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Attorneys for Plaintiff

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

TIFFANY GASTON, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ONRAD, INC., a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: RIC2004221

Assigned for All Purposes to:
Honorable Sunshine Sykes
Department 06

CLASS ACTION

**PLAINTIFFS' 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**

*[filed concurrently with Memorandum of Points
and Authorities; Declarations of Douglas Han,
Andrew C. Crane, Eric Springer, and Tammy
Bresyn; [Proposed] Order; and Compliance
Chart]*

[Reservation ID: 161391109139]

Hearing Date: April 4, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 06

Complaint Filed: October 20, 2020
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on April 4, 2022 at 8:30 a.m., or as soon thereafter as this
3 matter may be heard, at Department 06, located at 4050 Main Street, Riverside, California 92501,
4 Plaintiffs Tiffany Gaston and Amber Tomlinson (collectively referred to herein as “Plaintiffs”),
5 on behalf of themselves and all persons similarly situated, will and hereby do move this Court
6 pursuant to Code of Civil Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between Onrad, Inc.
8 (“Defendant”), including granting preliminary approval of the following Class:
9 “all current and former non-exempt or hourly paid employees of Defendant who
10 worked in California during the period from October 20, 2016 through the date of
11 December 28, 2021 (or if any such person is incompetent, deceased, or
12 unavailable due to military service, the person’s legal representative or successor
13 in interest evidenced by reasonable verification)” (“Class,” “Class Members,” and
14 “Class Period”). Class Members shall not include any person who submits a
15 timely and valid Request for Exclusion;
16 (2) Approving the form of notice of class action settlement and procedure for notice
17 to the Class; and
18 (3) Setting the Final Approval Hearing.

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

22 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Settlement” or
23 “Stipulation”), filed concurrently herewith as **Exhibit 1** to the Declaration of Douglas Han,
24 Defendant does not oppose the preliminary approval of the class action settlement.

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1 Under the terms of the Stipulation, the Parties have agreed that all claims brought on
2 behalf of the Class shall be fully and finally resolved for the total sum of \$250,000 (“Gross
3 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the Gross
4 Settlement Amount after the following deductions have been made (“Net Settlement Amount”)
5 shall be available for distribution to Class Members who do not opt out of the Settlement:

- 6 • up to \$87,500 to Class Counsel as the attorneys’ fees;
- 7 • up to \$20,000 to Class Counsel as the attorneys’ costs for reimbursement of
8 attorneys’ costs and expenses incurred;
- 9 • up to \$10,000 to the Class Representatives (\$5,000 to each Plaintiff) as their
10 respective Class Representative Enhancement Payments;
- 11 • up to \$5,000 to the Settlement Administrator as the Settlement Administration
12 Costs; and
- 13 • \$10,000 as the PAGA Payment, seventy-five percent (75%) of which (\$7,500)
14 will be payable to the California Labor and Workforce Development Agency
15 (“LWDA”) and twenty-five percent (25%) of which (\$2,500) will be included in
16 the Net Settlement Amount to be distributed to Class Members in accordance with
17 the Settlement.

18 This Notice of Motion and Motion is based on the fact that this is a fair and reasonable
19 settlement that benefits the Class and was the product of informed, non-collusive negotiations by
20 the Parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.*
21 (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44.
22 The proposed Settlement meets the legal standard for preliminary approval and is in the best
23 interests of the Class; the proposed form of notice explains the Settlement terms in a clear and
24 straightforward manner; the proposed procedures for notice provide the best practical notice to the
25 Class; and Class Members will have an opportunity to participate in and/or object to the
26 Settlement and/or opt-out of the Settlement.

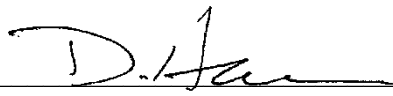
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1 This Notice of Motion and Motion is based on this Notice, and the exhibits thereto
2 (including the Notice of Class Action Settlement, the Request for Exclusion form, and the
3 Objection Form), the Memorandum of Points and Authorities, the Declaration of Douglas Han,
4 the Declaration of Andrew C. Crane, the Declaration Tammy Bresyn, the Declaration of Eric
5 Springer, the pleadings, records and files in the case, and such other oral and documentary
6 evidence which may be submitted at or before the hearing on this Motion.

7
8 Dated: March 8, 2022

JUSTICE LAW CORPORATION

9
10 By  _____

Douglas Han

Attorneys for Plaintiffs

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Honorable Sunshine Sykes
Department 06

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFFS' MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
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APPROVAL**

*[filed concurrently with Plaintiffs' Notice of
Motion and Motion; Declarations of Douglas
Han, Andrew C. Crane, Eric Springer, and
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Tiffany Gaston and Amber Tomlinson (“Plaintiffs,” “Plaintiff Gaston,”
4 “Plaintiff Tomlinson,” or “Class Representatives”) filed a wage-and-hour class action lawsuit
5 and representative action against Defendant Onrad, Inc. (“Defendant”) (collectively, referred to
6 herein as the “Parties”) in the Superior Court of California, County of Riverside, Case Number
7 RIC2004221 (the “Action”).

8 After engaging in substantial investigation and extensive negotiations with the
9 assistance of a respected third-party neutral, Steve Rottman, the Parties have agreed to settle all
10 claims alleged in the lawsuit on a class wide non-reversionary basis for \$250,000, which is
11 inclusive of all fees and costs.

12 The proposed Settlement reflected in the Joint Stipulation of Class Action Settlement
13 (“Stipulation” or “Settlement”) is fair, reasonable, and adequate, and in the best interests of the
14 Class. Consequently, Plaintiffs, with the consent of Defendant, move this Court for an order:
15 (1) granting preliminary approval of the proposed class action settlement, as embodied in the
16 Stipulation; (2) approving the Notice of Class Action Settlement, the Objection Form, and the
17 Request for Exclusion form (collectively, the “Notice Packet”) to be sent to Class Members,
18 and the notification schedule as set forth in the Stipulation and the Proposed Order; and (3)
19 setting a hearing for final approval of the class action settlement.

