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on behalf of themselves and all others similarly situated

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

DAMIAN CROCKETT, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

v.

CUSTOM BILT HOLDINGS, LLC d/b/a
CUSTOM BILT METALS, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 34-2020-00285868-CU-OE-GDS

Assigned for All Purposes to:
Honorable Jill H. Talley
Department 25

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 Plaintiffs' Memorandum
of Points and Authorities; Declaration of
Douglas Han; and [Proposed] Order]*

Hearing Date: June 17, 2022
Hearing Time: 09:00 a.m.
Hearing Place: Department 25

Complaint Filed: September 25, 2020
First Amended: February 10, 2022
Trial Date: None Set

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

2 PLEASE TAKE NOTICE that on June 17, 2022, at 09:00 a.m., or as soon thereafter as
3 this matter may be heard, at Department 25, located at 720 Ninth Street, Sacramento, CA 95814-
4 1380, Plaintiffs Damian Crockett and Neakco Cox (collectively “Plaintiffs”), on behalf of
5 themselves and all persons similarly situated, will and hereby moves this Court pursuant to
6 California Code of Civil Procedure § 382 and California Rule of Court 3.769 for an order:

7 (1) Preliminarily approving the class action settlement reached between the Plaintiffs
8 and Defendant CUSTOM BILT HOLDINGS, LLC d/b/a CUSTOM BILT METALS
9 (“Defendant”) (Plaintiffs and Defendant are collectively referred to herein as the “Parties”),
10 including granting preliminary approval of the following class: all current and former hourly-paid
11 or non-exempt employees (whether hired directly or through a staffing agency) of Defendant
12 within the State of California at any time during the period from April 6, 2016 to November 10,
13 2021;

14 (2) Approving the Notice of Class Action Settlement and Procedure for notice to the
15 class, and

16 (3) Setting the final approval hearing.

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

20 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Stipulation”), filed
21 concurrently herewith, Defendant does not oppose the preliminary approval of the class action
22 settlement.

23 Under the terms of the Stipulation, the parties have agreed that all claims brought on
24 behalf of the class shall be fully and finally resolved for the total sum of \$250,000.00 (“Maximum
25 Settlement Amount”), to be paid on a non-reversionary basis. The amount remaining of the
26 Maximum Settlement Amount after the following deductions have been made (“Net Settlement
27 Amount”) shall be available for distribution to class members who do not opt out of the settlement:

28 ///

1 • up to thirty-eight percent of the Maximum Settlement Amount, in the amount of
2 Eighty-Four Thousand Dollars, Three Hundred and Sixty Dollars and Zero Cents (\$95,000.00), to
3 Class Counsel for attorneys' fees, and not more than Twenty Thousand dollars (\$20,000.00) in
4 reasonable litigation costs;

5 • up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to the Class
6 Representatives (\$7,500.00 to Class Representative Damian Crockett and \$7,500.00 to Class
7 Representative Neakco Cox);

8 • claims administration costs not to exceed \$9,500.00;

9 • \$7,500.00 PAGA Payment (\$1,875.00 to be paid to the participating Class
10 Members and \$5,635.00 to be paid to the LWDA);

11 • Class Members' share of any employment taxes.

12 This Notice of Motion and Motion is based on the fact that this is a fair and reasonable
13 settlement that benefits the class and was the product of informed, non-collusive negotiations by
14 the parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.*
15 (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44. The
16 proposed settlement meets the legal standard for preliminary approval and is in the best interests of
17 the class; the proposed form of notice explains the settlement terms in a clear and straightforward
18 manner; the proposed procedures for notice provide the best practical notice to the class; and Class
19 Members will have an opportunity to participate in and/or object to the settlement and/or opt-out
20 of the class portion of settlement.

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1 This Notice of Motion and Motion is based on this Notice, the parties' Stipulation and the
2 exhibits thereto (including the Notice to Class Members), the accompanying Memorandum of
3 Points and Authorities, the Declaration of Douglas Han, the pleadings, records and files in the
4 case, and such other further oral and documentary evidence which may be submitted at or before
5 the hearing on this Motion.

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

13
14 Dated: May 24, 2022

Respectfully submitted,

15 JUSTICE LAW CORPORATION

16
17 By 
18 Douglas Han
19 Shunt Tatavos-Gharajeh
20 Jason Rothman
21 Attorneys for Plaintiffs Damian Crockett and
22 Neakco Cox, and all others similarly situated
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the proposed Joint Settlement Agreement of Class Action Settlement
4 (“Stipulation”), filed concurrently herewith, the class consists all current and former hourly-paid or
5 non-exempt employees (whether hired directly or through a staffing agency) of Defendant within
6 the State of California at any time during the period from April 6, 2016 to November 10, 2021
7 (“Class”). After engaging in substantial investigation and extensive negotiations with the
8 assistance of a respected third-party neutral Steve Pearl, the parties have agreed to settle all claims
9 alleged in the lawsuit on a class-wide non-reversionary basis for \$250,000.00, inclusive of all fees
10 and costs. All 303 Class Members shall receive a settlement share unless they opt out.

11 The proposed settlement reflected in the Stipulation is fair, reasonable, and adequate, and
12 in the best interests of the class. Consequently, Plaintiffs, Damian Crockett and Neakco Cox
13 (collectively “Plaintiffs”) with the consent of Defendant CUSTOM BILT HOLDINGS, LLC d/b/a
14 CUSTOM BILT METALS (“Defendant”) (Plaintiffs and Defendant are collectively referred to
15 herein as the “Parties”), hereby moves this Court for an order: (1) granting preliminary approval of
16 the proposed class action settlement, as embodied in the Joint Settlement Agreement of Class
17 Action Settlement (“Stipulation”) filed concurrently herewith; (2) approving the Class Notice to be
18 sent to class members, and the notification schedule as set forth in the Stipulation and the
19 Proposed Order, also filed concurrently herewith; and (3) setting a hearing for final approval of the
20 class action settlement.

