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

SEAN HAMMOND and JESUS
VALDOVINOS, individually, on behalf of
other members of the general public similarly
situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiffs,

v.

PAUL DURHAM ELECTRIC, INC. f/k/a
HAROLD E. NUTTER & SON, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 34-2020-00291142-CU-OE-GDS

Honorable Christopher E. Krueger
Department 54

CLASS ACTION

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

[Reservation ID: 2616731]

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

Hearing Date: March 2, 2022

Hearing Time: 9:00 a.m.

Hearing Place: Department 54

Complaint Filed: December 22, 2020

FAC Filed: November 10, 2021

Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 2, 2022, and at 9:00 a.m., or as soon as the matter
2 may be heard before the Honorable Christopher E. Krueger of Department 54 at the Superior Court
3 of California, County of Sacramento (Hall Of Justice) located at 813 6th Street, Sacramento
4 California 95814, Plaintiffs Sean Hammond and Jesus Valdovinos (“Plaintiffs,” “Plaintiff
5 Hammond,” and “Plaintiff Valdovinos”) will and hereby move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Joint Stipulation of Class Action Settlement and
8 Release (“Agreement,” “Settlement Agreement,” “Settlement,” or “Stipulation of
9 Settlement”), attached as **Exhibit 2** to the Declaration of Douglas Han, including,
10 and not limited to, the means of allocation and distribution of funds, the allocations
11 for penalties under the Private Attorneys General Act of 2004 (“PAGA”), the
12 Attorneys’ Fees and Costs, the Class Representative Enhancement Payments, and the
13 Claims Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement attached as **Exhibit A** to
18 the Settlement Agreement;
- 19 • Approving the proposed Claim Form attached as **Exhibit B** to the Settlement
20 Agreement;
- 21 • Directing the mailing of the proposed Notice of Class Action Settlement and Claim
22 Form (collectively, known as the “Notice Packet”) with a postage-paid return
23 envelope to the proposed Class Members;
- 24 • Approving the proposed deadlines for the notice and claims administration process;
- 25 • Approving Simpluris, Inc. (“Simpluris”) as the Claims Administrator; and

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- 1 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement,
2 at which time the Court will also consider whether to grant Final Approval of the
3 requests for Attorneys' Fees and Costs, the Class Representative Enhancement
4 Payments, the PAGA Payment, and the Claims Administration Costs.

5 This motion is based upon the following memorandum of points and authorities, the
6 Declaration of Proposed Class Counsel (Douglas Han), and the [Proposed] Order filed concurrently
7 with this motion, as well as the pleadings and other records on file with the Court in this matter, and
8 such documentary evidence and oral argument as may be presented at the hearing on this motion.

9 Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of
10 this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative
11 rulings for the department may be downloaded off the court's website. If the party does not have
12 online access, they may call the dedicated phone number for the department as referenced in the
13 local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before
14 the hearing and receive the tentative ruling. If you do not call the court and the opposing party by
15 4:00 p.m. the court day before the hearing, no hearing will be held.

16
17 Dated: January 26, 2022

JUSTICE LAW CORPORATION

18
19
20 By:



Douglas Han
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 Plaintiffs seek preliminary approval of the Settlement Agreement entered by and between
3 Plaintiffs, individually and on behalf of the proposed Class, and Defendant Paul Durham Electric,
4 Inc. f/k/a Harold E. Nutter & Son, Inc. (“Defendant”). Subject to Court approval, the Parties have
5 agreed to settle this case for a Maximum Settlement Amount of up to \$225,000, which includes
6 Attorney’s Fees and Costs, Class Representative Enhancement Payments, Claims Administration
7 Costs, and the PAGA Payment.

8 Plaintiffs seek to certify the following Class for settlement purposes, consisting of
9 approximately eighty-three (83) Class Members: all current and former hourly-paid or non-exempt
10 employees of Defendant within the State of California at any time during the period from June 26,
11 2016 to November 25, 2021 (“Class,” “Class Members,” and “Class Period”).

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

18 **II. BACKGROUND**

19 On December 22, 2020, Plaintiffs, former employees of Defendant, filed a wage-and-hour
20 class action lawsuit against Defendant in the Sacramento County Superior Court alleging eight (8)
21 causes of action for various violations of the Labor Code and Business & Professions Code.
22 (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class
23 Action Settlement (“Han Decl.”), at ¶ 10.)

24 On August 27, 2021, the Parties participated in mediation before Paul Grossman, a
25 respected mediator of wage-and-hour class actions. (Han Decl., *supra*, at ¶ 11.) Under the auspices
26 of the mediator, the Parties were able to reach an agreement via a mediator’s proposal. (*Ibid.*)

27 In line with the settlement, on October 22, 2021, Plaintiffs provided written notice to the
28 Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 12.)

1 Next, on November 10, 2021, Plaintiffs filed a First Amended Complaint in the Sacramento
2 County Superior Court adding three (3) causes of action under the Labor Code, including a cause of
3 action pursuant to Labor Code sections 2698, *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 13.)