20 **II. STATUS OF THE LITIGATION**

21 **A. Procedural History**

22 On October 20, 2020, Plaintiff Gaston, a former employee of Defendant and
23 represented by Class Counsel, filed a wage-and-hour class action lawsuit against Defendant in
24 the Superior Court of California, County of Riverside, alleging eight (8) causes of action.
25 (Declaration of Douglas Han in Support of Motion for Preliminary Approval of Class Action
26 Settlement. (“Han Decl.”), filed concurrently herewith, ¶ 12.)

27 On September 28, 2021, Plaintiff Tomlinson provided a written notice to the California
28 Labor and Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 13.)

1 On October 28, 2021, the Parties attended mediation with Steve Rottman. (Han Decl.,
2 *supra*, at ¶ 14.) Under the auspices of the mediator and after a full day of arm's-length
3 negotiations, the Parties reached a settlement that will resolve the Action in its entirety. (*Ibid.*)

4 To facilitate the settlement process, the Parties agreed to allow Plaintiff Gaston to file a
5 First Amended Complaint ("FAC"). (Han Decl., *supra*, at ¶ 15.) The FAC added Plaintiff
6 Tomlinson as an additional plaintiff and added three (3) additional causes of action. (*Ibid.*)

7 **B. Investigation**

8 Before filing the lawsuit, Class Counsel investigated and researched the facts and
9 circumstances underlying the pertinent issues and the law applicable thereto. (Han Decl.,
10 *supra*, at ¶ 16.) This required thorough discussions and interviews between Class Counsel and
11 Plaintiffs, as well as preliminary research into the various legal issues involved in the Action.
12 (*Ibid.*) After conducting an initial investigation, Class Counsel determined that Plaintiffs'
13 claims were well-suited for class and representative action adjudication. (*Ibid.*)

14 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
15 and claims giving rise to the action, including:

16 • conducting formal and informal discovery and meeting and conferring with
17 counsel for Defendant several times, which produced the following:

- 18 ○ Defendant's applicable employee handbook since September 29, 2011;
- 19 ○ Defendant's TRINET Terms and Conditions Agreement (TCA) since
20 October 9, 2017;
- 21 ○ Defendant's applicable employee handbook since November 1, 2019;
- 22 ○ Sampling of Defendant's Terms of Severance Agreements;
- 23 ○ Plaintiffs' payroll records, time records, and personnel records;
- 24 ○ A copy of a list of employees from April 6, 2016 to September 24, 2021;
- 25 ○ Excel spreadsheets and several lengthy .pdf documents comprising of a
26 sampling of eighty eighty-four (84) employees. The excel spreadsheets
27 and several .pdf documents were broken down into redacted earnings
28 statements, paystubs, and timecards;

1 • reviewing and analyzing time and payroll records as well as Defendant’s
2 employment handbooks, Terms of Severance Agreements, TRINET TCA, copy of Defendant’s
3 list of employees, Plaintiffs’ personnel records, relevant policies, and other documentation;
4 • researching the applicable law and potential defenses;
5 • constructing damage models based on interpretations of California law; and
6 • reviewing information provided by Defendant at the mediation. (Han Decl.,
7 *supra*, at ¶ 17.)

8 The Class is ascertainable because the Class Members may be readily identified by
9 reference to Defendant’s records. (Han Decl., *supra*, at ¶ 18.) Class Counsel’s investigation
10 revealed that there are approximately ninety-four (94) Class Members. (*Ibid.*)

11 **C. Settlement Efforts**

12 Defendant vigorously contested liability, the amount of claimed damages, and the
13 propriety of class certification. (Han Decl., *supra*, at ¶ 19.) After Class Counsel analyzed the
14 relevant documents and other gathered data, Class Counsel believed that this case was
15 appropriate for resolution via mediation. (*Ibid.*)

16 On October 28, 2021, the Parties participated in full day mediation with Steve Rottman.
17 (Han Decl., *supra*, at ¶ 20.) During mediation, the Parties discussed all aspects of the case,
18 including the risks of litigation, the risks to both Parties of proceeding with a motion for class
19 certification, and the law relating to off-the-clock work, meal breaks, and rest breaks. (*Ibid.*)
20 Consequently, the Parties agreed to settle the Action. (*Ibid.*) From Class Counsel’s review of
21 the facts, strengths, and weaknesses of the case, the risks and delays posed by further litigation,
22 and Class Counsel’s prior litigation experience, Class Counsel believe that the recovery for
23 each Class Member is fair and reasonable. (*Ibid.*)

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

25 The Parties have executed a Stipulation attached to Douglas Han’s declaration and
26 incorporated herein as **Exhibit 1**. Defendant has agreed to pay \$250,000 (“Maximum
27 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by
28 Plaintiffs in the operative complaints on behalf of the proposed Class. (Han Decl., *supra*, at ¶

22.) The Stipulation defines the “Class” as “all current and former non-exempt or hourly paid employees of Defendant who worked in California during the period from October 20, 2016 through the date of December 28, 2021 (or if any such person is incompetent, deceased, or unavailable due to military service, the person’s legal representative or successor in interest evidenced by reasonable verification)” (“Class,” “Class Members,” and “Class Period”). (*Ibid.*) Class Members shall not include any person who submits a timely and valid Request for Exclusion. (*Ibid.*) The amount remaining in the Maximum Settlement Amount after the following deductions have been made (“Net Settlement Amount”) shall be available for distribution to Class Members who do not opt out:

- up to thirty-five percent (35%) of the Maximum Settlement Amount to Class Counsel as the attorneys’ fees (\$87,500);
- up to \$20,000 to Class Counsel as the attorneys’ costs for the reimbursement of actual costs and expenses incurred;
- up to \$10,000 to the Class Representatives as the Class Representative Enhancement Payments (\$5,000 to each Plaintiff);
- up to \$5,000 to the Settlement Administrator as its Settlement Administration Costs¹; and
- up to \$10,000 as the PAGA Payment, seventy-five percent (75%) of such penalties (\$7,500) will be payable to the LWDA and twenty-five percent (25%) of which (\$2,500) will be included in the Net Settlement Amount to be distributed to Class Members even if they opt out as described in the Stipulation. Each Class Member’s pro rata share of that \$2,500 will be part of his or her Individual Settlement Payment. (Han Decl., *supra*, at ¶ 22.)