21 **II. STATUS OF THE LITIGATION**

22 **A. Procedural History**

23 On September 20, 2020, a lawsuit was commenced against Defendant by Plaintiff Damian
24 Crockett in the Superior Court of California, County of Sacramento, on behalf of himself and all
25 individuals employed by Defendant as non-exempt employees at any time within four years of the
26 filing of the Action within California. (Declaration of Douglas Han (“Han Decl.”), filed
27 concurrently herewith, ¶ 10.) This lawsuit included the following causes of action against
28 Defendant: (1) Failure to Pay Overtime Wages Under Labor Code §§ 510 & 1198, (2) Meal Period

1 Liability Under Labor Code § 226.7, (3) Rest-Break Liability Under Labor Code § 226.7, (4)
2 Failure to Pay Minimum Wages Under Labor Code §§ 1194 & 1197, (5) Waiting Time Penalties
3 Under Labor Code §§ 201-203, (6) Failure to Provide Compliant Wage Statements Under Labor
4 Code § 226(a), (7) Failure to Reimburse Expenses Under Labor Code § 2802, and (8) Violation of
5 Business & Professions Code § 17200, *et seq.* (*Id.*)

6 On August 9, 2021, the Parties participated in mediation before Steve Pearl, Esq. The
7 mediation was a successful, arms-length negotiation with the Parties agreeing to settle the above-
8 entitled matter. (Han Decl., ¶ 11.)

9 On September 20, 2021, Neakco Cox submitted a letter to the LWDA alleging the same
10 causes of action in order to pursue an action under the Private Attorneys General Act of 2004,
11 California Labor Code § 2698 *et. seq.*¹. (“PAGA”). (Han Decl., ¶ 12.)

12 On February 9, 2022, Plaintiff Damian Crockett, jointly with Defendant, filed a
13 Stipulation regarding the filing of the First Amended Complaint to add an additional named
14 Plaintiff, Neakco Cox. (*Id.* at ¶ 13.)

15 **B. Investigation**

16 Before filing the above Action, Class Counsel investigated and researched the facts and
17 circumstances underlying the pertinent issues and the law applicable thereto. (Han Decl. at ¶ 14.)
18 This required thorough discussions and interviews between Class Counsel and Plaintiffs, as well as
19 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
20 initial investigation, Class Counsel determined that Plaintiff Damien Crockett’s claims were well
21 suited for class action adjudication owing to what appeared to be a common course of conduct
22 affecting a similarly situated group of employees. (*Id.*)

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

- 25 • initiating formal discovery through Form Interrogatories, Special
- 26 Interrogatories, Request for Production of Documents, Request for Admissions,
- 27 • conducting informal discovery and meeting and conferring with defense

28 ¹ Neakco Cox was retained prior to mediation and his retainment was the driving force behind the PAGA settlement.

1 counsel about same. Defendant's counsel provided Plaintiffs' counsel the following
2 documentation informally:

- 3 ○ All job descriptions of Class Members during the Class Period;
- 4 ○ All applicable employment handbooks from April of 2016 through July
5 of 2021;
- 6 ○ Payroll, timekeeping records, and paystubs for Plaintiffs';
- 7 ○ Redacted payroll, timekeeping records, and paystubs comprising of a
8 random sampling of Class Members.
- 9 • The Parties agreed to a 100% timekeeping and payroll production for all of
10 the W-2 employees as Defendant did not have the payroll and timekeeping data for the temporary
11 employees
- 12 • All workweeks and pay periods for temporary employees.
- 13 • reviewing and analyzing time and pay records as well as employment
14 handbooks, Plaintiffs' personnel files, relevant policies and other documentation;
- 15 • researching the applicable law and potential defenses;
- 16 • constructing damage models based on interpretations of California law;
- 17 • meeting and conferring with Plaintiffs' expert on data analysis and
18 estimated exposure of Defendant; and
- 19 • reviewing information provided by Defendant at the mediation.

20 (Han Decl. at ¶ 15.)

21 The Class enumerated in this action is ascertainable because the Class Members may be
22 readily identified by reference to Defendant's records. Defendant has agreed to share the
23 information from these records with the Settlement Administrator, ILYM Group, in order to
24 identify and contact the Class Members. Our investigation, and the resulting settlement, revealed
25 approximately 303 Class Members and PAGA Members through the time of mediation on
26 November 19, 2021. (Han Decl. at ¶ 16.)

27 Defendant, for its part, vigorously contested liability, the amount of claimed damages, and
28 the propriety of class certification. (Han Decl. at ¶ 17.) After Class Counsel analyzed the relevant

documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (Han Decl. ¶ 17-18) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On August 9, 2021, the Parties mediated this case with Steve Pearl, Esq., a respected and highly experienced mediator in wage and hour class actions. (Han Decl. ¶ 18.) During the mediation, the Parties discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a motion for class certification as well as the law relating to unpaid wages, rest breaks, the addition of meal break claims, failure to properly calculate the regular rate of pay, and the non-reimbursement of necessary business expenses. (*Id.*) As a result of the mediation, the parties agreed to settle the lawsuit according to the terms set forth in the Stipulation. (*Id.*; See Exhibit 1 attached to Han Decl. (the "Stipulation").)

From Class Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's own prior litigation experience, Class Counsel believe that the recovery for each Class Member is fair and reasonable, taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (*Id.*) Further, based on the settlement negotiations, which were hard-fought and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Stipulation was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Stipulation, the Parties have agreed that all claims brought on behalf of the class shall be fully and finally resolved for the amount of \$250,000.00 ("Maximum Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs on behalf of the proposed class. (Han Decl., ¶ 19; Exh. 1, ¶ 15.) No later February 9, 2022, Defendant will deposit One Hundred Thousand Dollars (\$100,000.00) into a

1 Qualified Settlement Fund administered by the Settlement Administrator. (Han Decl., ¶ 19; Exh. 1,
2 ¶ 33.) Thereafter, beginning on March 9, 2022, and continuing monthly, Defendant will continue
3 to deposit Twenty-Five Thousand Dollars (\$25,000.00) until the Maximum Settlement Amount of
4 Two Hundred and Fifty Thousand Dollars and Zero Cents (\$250,000.00) has been established
5 within the Qualified Settlement Fund. (Han Decl., ¶ 19; Exh. 1, ¶ 33.)

6 The Stipulation defines the class as all current and former hourly-paid or non-exempt
7 employees (whether hired directly or through a staffing agency) of Defendant within the State of
8 California. (Han Decl., ¶ 20; Exh. 1, ¶ 5.) However, it does not include any person who submits a
9 timely and valid request to “Opt-Out” from the Class (*Id.*). “Class Period” means the period from
10 April 6, 2016 to November 10, 2021. (Han Decl., ¶ 20; Exh. 1, ¶ 7.)

11 The “PAGA Members” or “Settlement PAGA Members” is defined as “all current and
12 former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency)
13 of Defendant within the State of California.” (Han Decl., ¶ 21; Exh. 1, ¶ 6.) “PAGA Period” means
14 the period from April 6, 2019 to November 10, 2021. (Han Decl., ¶ 21; Exh. 1, ¶ 8.)