4 Following the filing of the First Amended Complaint, the Parties discovered that Plaintiff
5 Valdovinos had died on November 6, 2021 in Sacramento County at around 4:00 p.m. (Han Decl.,
6 *supra*, at ¶ 14.) The Parties agreed for Plaintiffs to file a Joint Stipulation Pursuant to Code of Civil
7 Procedure sections 377, *et seq.*, to appoint Plaintiff Valdovinos' widow Edianett Valdovinos as his
8 successor in interest. (*Ibid.*) The stipulation was granted on January 11, 2022. (*Ibid.*)

9 Defendant denies any and all liability or wrongdoing of any sort with regard to any of the
10 claims alleged, makes no concessions or admissions of liability of any sort, and contends that for
11 any purpose other than settlement, this case is not appropriate for class or representative treatment.
12 (Han Decl., *supra*, at ¶ 15.) Defendant also asserts several defenses to the claims and has denied
13 any wrongdoing or liability arising out of any of the alleged facts or conduct in this case. (*Ibid.*)

14 **III. INVESTIGATION/ LITIGATION HISTORY**

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

16 After Plaintiffs filed their complaint, the Parties engaged in discovery. (Han Decl., *supra*, at
17 ¶ 16.) Each Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
18 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production.
19 After Defendant responded to Plaintiffs' discovery, the Parties met and conferred. (*Ibid.*)

20 Prior to the mediation, the Parties conducted significant investigation and discovery of the
21 facts and law. (Han Decl., *supra*, at ¶ 17.) Specifically, Defendant produced documents relating to
22 its wage-and-hour policies, practices, and procedures. (*Ibid.*) Plaintiffs also reviewed information
23 relating to the size and scope of the Class and data permitting Plaintiffs to understand the number of
24 workweeks in the Class Period. (*Ibid.*) Plaintiffs also interviewed several Class Members. (*Ibid.*)

25 Based upon the informal exchange of information, Defendant's document production, and
26 interviews Class Counsel had with non-exempt employees, Plaintiffs contend – and Defendant
27 denies – that: Defendant: (a) failed to provide compliant meal and rest breaks; (b) failed to pay
28 employees for all hours worked; (c) failed to reimburse employees for incurring business expenses;

1 and (d) is liable for wage statement and waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-24.)

2 **b. The Parties Attended Mediation Which Led to the Joint Stipulation**

3 Under the auspices of mediator Paul Grossman, the Parties were able to reach an agreement
4 on settlement via a mediator's proposal, the terms of which were memorialized in the Settlement
5 Agreement that the Parties seek preliminary approval of. (Han Decl., *supra*, at ¶ 25; Exhibit 2.)

6 **c. Terms of Proposed Settlement**

7 **i. Deductions from the Settlement**

8 Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement
9 Amount of up to \$225,000, and the Net Settlement Amount will be calculated by deducting the
10 following amounts from the Maximum Settlement Amount: (a) attorneys' fees of up to \$85,500
11 (38% of the Maximum Settlement Amount) to compensate Class Counsel; (b) litigation costs and
12 expenses in amount not to exceed \$25,000 to Class Counsel as reimbursement for litigation costs
13 and expenses incurred; (c) the Class Representative Enhancement Payments of up to \$10,000 to
14 each Plaintiff; (d) Claims Administration Costs in a sum not to exceed \$10,000 to Simpluris, the
15 Claims Administrator; and (e) the PAGA Payment in an amount not to exceed \$10,000, seventy-
16 five percent (75%) of which (\$7,500) will be paid to the LWDA ("LWDA Payment") and twenty-
17 five percent (25%) of which (\$2,500) will be distributed, pro rata, based on number of weeks
18 worked to PAGA Aggrieved Employees. (Han Decl., *supra*, at ¶ 26.)

19 **ii. Calculation of the Individual Settlement Payments to Class Members**

20 To receive Individual Settlement Payments, all Class Members will be required to submit a
21 timely and valid Claim Form by the Response Deadline. (Han Decl., *supra*, at ¶ 28.)

22 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
23 Amount based on the number of Workweeks a Class Member worked during the Class Period.
24 (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at ¶ 57.)

25 All Individual Settlement Payments will be allocated as follows: one-third (1/3) of each
26 Individual Settlement Payment will be allocated as wages, one-third (1/3) will be allocated as
27 interest, and one-third (1/3) will be allocated as penalties. (Han Decl., *supra*, at ¶ 30.)

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1 The Claims Administrator will calculate the total number of Workweeks worked by each
2 individual PAGA Aggrieved Employee to determine the total number of Workweeks worked by all
3 PAGA Aggrieved Employees (“Total PAGA Workweeks”) during the period from October 22,
4 2020, to November 25, 2021. (Han Decl., *supra*, at ¶ 31; Exhibit 2, *supra*, at ¶ 55.)

5 All applicable employer-side payroll taxes relating to the portion of the Individual
6 Settlement Payments paid as wages shall be paid separate and apart from the Maximum Settlement
7 Amount. (Han Decl., *supra*, at ¶ 32.)