The balance (approximately \$120,000) will be distributed to the Class Members who do not exclude themselves from the Settlement. (Han Decl., *supra*, at ¶ 23.)

///

¹ The Settlement Administrator bid is a “capped fee” quote for \$3,000.

1 The Settlement amount was a compromise figure, factoring in the inherent risks related
2 to certification, liability, and damages. (Han Decl., *supra*, at ¶ 25.) But considering all the
3 circumstances of the action and the defenses raised by Defendant against certification, liability
4 and damages, Class Counsel believe the Settlement is fair and reasonable. (*Id.* at ¶¶ 25, 72.)

5 **A. Number of Class Members**

6 There are ninety-four (94) persons in the Class. (Han Decl., *supra*, at ¶¶ 18, 85.a.)

7 **B. Attorney's Estimate of the Recovery by the Average Class Member if the**
8 **Settlement Were Approved**

9 If the Settlement is approved, Plaintiffs estimate that the gross average Class Member
10 will receive approximately \$1,276.60 as his or her Individual Settlement Payment. (Han Decl.,
11 *supra*, at ¶ 23.) The Individual Settlement Payments will be calculated and apportioned from
12 the Net Settlement Amount based on the number of Workweeks a Class Member worked
13 during the Class Period as a non-exempt or hourly-paid employee in California. (*Ibid.*)

14 **C. Discovery Exchanged**

15 Section II.B. The description of Class Counsel's investigation above provides a detailed
16 description regarding the discovery that was exchanged.

17 **D. Other Pending Litigation**

18 After making reasonable inquiries, Class Counsel is not aware of any class,
19 representative, or other collective action in any other court in this or any other jurisdiction that
20 asserts claims like those asserted in this case on behalf of a class or group of persons some or
21 all of whom would also be Class Members defined in this case. (Han Decl., *supra*, at ¶ 21.)

22 **E. Counsel for Defendant's Declaration**

23 Counsel for Defendant's declaration is being submitted concurrently with this Motion.

24 **F. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

25 Class Members will receive checks for their Individual Settlement Payments. (Han
26 Decl., *supra*, at ¶ 83.) Checks will remain negotiable for one hundred twenty (120) calendar
27 days ("Check-Cashing Deadline"). (*Ibid.*) Any check not cashed within one hundred twenty
28 (120) calendar days will be void. (*Ibid.*) The funds from the uncashed checks shall be

distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund. (*Ibid.*) No later than ten (10) calendar days after the expiration of the 120-day period, the Settlement Administrator shall deposit the total amounts contained in the settlement checks, and all interest that has accrued, to the State Controller's Unclaimed Property Fund. (Han Decl., *supra*, at ¶ 83.)

G. Settlement Administrator

The Settlement provides that up to \$5,000 will be paid to the Settlement Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 81.) This bid is comprised of hourly, flat fee, per piece, per check, and per year figure rates. (*Ibid.*) The fee was calculated through a projected estimate from the following categories: (1) case startup; (2) notification; (3) call center; (4) administration; (5) distribution; and (6) case wrap up. (*Ibid.*)

Class Counsel obtained bids from Simpluris, Inc. ("Simpluris"), CPT Group, Inc. ("CPT Group"), and Phoenix Class Action Administration Solutions ("Phoenix") for the administration of this Action. (Han Decl., *supra*, at ¶ 82.) Simpluris had the most competitive (lowest) bid at \$3,000 when compared to the bids from CPT Group and Phoenix that were \$7,000 and \$5,500 respectively. (*Ibid.*)

Simpluris also has extensive experience in administering employment class action settlements. (Declaration of Eric Springer Re: Qualifications of Simpluris, Inc. As The Settlement Administrator ("Springer Decl."), ¶¶ 5-8.)

H. Release by Class Members is Limited

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

all causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the facts contained in the operative complaints, including all of the following claims for relief: (a) failure to pay all regular wages, minimum wages and overtime wages due; (b) failure to provide proper meal and rest periods and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate or properly formatted wage statements; (d) failure to keep requisite payroll records; (e) failure to reimburse necessary business expenditures; (f) failure to properly calculate and pay sick leave; (g) failure to pay waiting time penalties; (h) engaging in unfair business practices that could have been premised on the claims,

1 causes of action or legal theories of relief described above or any of the
2 claims, causes of action or legal theories of relief pleaded in the operative
3 complaints; (i) all claims under the California Labor Code Private
4 Attorneys General Act of 2004, which shall only bind Plaintiffs and the
5 State of California, that were described in Plaintiff Amber Tomlinson's
6 letter sent to the LWDA on September 28, 2021 and only to the extent that
7 these claims were alleged in the operative complaints; (j) any other claims
8 or penalties under the California Labor Code or other wage-and-hour laws
9 pleaded in the Action; and (k) all damages, penalties, interest, and other
10 amounts recoverable under said claims, causes of action or legal theories
11 of relief. Plaintiffs do not release any aggrieved employee's claim for
12 wages or damages. Moreover, Plaintiffs do not release Class Members'
claims for wages or damages if they submitted valid and timely Requests
for Exclusion. The period of the Released Claims shall extend to the limits
of the Class Period. The *res judicata* effect of the Judgment will be the
same as that of the Released Claims. Defendant shall be entitled to a
release of Released Claims which occurred during the Class Period only
during such time that the Class Member was classified as non-exempt or
hourly-paid and expressly excludes all other claims for vested benefits,
wrongful termination, unemployment insurance, disability, social security,
workers' compensation, claims while classified as exempt, and claims
outside of the Class Period (collectively, the "Released Claims").