15 The amount remaining in the Maximum Settlement Amount after the following
16 deductions have been made (called the “Net Settlement Amount”) shall be available for
17 distribution to Class Members who do not opt out: (*Id.* at ¶ 22.)

18 • up to one third of the Maximum Settlement Amount, in the amount of Ninety-Five
19 Thousand Dollars and Zero Cents (\$95,000.00), to Class Counsel for attorneys’ fees, and not more
20 than Twenty Thousand Dollars (\$20,000.00) in reasonable litigation costs² (Han Decl., ¶ 22; Exh.
21 1, ¶ 34.);

22 • up to Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to the Class
23 Representatives (\$7,500.00 to Class Representative Damian Crockett and \$7,500.00 to Class
24 Representative Neakco Cox) (Han Decl.; Exh. 1, ¶ 35.);

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28 ² Class Counsel’s current litigation costs are currently \$9,786.76. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 • claim administration costs expected not to exceed, via a “not to exceed” quote, in the
2 amount of Nine Thousand, Five Hundred Dollars and Zero Cents (\$9,500.00) (Han Decl., ¶ 22;
3 Exh. 1, ¶ 36.); and,

4 • \$7,500.00 PAGA Payment (\$1,875.00 to be paid to the participating Class Members
5 and \$5,635.00 to be paid to the LWDA). (Han Decl., ¶ 22; Exh. 1, ¶ 37.).

6 The balance (approximately \$103,000.00) will be distributed to Class Members who do
7 not exclude themselves from settlement. (Han Decl., ¶ 23; Exh. 1, ¶ 38.) The Settlement
8 Administrator will calculate the total of Workweeks worked by each Class Member as a non-
9 exempt employee in California during the Class Period and the aggregate total number of
10 Workweeks worked by all Class Members as non-exempt employees in California during the Class
11 Period. (Han Decl., ¶ 23; Exh. 1, ¶ 38(a)-(b).) To determine each Class Member’s estimated
12 “Individual Settlement Payment,” the Settlement Administrator will use the following formula:
13 The Net Settlement Amount will be divided by the aggregate total number of Workweeks,
14 resulting in the Workweek Value. (*Id.*) Each Class Member’s “Individual Settlement Payment” will
15 be calculated by multiplying each individual Class Member’s total number of Workweeks by the
16 Workweek Value. (*Id.*) If there are any valid and timely Requests for Exclusion from members of
17 the Settlement Class, the Settlement Administrator shall proportionately increase the Individual
18 Settlement Payment for each Class Member according to the number of Workweeks worked, so
19 that the amount actually distributed to the Settlement Class equals 100% of the Net Settlement
20 Amount. (Han Decl., ¶ 23; Exh. 1, ¶ 38(c).)

21 Each PAGA Members Individualized Settlement Payment will be calculated and
22 apportioned from the PAGA Payment amount based on the number of Pay Periods a PAGA
23 Member worked during the PAGA Period as a non-exempt employee in California. (Han Decl., ¶
24 24; Exh. 1, ¶ 39(a)-(c).) The Settlement Administrator will calculate the total number of Pay
25 Periods worked by each PAGA Member as a non-exempt employee in California during the
26 PAGA Period and the aggregate total number of Pay Periods worked by all PAGA Members as
27 non-exempt employees in California during the PAGA Period (“Pay Period Value”). (Han Decl., ¶
28 24; Exh. 1, ¶ 39(a)-(c).) To determine each PAGA Members estimated “Individual Settlement

1 Payment,” the Settlement Administrator will use the following formula: The PAGA Payment
2 amount’s portion allocated to the PAGA Period will be divided by the aggregate total number of
3 Pay Periods within the PAGA Period, resulting in the Pay Period Value. Each PAGA Member’s
4 “Individual Settlement Payment” will be calculated by multiplying each individual PAGA
5 Member’s total number of Pay Periods by the Pay Period Value. (Han Decl., ¶ 24; Exh. 1, ¶ 39(a)-
6 (c).) PAGA Members will not be able to opt out or request exclusion from the PAGA Payment.
7 (Han Decl., ¶ 24; Exh. 1, ¶ 39(c).)

8 The amounts distributed to the Participating Class Members will be characterized as 20%
9 alleged wages, 80% as alleged penalties, unreimbursed expenses, and interest. (Han Decl., ¶ 25;
10 Exh. 1, ¶ 55.) Defendant shall pay the employer’s share of payroll taxes due on the portion of
11 Settlement Payments allocated to wages separately and in addition to the Maximum Settlement
12 Amount. (Han Decl., ¶ 25; Exh. 1, ¶ 15.)

13 The settlement amount was a compromise figure, factoring in the inherent risks related to
14 certification, liability and damages. (Han Decl., ¶ 26.) However, taking into account all of the
15 circumstances of the action and the defenses raised by Defendant against certification, liability and
16 damages, Class Counsel believes that the settlement is fair and reasonable. (*Id.*)

17 Attached to the Stipulation as **Exhibit A** is the Notice of Class Action Settlement (the
18 “Notice”). The Notice includes a summary of the case and settlement terms and provides Class
19 Members with instructions on how to exclude themselves and object to the settlement. The Parties
20 have approved the Notice, which is to be disseminated to Class Members consistent with the
21 manner and timing set out in the Stipulation and Proposed Order. (Han Decl., ¶¶ 27-28; Exh. A to
22 the Stipulation). The Parties request that this Court approve the Notice as well.

23 The Parties have also agreed that ILYM Group (“ILYM”) shall handle the notice and
24 claims administration (Exh. 1, ¶ 29), and the Parties respectfully request this Court to appoint
25 ILYM to handle those procedures. The procedures for mailing notice and processing exclusions
26 and objections as well as distribution of the Net Settlement Amount is detailed in the Stipulation.
27 (Han Decl., ¶ 27-28; Exh. 1, ¶¶ 43-50.)

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

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

9 To certify a settlement class, the Court must find the two primary requirements for
10 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
11 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. These 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 size
16 of the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d
17 at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263,
18 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, this
21 requirement and the requirement of numerosity is met. Class Members are all current and former
22 hourly-paid or non-exempt employees (whether hired directly or through a staffing agency) of
23 Defendant within the State of California. (Exh. 1, ¶ 5.) PAGA Member(s)” or “Settlement PAGA
24 Members” are all current and former hourly-paid or non-exempt employees (whether hired directly
25 or through a staffing agency) of Defendant within the State of California. (Exh. 1, ¶ 6.)

26 Documents and information exchanged between the Parties reflect a class of
27 approximately 303 combined Class Members and PAGA Members. (Han Decl. ¶¶ 16, 77(a).)