13 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 23.)

14 Pursuant to the terms set forth in the Settlement Agreement, Released Parties include
15 Defendant together with its officers, directors, employees, and agents ("Released Parties").
16 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 24.)

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

18 The Notice Packet fully apprises Class Members of the nature of the lawsuit, the claims
19 involved, the material terms of the Settlement, Class Members' options thereunder, and how
20 Class Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 70.)

21 Specifically, within twenty-one (21) calendar days of entry of the Court's Order
22 Granting Preliminary Approval, Defendant will provide the Class List to the Settlement
23 Administrator. (Han Decl., *supra*, at ¶ 69.)

24 Prior to mailing the Notice Packets, the Settlement Administrator will perform a search
25 based on the National Change of Address Database ("NCOA") for information to update and
26 correct for any known or identifiable address changes. (Han Decl., *supra*, at ¶ 69.) Any Notice
27 Packets returned to the Settlement Administrator as non-deliverable on or before the Response
28 Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address

1 affixed thereto, and the Settlement Administrator will indicate the date of such remailing on the
2 Notice Packet. (Han Decl., *supra*, at ¶ 69.) If no forwarding address is provided, the
3 Settlement Administrator will promptly attempt to determine the correct address using an
4 Accurant search/skip-trace and will perform a single remailing. (*Ibid.*)

5 Within ten (10) days after the Settlement Administrator receives the Class List from
6 Defendant, the Settlement Administrator will mail a Notice Packet to all Class Members via
7 regular First-Class U.S. Mail, using the most current, known mailing addresses identified in the
8 Class List. (Han Decl., *supra*, at ¶ 69.)

9 **J. Settlement Does Not Require Any Class Members to Submit Claims**

10 Class Members who do not timely request exclusion will receive an Individual
11 Settlement Payment. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 45.) Class Members are
12 not required to submit claim forms to receive Individual Settlement Payments. (*Ibid.*)

13 **K. Settlement Does Not Provide Any Reversion to Defendant**

14 This is a non-reversionary Settlement. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶
15 12.) Thus, none of the Maximum Settlement Amount will revert to Defendant. (*Ibid.*)

16 **L. Employer's Share of Payroll Taxes Will Not Be Paid Out of the Settlement**

17 All Individual Settlement Payments will be allocated as follows: (1) twenty-five percent
18 (25%) as wages; and (2) seventy-five percent (75%) as penalties and interest. (Han Decl.,
19 *supra*, at ¶ 24.) Defendant shall pay the employer's share of payroll taxes due on the portion of
20 Individual Settlement Payments allocated to wages separately and in addition to the Maximum
21 Settlement Amount. (*Ibid.*)

22 **M. Class Members Are Bound by the Released Claims**

23 Class Members are bound by the Released Claims as set forth in the Settlement.

24 **N. Notice of Class Action Settlement, Objection Form, and Request for Exclusion**

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

28 ///

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

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

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

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

15 Whether a class is ascertainable is determined by examining the class definition, the
16 size of the class, and the means available for identifying class members. *See Vasquez, supra*, 4
17 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d
18 1263, 1271. Class members are “ascertainable” where they may be readily identified without
19 unreasonable expense or time.

20 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
21 the requirement of numerosity is met. The documents and information exchanged between the
22 Parties reflect a Class of approximately ninety-four (94) Class Members. (Han Decl., *supra*, at
23 ¶ 85.a.) The Class Members have already been identified by reference to Defendant’s payroll
24 and personnel records. (*Id.* at ¶ 85.b.)

25 Therefore, the numerosity and ascertainability requirements have been met.

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

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

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

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

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

24 This Action involves, *inter alia*, a determination about Defendant’s alleged failure to
25 provide meal and rest breaks, failure to reimburse business expenses, failure to pay minimum
26 wages, failure to pay overtime wages, the resulting failure to pay final wages when required,
27 the failure to provide accurate wage statements, and largely derivative claims under the
28 Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶ 86.e.) Plaintiffs contend that
these practices, including an alleged practice of failing to provide complete meal and rest
breaks, the alleged failure to provide corresponding premium wages, and alleged systemic
policies and practices of pressuring employees to work off-the-clock, affected Class Members
in the same way. (*Ibid.*) Thus, the outcome of litigation on this matter depends upon questions

1 that are common to Class Members. While Defendant maintained otherwise, these issues will
2 not be decided on the basis of facts peculiar to each Class Member but on the basis of facts
3 common to them all. Finally, these issues of liability can be determined on a class wide basis.

4 Thus, the commonality requirement has been satisfied as well.

5 **C. The Plaintiffs' Claims Are Typical**

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

17 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
18 Plaintiffs' claims are typical of Class Members' claims because they arose from the same
19 factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 86.c.) Plaintiffs
20 were employed by Defendant during the Class Period and subject to the allegedly unlawful
21 meal and rest break policies and pay practices at issue in this litigation, which makes Plaintiffs
22 Class Members. (*Ibid.*) The central issues of this litigation (whether Defendant failed to pay all
23 wages, whether Defendant failed to provide meal and breaks, whether Defendant failed to pay
24 premium wages for noncompliant meal and rest breaks, etc.), which would arise if this were an
25 individual action brought by Plaintiffs, apply to the other Class Members as well. (*Ibid.*) The
26 answer to these questions would determine Defendant's liability to the Class. (*Ibid.*)

27 Consequently, Plaintiffs' claims are typical of the claims of the Class, meaning the
28 typicality requirement has also been met.