1 Defendant has substantially complete records of each such person, including contact information
2 and social security numbers. (Han Decl. ¶ 16.)

3 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.
4 (Han Decl. ¶ 77(a)-(b).)

5 **B. There Is a Well-Defined Community of Interest**

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

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

18 *Id.* at 809.

19 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
20 common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the
21 class is united in its proof. (Han Decl. ¶ 77(f).) Because Plaintiffs have alleged a single scheme,
22 “the relevant proof [does] not vary among class members” and “clearly presents a common
23 question fundamental to all class members.” *See In Re NASDAQ Market-Makers Antitrust*
24 *Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust*
25 *Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in
26 inferring class-wide causation, class-wide injury, and class-wide damages when a common course
27 of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference
28 “eliminates the need for each class member to prove individually the consequences of the
defendants’ actions to him or her.” *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1351 (quoting
Rosack v. Volvo of America Corp (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
wages and overtime, failure to provide timely meal and/or rest breaks or premium payments in lieu
thereof, the resulting failure to pay final wages when required, the failure to reimburse necessary

1 business expenditures, failure to properly calculate non-discretionary bonuses, the failure to
2 provide accurate paystubs, and largely derivative claims under the Business & Professions Code
3 and PAGA. (Han Decl. ¶ 77(f).) Plaintiffs contend these practices effected Class Members and
4 PAGA Members in the same way. Plaintiffs contend these practices resulted in a failure to
5 compensate employees at termination, and incomplete wages displayed on wage statements. The
6 outcome of litigation on this matter depends upon questions that are common to class members.
7 (Han Decl. ¶ 77(f).) While Defendant maintained otherwise, these issues will not be decided on the
8 basis of facts peculiar to each Class Member and/or PAGA Member, but rather on the basis of
9 facts common to them all. Plaintiffs contend that it is also true that these issues of liability can be
10 determined on a class-wide basis. (*Id.*)

11 **C. The Named Plaintiffs' Claims Are Typical**

12 A class representative's claims are typical when they arise from the same event, practice,
13 or course of conduct that gives rise to the claims of other putative class members, and if their
14 claims rest on the same legal theories. The class representative's claims must be "typical" but not
15 necessarily identical to the claims of other class members. It is sufficient that the representative is
16 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
17 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
18 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
19 representative must have identical interests with the class members."). Thus, it is not necessary
20 that the class representative should have personally incurred all of the damages suffered by each of
21 the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

22 Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that
23 Plaintiffs' claims are typical of class members' claims because they arose from the same factual
24 basis and are based on the same legal theories. (Han Decl. ¶ 77(c)). Plaintiffs worked as hourly
25 non-exempt-employees in California during the Class Period. (*Id.*) Accordingly, Plaintiffs are
26 members of the class. (Han Decl. ¶ 77(c)). The central issues of this litigation (whether Defendant
27 failed to pay all wages and subjected its employees to a detrimental rounding policy, etc.), which
28 would arise if this were individual actions of Plaintiffs applies to the other Class Members as well.

1 As noted in the operative First Amended Complaint, ¶¶ 13-47, Plaintiffs contend Defendant had an
2 alleged practice of failing to provide them all minimum wages owed, rounding time keeping in a
3 way that was detrimental to Class Members, failed to pay all premiums payments associated with
4 late and/or missed meal and rest breaks, failed to properly calculate the regular rate of pay, and
5 failed to reimburse all necessary business expenses, which they also contend applied to the class.
6 (Second Amended Complaint, ¶ 13-47; Han Decl. ¶ 77(c).) The answer to these questions would
7 determine Defendant's liability to the putative class. (Han Decl. ¶ 77(c)). Thus, the claims of
8 Plaintiffs are typical of the claims of the putative class. (*Id.*) Accordingly, the typicality
9 requirement is satisfied. (*Id.*)

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

11 Class Counsel are experienced in class actions, have represented their clients zealously
12 and have no conflicts of interest. (Han Decl., ¶¶ 3-9, 77(d)). The Class Representatives interests
13 are aligned with those of the Class Members, they have suffered the same injuries as the Class
14 Members, and they have no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class
15 Representatives are adequate.

16 **E. Predominance and Superiority**

17 Individual issues do not predominate over those common to the class. (Han Decl., ¶¶
18 77(f)-(g).) The class action mechanism is superior to individualized actions because class members
19 have little incentive to bring claims that are small. (*Id.*)

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

21 Any settlement of class action litigation must be reviewed and approved by the Court.
22 This is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a
23 detailed review after the notice has been distributed to the class members for their comments or
24 objections. In this regard, the Manual for Complex Litigation (Second) explains:

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1 A two-step process is followed when considering class
2 settlements... If the proposed settlement appears to be the product
3 of serious, informed, non-collusive negotiations, has no obvious
4 deficiencies, does not improperly grant preferential treatment to
5 class representatives or segments of the class, and falls within the
6 range of possible approval, then the court should direct that notice
7 be given to the class members of a formal fairness hearing, at which
8 evidence may be presented in support of and in opposition to the
9 settlement.

10 *Manual for Complex Litigation (Second)* (1985) at § 30.44. The preliminary approval of the class
11 action settlement by the trial court is simply a conditional finding that the settlement appears to be
12 within the range of acceptable settlements. *See, e.g., Newberg*, § 11.25; *North County*
13 *Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95. Thus,
14 the preliminary approval of the class action settlement by the trial court is simply a “conditional
15 finding that the settlement appears to be within the range of acceptable settlements.

16 Settlements to resolve PAGA claims also require court approval. Labor Code § 2699(1)(2).
17 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little
18 as \$0 have been approved. *See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589
19 (approving PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also
20 approved settlements for \$20,000.00 or less. *See, e.g., Hicks v. Toys 'R' Us-Delaware, Inc.*, (C.D.
21 Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million
22 settlement); *Chu v. Wells Fargo Invest.LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1
23 (approving PAGA payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson*
24 *Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in
25 \$300,000 settlement).

26 A review of the preliminary approval criteria demonstrates a substantial basis for granting
27 the instant Motion and proceeding to a full settlement hearing.

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

As a matter of public policy, courts both encourage the use of the class action device and
favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th
429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a
failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268,

1 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action
2 litigation is concerned.”).