1 **D. Adequacy of Class Counsel and Class Representatives**

2 Class Counsel are experienced in class actions, have represented their clients zealously,
3 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 85.d.) Moreover, the Class
4 Representatives’ interests are aligned with those of the Class Members, they have suffered the
5 same injuries as the Class Members, and they have no conflicts of interest. (*Id.* at ¶ 85.d.)

6 Therefore, the adequacy requirement has been satisfied as well.

7 **E. Predominance and Superiority**

8 Individual issues do not predominate over those common to the Class. (Han Decl.,
9 *supra*, at ¶ 86.f.) Furthermore, the class action mechanism is superior to individualized actions
10 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 86.g.)

11 Thus, there are no individual issues predominating this case, and class action litigation
12 is the superior method of resolving the issues set forth herein.

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

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

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

28 Preliminary approval by the trial court is a conditional finding the settlement appears to
be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
of the findings made by a judge at a preliminary hearing or conference concerning a tentative
settlement proposal may vary. The court may find the settlement proposal contains some merit,

1 is within the range of reasonableness required for a settlement offer, or is presumptively valid
2 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert
3 B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

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

6 “When the parties to an action reach a monetary settlement, they will
7 usually prepare and execute a joint stipulation of settlement, which is
8 submitted to the court for preliminary approval. The stipulation should
9 set forth the central terms of the agreement, including but not limited to,
the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause.” *Id.* at § 11.24.

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

11 As a matter of public policy, the courts both encourage the use of the class action
12 device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000)
13 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a
14 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
15 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
16 where complex class action litigation is concerned.”)

17 The courts presume the absence of fraud or collusion in the negotiation of a settlement
18 unless evidence to the contrary is offered. There is a presumption that the negotiations were
19 conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
20 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
21 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when
22 settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
23 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

24 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid
25 out several factors that should be analyzed in determining if a class action settlement should be
26 approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense,
27 complexity, and likely duration of further litigation; (3) the risk of maintaining class action
28 status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed

1 and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
2 governmental participant; and (8) Class Members' reaction to the proposed settlement.

3 Here, the Settlement satisfies each of these factors. Class Counsel conducted extensive
4 discovery before entering meaningful settlement negotiations in this matter, including a
5 detailed analysis of Defendant's policies and a considerable sample of Defendant's time and
6 pay records. (Han Decl., *supra*, at ¶ 17.) This discovery permitted Class Counsel to evaluate
7 the strengths and weaknesses of the case and the risks associated with ongoing litigation. (*Id.*
8 at ¶ 20.) In addition, Class Counsel are experienced in the handling of wage-and-hour class
9 actions and support the Settlement. (*Id.* at ¶¶ 3-10.)

10 **A. The Strength of Plaintiffs' Case.**

11 The claims in this action include failure to provide meal and rest breaks, failure to pay
12 minimum wages, failure to pay overtime wages, failure to pay final wages when due, failure to
13 provide accurate wage statements, failure to reimburse necessary business expenses, and
14 related claims for violations of the Business & Professions Code and for penalties under
15 PAGA. (Han Decl., *supra*, at ¶ 27.)

16 Class Counsel felt confident the claims here would be certified given that Defendant's
17 policies and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 28-62.)

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

19 As with all litigation, there are risks that a party will not prevail on the merits. In this
20 case, Plaintiffs contend that they and other Class Members were not provided compliant meal
21 and rest breaks due to the nature of their work, heavy, time-sensitive workloads, and
22 understaffing. (Han Decl., *supra*, at ¶¶ 29, 32-33.) Defendant countered that it never
23 prioritized employees completing their assignments at the expense of working through, cutting
24 short, or taking late meal breaks. (*Id.* at ¶ 34.) In other words, employees were choosing to
25 forgo receiving proper meal breaks as opposed to being pressured to do so to avoid being
26 punished or admonished by supervisors. (*Ibid.*) This would also mean that employees were
27 electing to clock out for meal breaks but not take full and timely meal breaks instead of being
28 instructed to do so. (*Ibid.*) Finally, Defendant contended if employees did not receive proper

1 meal breaks, they were promptly paid premium wages if the issue was brought up. (Han Decl.,
2 *supra*, at ¶¶ 29, 32-33.)

3 Additionally, Defendant asserted it did provide reasonable opportunities for employees
4 to take compliant rest breaks. (Han Decl., *supra*, at ¶ 30.) Defendant also pointed out that
5 unlike meal breaks, rest breaks are not recorded, meaning it will be difficult for Plaintiffs to
6 prove employees did not receive full and timely rest breaks. (*Ibid.*) By extension, Defendant
7 also asserted that employees failed to inform Defendant that they were not receiving compliant
8 rest breaks. (*Ibid.*) This would mean that employees were choosing to work through, cut short,
9 or take late rest breaks rather than being forced to do so by the nature of their work, heavy,
10 time-sensitive workloads, and purported understaffing. (*Ibid.*) Finally, like meal breaks,
11 Defendant asserts that it paid employees premium wages for noncompliant rest breaks. (*Ibid.*)

12 As the consideration concerning meal and rest breaks would likely depress the damages
13 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
14 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 31, 35.) If Defendant's contentions are
15 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
16 would be no recovery for the Class Members.

17 Plaintiffs also alleged that they were not paid for all hours worked, including minimum
18 wages and overtime wages as applicable due to Defendant's improper, uniform practices. (Han
19 Decl., *supra*, at ¶ 36.) Specifically, the amount of time-sensitive tasks Defendant would
20 allegedly assign employees left them with no choice but to work additional hours off-the-clock.
21 (*Ibid.*) Furthermore, employees did not record these additional hours of work because
22 Defendant supposedly discouraged overtime work (*i.e.*, disciplined employees for working
23 unauthorized overtime hours). (*Ibid.*) Defendant countered that this claim was not suitable for
24 class treatment. (*Id.* at ¶ 37.) Instead, Defendant argued that it expressly prohibited off-the-
25 clock work, generally approved overtime requests, and was never made aware of employees
26 working additional hours off-the-clock. (*Ibid.*) Finally, Defendant asserted any unrecorded
27 hours would likely be subject to individual inquiries and unlikely to be certified. (*Ibid.*) Given
28 the difficulty in certifying this claim, Class Counsel also applied a significant discount to

1 damages based on this theory. (Han Decl., *supra*, at ¶ 38.) If Defendant’s contentions held
2 true, the likely outcome of this claim would be little to no recovery for employees.