3 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
4 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
5 negotiations were conducted in good faith. *Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
6 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989)
7 883 F.2d 438, 447. Courts do not substitute their judgment for that of the proponents, particularly
8 when settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
9 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

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

17 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
18 informal discovery before entering into meaningful settlement negotiations in this matter,
19 including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s
20 time and pay records. (Han Decl., ¶¶ 14-16.) This discovery permitted Class Counsel to fairly
21 evaluate the strengths of the case and the risks associated with ongoing litigation, along with an
22 additional allegation for failure to properly record meal breaks and to pay for meal breaks taken
23 late or that were shortened. Class Counsel is very experienced in the handling of wage and hour
24 class actions and supports this Settlement. (Han Decl., ¶¶ 3-9.)

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1 **A. The Strength of Plaintiffs’ Case.**

2 The claims in this action include failure to provide accurate wage statements, rounding of
3 hours worked, failure to properly calculate non-discretionary bonuses, failure to pay minimum
4 wages and overtime, failure to provide timely meal and/or rest breaks or provide one hour of
5 premium pay in lieu thereof, failure to reimburse business expenses, failure to pay final wages
6 when due, and related claims for violations of California’s Business & Professions Code and for
7 penalties under PAGA. (Han Decl., ¶¶ 10-13.)

8 Class Counsel felt confident in Plaintiffs’ case and class certification given that
9 Defendant’s policies were applicable to all class members and unlawful on their face. (Han Decl.,
10 ¶¶ 29-55.)

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

12 As with all litigation, there are risks that a party will not prevail on the merits. In this case
13 Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members minimum wages and
14 overtime wages for all hours worked as they and other Class Members had to work pre-shift and
15 post-shift hours while off the clock, be subjected to Defendant’s rounding policy that was
16 detrimental to Class Members, along with Defendant’s failure to properly record meal breaks.
17 (Han Decl., at ¶ 29-55.)

18 Defendant counters that the allegations regarding failure to pay wages for hours worked in
19 excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. (Han
20 Decl., at ¶ 33.) Defendant maintained that Class Members were instructed to clock in before
21 attending to any duties and to stop all work after clocking out. Defendant contends that it paid for
22 all reported hours worked, that Class Members were trained to record all hours worked, and that it
23 paid proper overtime and minimum wages to Class Members. (*Id.*) Defendant further argued that
24 to the extent time keeping records were rounded, the rounding was neutral. (*Id.*) Defendant also
25 argued that to the extent non-discretionary bonuses were provided, the regular rate of pay was
26 properly calculated when such bonuses were provided. (*Id.*)

27 Defendant also argued that Plaintiffs and other class members were provided with the
28 opportunity to take proper meal and rest periods. (*Id.* at ¶¶ 40-41.) Defendant maintained that its

1 policies and practices allowed its employees reasonable opportunities to take duty-free rest breaks
2 under California law and that rest breaks need not be recorded, making these individualized
3 inquiries and not suitable for class treatment. (Han Decl., at ¶ 41.); *Brinker Restaurant Corp. v.*
4 *Superior Court* (2012) 53 Cal. 4th 1004, 1028-29.).

5 Plaintiffs contend that they and other Class Members were not paid proper overtime and
6 minimum wages because Defendant failed to pay Class Members wages for hours worked in
7 excess of eight hours in a day due to Defendant having a systematic practice of pressuring it's
8 employees to engage in pre-shift and post-shift off the clock work, to their detriment. (Han Decl.
9 at ¶31.) Plaintiffs further allege that, separate from the off the clock work discussed above,
10 Defendant also had a regular and systematic practice of rounding all hours worked to the nearest
11 quarter of an hour. (*Id.* at ¶32.)

12 Defendant argues that the allegations regarding failure to pay Class Members wages for
13 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor
14 Code § 510. (*Id.* at ¶33.) Defendant contends that Class Members were instructed to clock in
15 before attending to any duties and to stop all work after clocking out. (*Id.*) Defendant contends that
16 they paid for all reported hours worked, that Class Members were trained to record all hours
17 worked and that they paid proper overtime and minimum wages to class members. (*Id.*) Defendant
18 further argued that to the extent time keeping records were rounded, the rounding was neutral. (*Id.*)
19 Defendant contends that given its written policies and practices, any unrecorded hours were likely
20 subject to individualized inquiry and unlikely to be certified. (*Id.*) Counsel had to apply a
21 significant discount to damages based on this theory. (*Id.* at ¶ 34.)

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

23 In order to establish liability for these penalties, Plaintiffs would first have to establish
24 liability for the underlying claims.

25 Moreover, Defendant argues that meal and rest violations, even if established, could not
26 be the predicate for a Labor Code § 226 wage statement or § 203 waiting time claim. (Han Decl., ¶
27 43.) For example, the California Supreme Court has held that claims for meal and rest period
28 penalties do not constitute “action[s] brought for the nonpayment of wages” for the purpose of

1 determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In *Ling*
2 *v. P.F. Chang's China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an action
3 for unlawful meal and rest periods under the Labor Code “cannot support a section 203 penalty
4 because section 203, subdivision (b) tethers the waiting time penalty to a separate action for
5 wages.”). Authority is divided on this point. Moreover, although authority is divided, many district
6 court rulings support the conclusion that any unpaid meal and rest period premium pay cannot give
7 rise to derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236
8 F.Supp.3d 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393
9 (noting a wage statement need only document compensation *actually received* and the hours used
10 to calculate that compensation). Thus, it is unclear if the Court would have permitted untimely
11 wage penalties or wage statement violations for Defendant’s alleged failure to provide meal and
12 rest period penalties.

13 In addition, Plaintiffs would have to establish that Defendant’s conduct was willful to
14 recover waiting time penalties. (Labor Code § 203.) (Han Decl., at ¶ 45.) With these penalties
15 there is always the risk that the trier of fact would not have held that Defendant’s actions were
16 done “willfully.” A good faith belief in a legal defense can preclude a finding of willfulness.
17 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As
18 discussed above, Plaintiffs allege that Defendant failed to pay for all hours worked and premiums
19 for non-compliant meal and rest breaks. (Han Decl., ¶¶ 35-41.) Plaintiffs contend Class Members
20 are entitled to these wages and premiums, which they allege were not paid at the time of their
21 termination or resignation. If Plaintiffs are successful on their claims, the penalties pursuant to
22 Labor Code § 203 shall attach. Defendant, however, contends that it provided employees with a
23 reasonable opportunity to take meal and rest periods, asked class members to confirm the accuracy
24 of their time records, and had good-faith defenses under *Brinker* and its progeny. As such, there
25 was some risk associated with waiting time penalties that Class Counsel had to consider. (Han
26 Decl., ¶¶ 42-47.)

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

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

14 Plaintiffs discounted potential penalties under this claim given this authority, and for other
15 reasons. The PAGA claims are premised on the same underlying wage statement and waiting time
16 claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether
17 violations in later pay periods trigger the \$200 penalty under PAGA as a “subsequent violation.”
18 (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair
19 amount of risk associated with PAGA claims. (Han Decl., ¶¶ 48-52.) The Parties also considered
20 that the purpose of PAGA is to “achieve maximum compliance with state labor laws,” and through
21 the proposed settlement, Defendant has agreed to ensure policies comply with California law.
22 *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the
23 settlement’s contemplated PAGA payment of \$7,500.00 appropriate.

24 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable
25 and in the best interest of the Class. (Han Decl., *passim*.)

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1 **E. The Risks Associated with the Failure to Reimburse Necessary Business**
2 **Expenses Claim.**

3 Plaintiffs contend that Defendant required the Class Members to pay for necessary work
4 related expenses they incurred, including, but not limited to, having to purchase (i) safety goggles,
5 (ii) masks, (iii) gloves, (iv) safety vests, (v) steel toe boots, and (vi) having to use personnel
6 cellular phones. (Han Decl., ¶ 53.)

7 Defendant argues that exposure to Defendant is limited and it only affected a handful of
8 employees. (Han Decl., ¶ 54.) Furthermore, Defendant argued that it's employee handbook
9 specifically discouraged the use of cellular phones. (Han Decl., ¶ 54.) Defendant argued that
10 Plaintiff would be unable to certify the reimbursement claim on the class wide level (*Id.*)

11 **F. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

12 Given the risks outlined above, the issues in this case were complex and the risk for
13 Plaintiffs and the Class Members associated with this litigation was high. (Han Decl., ¶¶ 58-61.) A
14 class trial would have required the retention of expensive expert witnesses, the accrual of
15 extensive litigation costs, and the Parties would have had to spend a substantial amount of time.

16 Finally, given the complexity and unsettled nature of the issues, it is likely that any
17 outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in
18 further delay for the class members who have already waited years for resolution in this matter.

19 **G. The Risk of Maintaining Class Action Status Through Trial.**

20 In class actions, decertification is always a possibility. There is always a risk that a trial of
21 this magnitude can become unmanageable. (Han Decl., ¶¶ 58-61.) Given cases like *Duran v. U.S.*
22 *Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples
23 in class actions, decertification is a real risk that Class Counsel must take into account.

24 **H. The Amount Offered in Settlement.**

25 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
26 collusive, and arms-length negotiations between the Parties with an experienced mediator. In order
27 to determine the approximate potential damages which would be owed to Class Members, Class
28 Counsel analyzed the time records for Plaintiffs and Defendant provided Class Counsel with

1 records for a sampling of the Class Members. By analyzing this information, Class Counsel was
2 able to estimate the maximum value of the case if Plaintiffs were to prevail at trial.

3 There are approximately 303 total Class Members. Class Counsel estimated the maximum
4 exposure on the unpaid wage claim at \$333,974.00. (Han Decl., at ¶ 34.) The maximum exposure
5 for the meal period claim at 570,326.00 and rest claim at \$451,896.00.³ (Id. at ¶¶ 40-41.) The
6 maximum exposure for the wage statement claim is \$247,350.00. (Han Decl. at ¶ 44.) The
7 maximum exposure for the waiting time penalties claim is \$247,350.00. (Han Decl. at ¶ 47.) On
8 PAGA, Plaintiffs estimated maximum exposure at \$251,800.00. (Id. at ¶ 52.) As to Defendant's
9 failure to reimburse necessary business expenses, Plaintiffs estimated maximum exposure at
10 \$70,684.00. (Id. at ¶ 54.)

11 Once Class Counsel was able to determine the maximum potential damages, it was able to
12 determine a fair and reasonable settlement for the Class. (Id. at ¶¶ 31-54.) Class Counsel analyzed
13 the likelihood of success on the merits. (Id.) It believes that the Class had a reasonable likelihood
14 of success on the core claims. (Id.) However, Defendant disputes this contention, denies all
15 wrongdoing in this matter, and is confident they have strong legal and factual defenses to
16 Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the
17 claims for rest break violations, unpaid wages and for waiting time penalties were not as strong,
18 because of various defenses, including issues not suitable for class treatment, no detriment to the
19 class members over time, and *de minimis* defenses. Defendant may have had the opportunity to
20 establish that they had a good faith belief that they were complying with the law. (Id.) After taking
21 into account the likelihood of success on each claim and the challenges faced with certifying these
22 claims, Class Counsel determined that the settlement amount of \$250,000.00 was fair and
23 reasonable. (Id. at ¶ 57.)

24 Under the Settlement, each of the approximately 303 Class Members and PAGA Members
25 will receive on average \$339.94 after expenses. (Id. at ¶ 57.) Class Counsel feels that this
26 Settlement is fair, reasonable, and advantageous to the class. (Id. at ¶ 26.)

27
28 ³ This rest break number assumed a 50% violation rate which grossly overstates the potential exposure as there was
no discoverable data points to show an actual violation rate without taking the depositions of numerous Class
Members.

1 To summarize, the Settlement here is fair because it provides a substantial payment to
2 each Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides
3 a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class
4 Members proportionally based on their Payout Ratio.

5 As detailed at length in the accompanying Declaration of Douglas Han, the settlement is
6 the result of extensive settlement negotiations between the Parties, conducted at arm's length, and
7 informed by substantial factual and legal investigations. (Han Decl., *passim*.) Throughout this
8 case, Class Members have been represented by experienced counsel with many years of
9 experience in employment class action litigation. (Han Decl., ¶¶ 3-9.)

10 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
11 including but not limited to, interviewing Plaintiffs at length on repeated occasions; drafting
12 pleadings; conducting informal discovery, meeting and conferring with defense counsel about
13 same; reviewing and analyzing time records and various handbooks and policies, Plaintiffs'
14 personnel file, an agreed upon sampling of data from Defendant's counsel for Class Members, and
15 other documentation; researching California law, preparing for and attending mediation;
16 extensively meeting and conferring with Plaintiffs' analytical expert; and negotiating and
17 finalizing the Stipulation and related documents. (Han Decl., ¶¶ 14-16.)

18 Among those matters considered during the course of settlement negotiations were the
19 strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and length
20 of further litigation, including class certification and the appeals process; the present state of the
21 law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value
22 of a settlement versus the long wait necessitated by any potential judgment in class members'
23 favor; the burdens of proof necessary to establish liability against Defendant; and Defendant's
24 defenses to the action. (Han Decl., *passim*.)