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

4 To establish liability for wage statement violations and waiting time penalties, Plaintiffs
5 would first have to establish liability for the underlying claims. But Defendant argued that meal
6 and rest break violations, even if established, could not be the predicate for a Labor Code
7 section 226 wage statement or section 203 waiting time claim. (Han Decl., *supra*, at ¶¶ 41, 45-
8 46.) For example, the California Supreme Court has recently held that claims for meal and rest
9 break penalties do not constitute “action[s] brought for the nonpayment of wages” for the
10 purpose of determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244,
11 1259. In *Ling v. P.F. Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal
12 noted an action for unlawful meal and rest periods under “cannot support a section 203 penalty
13 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
14 wages.”). Authority is divided on this point. Moreover, although authority is divided, many
15 district court rulings support the conclusion that any unpaid meal and rest break premium pay
16 cannot give rise to derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D.
17 Cal. 2017) 236 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4
18 Cal.App.5th 385, 392-393 (noting a wage statement need only document compensation
19 *actually received* and the hours used to calculate that compensation). It is unclear if the Court
20 would have permitted untimely wage penalties or wage statement violations for Defendant’s
21 failure to provide meal and rest break penalties.

22 In addition, Plaintiffs would have to establish that Defendant’s conduct was willful to
23 recover waiting time penalties. (Lab. Code, § 203.) With these penalties, there is always the
24 risk that the trier of fact would not have held that Defendant’s actions were done “willfully.” A
25 good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v.*
26 *Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above,
27 Plaintiffs allege Defendant failed to pay for all hours worked and premiums for noncompliant
28 meal and rest breaks. (Han Decl., *supra*, at ¶¶ 29, 32-33, 36.) By extension, Plaintiffs contend

1 the Class Members are entitled to minimum wages, overtime wages, and premium wages,
2 which they allege were not paid at the time of their termination or resignation. (Han Decl.,
3 *supra* at ¶¶ 43-44.) If Plaintiffs are successful on their claims, the penalties pursuant to Labor
4 Code section 203 shall attach. (*Id.* at ¶ 47.) Defendant counters it provided employees with
5 reasonable opportunities to take meal and rest breaks, asked employees to confirm the accuracy
6 of their time records, and, therefore, had good-faith defenses under *Brinker* and its progeny.
7 (*Id.* at ¶¶ 45-46.) As such, there was some risk associated with waiting time penalties that Class
8 Counsel had to consider. (*Id.* at ¶ 47.)

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

10 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
11 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a
12 penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
13 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
14 period for each subsequent violation. (Lab. Code § 2699, subd. (e)(2).) However, if a civil
15 penalty is provided in a specified amount by the Labor Code section relating to the underlying
16 alleged Labor Code violation, that amount shall apply. (*Ibid.*) The PAGA also gives the Court
17 discretion to award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may
18 award a lesser amount than the maximum civil penalty amount specified by this part if, based
19 on the facts and circumstances of the particular case, to do otherwise would result in an award
20 that is unjust, arbitrary and oppressive, or confiscatory.”]); *Thurman v. Bayshore Transit*
21 *Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

22 The provisions of the Labor Code potentially triggering PAGA penalties in this case
23 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221,
24 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and
25 2802. (Han Decl., *supra*, at ¶ 52.) Defendant asserted that, regardless of the results of the
26 underlying causes of action, PAGA penalties are not mandatory but permissive and
27 discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against the
28 underlying claims, it had a strong argument that it would be unjust to award maximum PAGA

1 penalties given the law’s unsettled state. (Han Decl., *supra*.; See *Thurman v. Bayshore Transit*
2 *Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Thus,
3 without stacking and limited to the initial violation, PAGA penalties would be limited to
4 **\$4,300** (43 employees x \$100 initial violation) on the low end and **\$30,100** (43 employees x
5 \$100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 53-
6 56.)

7 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
8 (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the
9 statutory claims, such as violations of Labor Code sections 201, 202, 226(a), 226.7, 510,
10 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay
11 period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the
12 maximum penalties under the law. (*Ibid.*) Thus, allocating \$10,000 to PAGA civil penalties
13 was reasonable based on a rate of **\$11.42** per pay period [$\$10,000 \div 876$ Pay Periods in PAGA
14 Date Range = **\$11.42**], given the fact that Defendant is paying an additional \$240,000 in the
15 class settlement.² (*Ibid.*) Where PAGA penalties are negotiated in good faith and “there is no
16 indication that [the] amount was the result of self-interest at the expense of other Class
17 Members,” such amounts are considered reasonable.³ (*Ibid.*)

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

19 Given the risks outlined above, the issues in this case were complex and the risk for
20 Plaintiffs and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
21 63-67.) A class trial would have required the retention of expensive expert witnesses, the
22

23
24 ² (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
26 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

27 ³ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
28 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.”).)

1 accrual of extensive litigation costs, and the Parties would have had to spend a substantial
2 amount of time. (Han Decl., *supra*, at ¶ 67.) Given the complexity and unsettled nature of the
3 issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal.
4 (*Id.* at ¶¶ 64-65, 67.) Finally, an appeal would result in further delay for the Class Members
5 who have already waited years for resolution in this matter. (*Ibid.*)

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

7 In class actions, decertification is always a possibility. There is always a risk that a trial
8 of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*
9 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class
10 actions, decertification is a real risk that Class Counsel must consider.