25 These factors each indicated that the interests of class members are best served by a
26 settlement of this action in the manner and upon the terms set forth in the Stipulation. The
27 Stipulation confers a substantial benefit on the class of up to \$250,000.00, based on the (i) total
28 Workweeks worked by each Class Member as a non-exempt employee in California during the

1 Class Period and the aggregate total number of Workweeks worked by all Class Members as non-
2 exempt employees in California during the Class Period (Han Decl., at ¶ 23.), and the (ii) total
3 number of Pay Periods worked by each PAGA Member as a non-exempt employee in California
4 during the PAGA Period and the aggregate total number of Pay Periods worked by all PAGA
5 Members as non-exempt employees in California during the PAGA Period. (*Id.* at ¶ 24.) In
6 addition, Class Counsel secured prospective relief for the class in that Defendant will ensure their
7 policies comply with California law.

8 Class Counsel believes that the settlement is fair and reasonable and serves the best
9 interests of the Class Members. (Han Decl. at ¶ 26.) Although the recommendations of counsel
10 proposing the class settlement are not conclusive, the Court can properly take the
11 recommendations into account, particularly if counsel has been involved in litigation for some
12 period of time, appear to be competent, and have experience with this type of litigation, and
13 significant discovery has been completed. *See Newberg*, §11.47.

14 **I. Uncashed Checks, Unpaid Reside or Other Unclaimed Funds**

15 The Parties have agreed that funds from any checks returned as undeliverable, or any
16 checks not negotiated within 120 days, shall be distributed by the Settlement Administrator to the
17 State Controller's Unclaimed Property Fund. (Han Decl., ¶¶ 75-76; Exh. 1, ¶ 53.) No later than ten
18 (10) calendar days after the expiration of the 120 day period, the Settlement Administrator shall
19 deposit the total amounts contained in the settlement checks, and all interest that has accrued, to
20 the State Controller's Unclaimed Property Fund. (*Id.*) The Settlement Administrator shall provide
21 a declaration of deposit with the State Controller's Unclaimed Property Fund, which will be served
22 on Class Counsel and Defendant's Counsel within ten (10) calendar days of payment of the
23 residual to such beneficiary. (*Id.*)

24 Any costs associated with administering the remaining funds under this section (e.g., bank
25 stop-payment charges, settlement administration costs associated with any reserve amount) or
26 payments to the State Controller's Unclaimed Property Fund will be deducted before the deposit
27 into the State Controller's Unclaimed Property Fund. (*Id.*)

28 ///

1 **VII. THE CLASS REPRESENTATIVES' ENHANCEMENT IS FAIR AND**
2 **REASONABLE**

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

6 Plaintiffs spent a considerable amount of time better apprising themselves of their rights,
7 deciding whether remedial action should be taken, how it should be taken, how the lawsuit would
8 impact them, and finally contacting Class Counsel who spent many hours with each of the
9 Plaintiffs discussing the case and the law. (Han Decl., ¶¶ 70-71.) In the end, Plaintiffs decided to
10 vindicate not only their own rights but also those of their co-workers by pursuing a class action
11 lawsuit. (*Id.*)

12 The courage it took to do this should not be underestimated. By suing Defendant,
13 Plaintiffs contend they increased their respective risk of retaliation by prospective employers. (*Id.*
14 ¶ 71.) Plaintiffs' lawsuit has now cost Defendant considerable resources, and Plaintiffs contends
15 such conduct will not be lost on a prospective employer who have to choose between an applicant
16 who has never sued a prior employer and one who has. (*Id.*) Plaintiffs contend this risk is
17 particularly real in the information age, where employers can, more easily than ever, perform
18 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

19 But Plaintiffs did not allow their fear of the potential repercussions of being a class
20 representative deter them from acting for the benefit of Class Members. (*Id.* ¶ 72.) To the contrary,
21 Plaintiffs have been intimately involved in this case since they each respectively signed on as a
22 plaintiff. (*Id.*) They have devoted a substantial amount of time to helping Class Counsel effectively
23 develop and prosecute this action at every stage of the litigation since they were each effectively
24 brought on as a plaintiff. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff Damian
25 Crockett conferred with Class Counsel on numerous occasions to discuss every aspect of his case.
26 (*Id.*) Plaintiff Neakco Cox, while not part of the pre-investigation phase of the lawsuit, also spent
27 considerable time with Class Counsel getting apprised of the current state of the case prior to being
28 brought on a class representative. (*Id.*) Plaintiffs have provided Class Counsel with information

1 about Defendant and about the industry generally, reviewed documents, identified witnesses,
2 consulted Class Counsel throughout the litigation, participated in the mediation process, monitored
3 the progress of the litigation with Class Counsel, and reviewed and signed the settlement
4 agreement. (Han Decl. at ¶ 72.))

5 Plaintiffs have spent a significant amount of time with Class Counsel detailing their
6 knowledge of Defendant's practices. (*Id.* ¶ 73.) They have diligently, adequately, and fairly
7 represented Class Members, and have not placed their interests above any member of the putative
8 class. (Han Decl., ¶ 73) This sort of payment to a class representative has been a common feature
9 of settlements negotiated by Class Counsel and have been routinely approved by trial courts. (*Id.*)

10 Class Counsel believes that a combined service enhancement award in the amount of of
11 \$15,000.00 (\$7,500.00 to Class Representative Damian Crockett and \$7,500.00 to Class
12 Representative Neakco Cox) to the Class Representatives is fair and reasonable. (*Id.* ¶ 74.)

13 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
14 **CLASS MEMBERS.**

15 Constitutional due process requires that class members be provided with notice sufficient
16 to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank &*
17 *Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient
18 information to make an informed decision as to whether to accept or object to the settlement. (*Id.*
19 at 314.) The notice must apprise the class members of the pendency of the action; reasonably
20 convey information regarding the settlement and the class members' rights, entitlements, and
21 obligations; and afford class members the opportunity to present their objections. (*Id.*)

22 The Notice meets constitutional standards because it provides all the information a
23 reasonable person would need to make a fully informed decision about the settlement. It will
24 notify all class members of the terms of the settlement, of its effect on their rights, of their options
25 as class members (i.e., participate, object, opt out, do nothing), and of the consequences of
26 exercising those options. (Han Decl., ¶¶ 27-28, 62-65.) Moreover, the Notice will specifically
27 direct any class members who have questions or concerns to contact the settlement administrator,
28 ILYM Group, or Class Counsel. (*Id.*)

1 The standard for determining the adequacy of notice is whether the notice has “a
2 reasonable chance of reaching a substantial percentage of the class members.” *Cartt v. Superior*
3 *Court* (1975) 50 Cal.App.3d 960, 974. The Judicial Council of California’s Deskbook on the
4 Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual
5 notice by mail is preferred when possible and dissemination of combined certification/settlement
6 notice is a common and accepted practice. *In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.

7 Here, the Notice Packet will be sent via first-class mail to each Class Member. (Han Decl.
8 ¶¶ 27, 64, Exh. 1 ¶¶ 43-45.) If any Notice Packets are returned undeliverable, the Settlement
9 Administrator will forward them to any address appearing on the returned envelope or, if there is
10 no forwarding address, perform a skip trace before mailing them to any addresses thereby
11 identified. (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

12 Moreover, for Class Members who were paid by a staffing agency, Defendant will issue
13 subpoenas to the staffing agencies who paid them to obtain their names, addresses, phone
14 numbers, and social security numbers. (Han Decl. ¶ 63, Exh. 1 ¶ 42(a).) Defendant will issue these
15 subpoenas within seven (7) calendar days of entry of the Court’s Order Granting Preliminary
16 Approval and will apprise Plaintiff’s counsel of the responses obtained from the staffing agencies.
17 (*Id.*) Defendant will add to the Class List all information obtained regarding Class Members who
18 were paid by a staffing agency and apprise Plaintiffs’ Counsel of the number of putative class
19 members paid by a staffing agency for whom it has been unable to obtain such information within
20 five (5) business days of the response date for the subpoenas

21 Pursuant to controlling authority, the proposed Class Notice and method of distribution
22 fully comport with due process requirements. Therefore, the Court should approve the Class
23 Notice and direct that it be distributed as proposed herein.

24 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

25 Non-settling parties and third parties periodically may attempt to object to proposed class
26 action settlements, but the right of non-settling parties to object at the final settlement approval
27 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
28 members have standing to object to a proposed settlement. “Beginning from the unassailable

1 premise that settlements are to be encouraged, it follows that to routinely allow non-class members
2 to inject their concerns via objection at the settlement stage would tend to frustrate this goal.”
3 *Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.

4 Since an application is being filed to obtain a good faith determination, no persons other
5 than class members have standing to object to the proposed settlement. *In re School Asbestos*
6 *Litigation* (3rd Cir. 1990) 921 F.2d 1330.

7 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
8 **REASONABLE AND SHOULD BE APPROVED.**

9 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an award
10 of fees equal to thirty-eight percent of the of the Maximum Settlement Amount, amounting to
11 \$95,000.00, and actual litigation costs of up to \$20,000.00⁴. (Han Decl. ¶¶ 22, 67-68; Exh. 1, ¶
12 34.) The requested fees are fair compensation for a law firm involved in undertaking complex,
13 risky, expensive, and time consuming litigation solely on a contingent basis. (*Id.*) Defendant will
14 not oppose Class Counsel’s fee and cost request.

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

23 Several courts have, however, expressed frustration with the “lodestar” approach for
24 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
25 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
26 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
27

28 ⁴ Class Counsel’s current litigation costs are currently \$9,786.76. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
2 demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. The
3 Ninth Circuit has used the percentage of the common fund approach to determine the award of
4 attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79
5 (approving attorneys' fee of 33 1/3% of settlement fund).

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

13 The attorneys' fees request provided for in the Stipulation is commensurate with judicial
14 precedent. Both state and federal courts regularly approve fee awards equal to or greater than the
15 percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir.
16 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*
17 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8%
18 of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C.
19 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker v. City of Los*
20 *Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of
21 recovery achieved).

22 In wage and hour class actions in particular, California trial courts have customarily
23 approved attorney's fees consistent with or greater than the percentage of the common fund
24 requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super.Ct. Case No. BC
25 220525 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least
26 33-1/3% of the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super.
27 Ct. Case No.BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los
28 Angeles County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah*

1 *Eaton v. Adolph Coors Company* (2003) Orange County Super.Ct. Case No. 01CC00140 (Hon.
2 Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County
3 Super.Ct. Case No. BC 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper*
4 *Restaurants*, Orange County Super.Ct. Case No. 02CC10201 (2006) (Hon. Ronald L. Bauer).

5 Here, Class Counsel has borne the entire risk and cost of litigation and will not receive
6 any compensation until recovery is obtained. (See Han Decl., ¶¶ 67-68.) The Court should also
7 consider the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested
8 award for Class Counsel is reasonable.

9 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
10 **APPROVAL**

11 The parties respectfully request this Court, as part of the preliminary approval process, to
12 grant the following relief and make the following orders:

- 13 1. Review and approve the Stipulation;
- 14 2. Review and approve the Notice, attached to the Stipulation as Exhibit A;
- 15 3. Consider and determine that the proposed class action settlement as set forth in the
16 Stipulation preliminarily appears fair, reasonable, and adequate;
- 17 4. Enter an order conditionally certifying the action as a class action for settlement
18 purposes only and preliminarily approving the proposed class action settlement and the
19 Stipulation;
- 20 5. Approve and appoint Douglas Han of JUSTICE LAW CORPORATION, to serve
21 as Class Counsel for settlement purposes;
- 22 6. Approve and appoint ILYM Group, as the claims administrator to handle the
23 notice and claims procedures as set forth in the Stipulation;
- 24 7. Approve the proposed settlement's allocation of funds to claims made under
25 PAGA;

26 ///

27 ///

28 ///

1 8. Order Defendant to disclose to ILYM Group, Inc. the names, last-known
2 addresses, telephone numbers, dates of employment, and social security numbers of class members
3 as set forth in the Stipulation;

4 9. Order that Defendant issue subpoena's to the known staffing agencies that
5 employed class members to obtain class members names, addresses, phone numbers, and social
6 security numbers.

7 10. Order that ILYM Group, Inc. mail the Notice Packet to Class Members; and

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

9
10 Dated: May 24, 2022

Respectfully submitted,

11 JUSTICE LAW CORPORATION

12
13 By: _____

14 Douglas Han

Shunt Tatavos-Gharajeh

15 Jason Rothman

16 Attorneys for Plaintiffs Damian Crockett and
17 Neakco Cox, and all others similarly situated
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 25, 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: **Crockett, et al. v. Custom Bilt Holdings, LLC d/b/a Custom-Bilt Metals**
LWDA/Court Case No.: **LWDA-CM-845280-21**
34-2020-00285868-CU-OE-GDS
Sacramento 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 May 25, 2022, at Pasadena, California.


Mariah Anderson