11 **G. The Amount Offered in Settlement.**

12 There can be no doubt that the Settlement is the result of vigorous, adversarial, non-
13 collusive, and arms-length negotiations. To determine the approximate potential damages
14 which would be owed to each of the Class Members, Class Counsel analyzed the time records
15 for Plaintiffs and a sampling of the Class Members. By analyzing this information, Class
16 Counsel was able to estimate the full value of the case if Plaintiffs were to prevail at trial.

17 Excluding the civil penalties, which could be completely discretionary, for the reasons
18 stated, the total estimated potential exposure, assuming certification and prevailing at trial,
19 would be around **\$1,198,794.13** on the low end and **\$1,275,321.13** on the high end. (Han
20 Decl., *supra*, at ¶ 59.)

21 ///

22 ///

23 ///

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$196,143.93	70%	60%	\$23,537.27
Meal Break Premiums	\$350,653.20	60%	50%	\$70,130.64
Overtime/Minimum Wage: Off-the-Clock	\$152,955 to \$229,482	50%	50%	\$38,238.75 to \$57,370.50
Unreimbursed Business Expenses	\$107,060	30%	70%	\$22,482.60
Wage Statement Penalty	\$191,750	40%	50%	\$57,525
Waiting Time Penalty	\$200,232	40%	50%	\$60,069.60
MAXIMUM TOTAL EXPOSURE	\$1,198,794.13 to \$1,275,321.13			\$271,983.86 to \$291,115.61

Based on this analysis, the realistic recovery for this case is approximately **\$271,983.86** on the low end and **\$291,115.61** on the high end. (Han Decl., *supra*, at ¶ 60.) The Maximum Settlement Amount of \$250,000 is approximately nineteen percent (19.6%) of the high end maximum potential exposure and about eighty-six percent (85.88%) of the high end maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class after analyzing the likelihood of success on the merits. (Han Decl., *supra*, at ¶ 26.) Class Counsel concluded that the Class had a reasonable likelihood of success on the core claims. (*Id.* at ¶¶ 59-67.) However, Defendant disputes this contention, denies all wrongdoing in this matter and is confident it has strong legal and factual defenses to Plaintiffs' claims. (*Id.* at ¶¶ 64, 66.) Class Counsel determined that the likelihood of success on the claims for meal breaks, rest breaks, unpaid wages, waiting time penalties, and unreimbursed necessary business expenses was not as strong because of various defenses, including Defendant's arguments that the issues were not suitable for class treatment due to their individualized nature. (*Ibid.*) After considering the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the Settlement amount of \$250,000 was fair and reasonable.

The Settlement is fair because: (1) it provides a substantial payment to each Class Member for releasing his/her claims; (2) extinguishes the risk of litigation; and (3) provides a

1 fair and adequate distribution of the settlement proceeds where the funds are allocated to Class
2 Members based upon the number of workweeks worked during the Class Period.

3 As detailed at length in the accompanying declaration of Douglas Han, the Settlement
4 is the result of extensive settlement negotiations between the Parties, conducted at arm's
5 length, and informed by substantial factual and legal investigations. (Han Decl., *supra*,
6 *passim*.) Throughout this case, Class Members have been represented by experienced counsel
7 with many years of experience in employment class action litigation. (*Id.* at ¶¶ 3-10.)
8 Specifically, Class Counsel has devoted a considerable amount of time to the prosecution of
9 this case, including but not limited to: (1) interviewing Plaintiffs at length on repeated
10 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with
11 counsel for Defendant; (3) reviewing and analyzing time and pay records, employee
12 handbooks, and applicable policies, Plaintiffs' personnel files; (4) researching California law;
13 (5) interviewing Class Members regarding their experiences; (6) preparing for and attending
14 mediation; and (7) negotiating and finalizing the Stipulation. (Han Decl., *supra*, at ¶¶ 16-20.)

15 Among those matters considered were: (a) the strength of Plaintiffs case versus the
16 amounts offered in settlement; (b) the risks, expenses, and length of further litigation, including
17 class certification and the appeals process; (c) the present state of the law as it applies to wage-
18 and-hour class actions, particularly in light of *Brinker*; (d) the present value of a settlement
19 versus the long wait necessitated by any potential judgment in Class Members' favor; (e) the
20 burdens of proof necessary to establish liability against Defendant; and (f) Defendant's
21 defenses to the action. (Han Decl., *supra*, *passim*.)

22 These factors indicated the interests of Class Members are best served by a settlement
23 of this action in the manner set forth in the Stipulation, which confers a substantial benefit to
24 the Class. Furthermore, the Individual Settlement Payment for each Class Member will be
25 tailored to their workweeks during the Class Period. Class Counsel also secured prospective
26 relief for the Class in that Defendant will ensure its policies comply with California law.

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1 Finally, Class Counsel believe the Settlement serves the best interests of the Class.
2 While the recommendations of counsel proposing the class settlement are not conclusive, the
3 Court can properly take the recommendations into account if counsel have been involved in
4 litigation for some period of time, appear to be competent, and have experience with this type
5 of litigation, and significant discovery has been completed. *See Newberg*, § 11.47.

6 **VII. THE TWO CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE**
7 **FAIR AND REASONABLE**

8 It is appropriate to provide a relatively modest additional incentive payment to the class
9 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
10 901 F.Supp. 294.

11 Plaintiffs are entitled to reasonable service payments for their efforts and initiative in
12 bringing and helping to prosecute this class action. (Han Decl., *supra*, at ¶ 76.) Plaintiffs spent
13 significant time better apprising themselves of their rights, deciding whether remedial action
14 should be taken, and contacting Class Counsel who spent many hours with Plaintiffs discussing
15 their cases and the law. (*Ibid.*) Plaintiffs ultimately decided to vindicate not only their own
16 rights but also those of their co-workers by filing a class action. (*Ibid.*)

17 By suing Defendant, Plaintiffs increased the risk of retaliation by prospective
18 employers. (Han Decl., *supra*, at ¶ 77.) Plaintiffs' lawsuit has cost Defendant considerable
19 resources and such conduct will not be lost on prospective employers. (*Ibid.*) This risk of
20 losing employment opportunities is particularly real in the information age, where employers
21 can perform background checks of prospective employees. (*Ibid.*)

22 Plaintiffs did not allow their fears of the potential repercussions of being class
23 representatives deter them from acting for the benefit of Class Members. (Han Decl., *supra*, at
24 ¶ 78.) Instead, Plaintiffs have been intimately involved in this case since its inception. (*Ibid.*)
25 Specifically, Plaintiffs have devoted a substantial amount of time to helping Class Counsel
26 effectively develop and prosecute this action at every stage of the litigation. (*Ibid.*)

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1 Plaintiffs have spent a significant amount of time with Class Counsel detailing their
2 knowledge of Defendant's practices. (Han Decl., *supra*, at ¶ 79.) Plaintiffs have diligently,
3 adequately, and fairly represented Class Members and have not placed their own interests
4 above any member of the Class. (*Ibid.*) The Class Representative Enhancement Payments to
5 each Plaintiff is intended to recognize their time and effort on behalf of the Class, and amount
6 requested is fair and appropriate based on their contribution and involvement. (*Ibid.*) This sort
7 of payment to a class representative has been a common feature of settlements negotiated by
8 Class Counsel and has been routinely approved by trial courts. (*Ibid.*)

9 Considering the forgoing, Class Counsel believes the combined Class Representative
10 Enhancement Payments in the amount of \$10,000 (\$5,000 to each Plaintiff) to the Class
11 Representatives is fair and reasonable. (Han Decl., *supra*, at ¶ 80.)

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

14 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an
15 award of up to \$87,500 as the attorneys' fees (35% of the Maximum Settlement Amount) and
16 reimbursement of actual litigation costs and expenses of up to \$20,000 as the attorneys' costs.
17 (Han Decl., *supra*, at ¶ 73.) The requested fees are fair compensation for a law firm involved in
18 undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent
19 basis. (*Id.* at ¶¶ 73-74.) Class Counsel's request for Attorneys' Fees and Costs will not be
20 opposed by Defendant throughout the settlement process.

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

1 1291, 1295-96.

2 Several courts have, however, expressed frustration with the “lodestar” approach for
3 deciding fee awards, which usually involves wading through voluminous time records. In other
4 words, the percentage approach can be preferable to the lodestar in certain situations because:
5 (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient
6 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
7 (3) it reduces the demands on judicial resources. *In re Activision Securities Litigation*, 723 F.
8 Supp. at 1378-79. The Ninth Circuit has used the percentage of the common fund approach to
9 determine the award of attorneys’ fees. *In re Pacific Enterprises Securities Litigation* (9th Cir.
10 1994) 47 F.3d 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).

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

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

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1 In wage-and-hour class actions in particular, California trial courts have customarily
2 approved attorney's fees consistent with or greater than the percentage of the common fund
3 requested in this case. *See Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct.
4 Case No. BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
5 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. Douglas M. Minning);
6 *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Super. Ct. Case No.
7 01CC00140 (Hon. Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los
8 Angeles County Super.Ct. Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman);
9 *Daum v. Claim Jumper Restaurants*, Orange County Super.Ct. Case No.02CC10201 (2006)
10 (Hon. Ronald L. Bauer).

11 Here, Class Counsel has borne the entire risk and costs of litigation and will not receive
12 any compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 73-74.) The Court
13 should also consider the benefit obtained by Class Counsel on behalf of Class Members. Thus,
14 the requested award for Class Counsel is reasonable.

15 **A. Fee Splitting Agreement**

16 Class Counsel is not splitting the costs associated with the settlement with any other
17 individuals or firms. (Han Decl., *supra*, at ¶ 84.)

18 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
19 **APPROVAL**

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

22 1. Review and approve the Stipulation attached to Douglas Han's declaration as
23 **Exhibit 1**;

24 2. Review and approve the Notice of Class Action Settlement, the Objection Form,
25 and the Request for Exclusion form attached to the Proposed Order as **Exhibit A, Exhibit B,**
26 **and Exhibit C** respectively;

27 3. Consider and determine that the proposed class action settlement as set forth in
28 the Stipulation preliminarily appears fair, reasonable, and adequate;

1 4. Conditionally certify the action as a class action for settlement purposes only
2 and preliminarily approving the proposed class action settlement and Stipulation;

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

5 6. Approve and appoint Simpluris as the Settlement Administrator to handle the
6 notice procedures as set forth in the Stipulation;

7 7. Approve the proposed allocation of funds to the claims made under PAGA;

8 8. Order Defendant to disclose the Class List to Simpluris in accordance with the
9 manner set forth in the Stipulation.;

10 9. Order Simpluris to mail the Notice Packet to Class Members; and

11 10. Set a date for the Final Approval Hearing.

12
13 Dated: March 8, 2022

JUSTICE LAW CORPORATION

14
15 By 
16 Douglas Han
17 Attorneys for Plaintiffs
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**PROOF OF SERVICE
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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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, California 91103 and my electronic service address is manderson@justicelawcorp.com.

On March 9, 2022, I served the foregoing document described as

PLAINTIFFS' 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 PLAINTIFFS' 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: **Gaston v. Onrad, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-846363-21**
Court Case No.: RIC2004221
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.

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Executed on March 9, 2022, at Pasadena, California.

A handwritten signature in cursive script, reading "Mariah Anderson", written in black ink. The signature is fluid and stylized, with the first name "Mariah" and last name "Anderson" clearly distinguishable.

Mariah Anderson