8 **iii. Release of Claims**

9 Upon the Effective Date, Plaintiffs and all Settlement Class Members will be deemed to
10 have fully, finally, and forever released, settled, compromised, relinquished, and discharged with
11 respect to all the Released Parties all Released Claims for any period during the Released Claims
12 Period (“Released Claims”). (Han Decl., *supra*, at ¶ 37; Exhibit 2, *supra*, at ¶¶ 25, 37-39, 82.)

13 The Released Parties include Defendant, and its former and present parents, subsidiaries,
14 and affiliates, and their current and former officers, directors, owners, employees, partners,
15 shareholders and agents, and the predecessors and successors, assigns, and legal representatives of
16 all such entities and individuals, as well as any entities with whom Defendant could share a Joint
17 Employer relationship under any legal theory (“Released Parties”). (Han Decl., *supra*, at ¶ 38;
18 Exhibit 2, *supra*, at ¶ 39.)

19 Pursuant to the terms of the Settlement, and solely with respect to the Released Claims,
20 Plaintiffs waive and relinquish any rights or benefits available to them under the provisions of
21 section 1542 of the California Civil Code. (Han Decl., *supra*, at ¶ 39; Exhibit 2, *supra*, at ¶ 83.)

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

the scope of the allegations in the operative complaint””” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.)

**iv. Range of Individual Settlement Payments that Will Likely Be Issued
to Class Members**

Class Members who submit timely and valid Claim Forms to the Claims Administrator for participation in the Settlement will be issued Individual Settlement Payments based on the total number of Individual Workweeks the Class Member worked during the Class Period. (Han Decl., *supra*, at ¶ 40.) As discussed *supra*, the Individual Settlement Payments will be calculated by dividing the Net Settlement Amount by the Class Workweeks and multiplying that number by the Individual Workweeks for each individual Class Member. (*Ibid.*)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

California Rules of Court, rule 3.769 requires court approval for class action settlements.¹ “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

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

...

(c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts act within their discretion in approving settlements that are fair, non-collusive, and consider “all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S.

¹ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 905.)

2 The approval process of any class action settlement is done in two steps: (1) an earlier
3 conditional review by the court; and (2) a later detailed review after the period during which notice
4 is distributed to class members for their comment or objections. (Conte & Newberg, Newberg on
5 Class Actions (4th ed. 2002 supp.) § 11.24.) This procedure, which is commonly utilized by federal
6 and state courts, assures class members of the protection of procedural due process safeguards, and
7 enables a court to fulfill its role as the guardian of the interests of the settlement class.

8 Accordingly, preliminary approval does not require a court to make a final determination
9 that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the final
10 approval stage, after notice of the settlement has been given to the class members, and they have
11 had an opportunity to voice their views of the settlement or to exclude themselves from the
12 settlement. (See Cal. Rules of Court, rule 3.769(g).) In considering a potential class settlement, the
13 court also need not reach any ultimate conclusions on the issues of fact and law which underlie the
14 merits of the dispute and need not engage in a trial on the merits. (See *City of Detroit v. Grinnell*
15 *Corporation* (2d Cir. 1974) 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of*
16 *City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615, 625.) Neither formal notice nor a
17 hearing is required for the trial court to grant provisional class certification and preliminary
18 approval; the court may grant such relief upon an informal application by the settling parties and
19 may conduct any necessary hearing in court or in chambers, at the court's discretion. (Conte &
20 Newberg, *supra*, § 11.25.)

21 **b. Preliminary Approval of the Proposed Settlement Is Appropriate**

22 To grant preliminary approval of a class action settlement, the trial court must preliminarily
23 determine whether the settlement is fundamentally fair, adequate, and reasonable. (*Dunk v. Ford*
24 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court has broad powers to determine whether a
25 proposed settlement is fair under the circumstances of the case. (*Id.* at p. 1801.) To make this
26 fairness determination, courts must consider several relevant factors, including “the strength of the
27 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
28 maintaining class action status through trial, the amount offered in settlement, the extent of

1 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
2 [.]” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) “The list of factors is not
3 exclusive and the court is free to engage in a balancing and weighing of the factors depending on
4 the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
5 245.) Furthermore, courts give “proper deference to the private consensual decision of the
6 parties[.]” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027 (citation omitted).)

7 **c. The Settlement Was Reached as a Result of Arm’s-length Negotiations**

8 The Settlement was reached through arm’s-length negotiations. (Han Decl., *supra*, at ¶ 41.)
9 Though cordial and professional, the settlement negotiations were always adversarial and non-
10 collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive arm’s-length
11 settlement negotiations until the Parties finally reached an agreement on settlement. (*Ibid.*)

12 Plaintiffs believe in the merits of their case but also recognize the inherent risks of litigation
13 and understand the benefit of the Class receiving settlement funds immediately as opposed to
14 risking continued litigation with no guarantee of success. (Han Decl., *supra*, at ¶ 42.)

15 **d. The Settlement Agreement Is Fair, Reasonable, and Adequate**

16 In deciding whether to approve a proposed class action settlement under Code of Civil
17 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
18 reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) The burden is on the
19 proponent of the settlement to show that it is fair and reasonable. (*Wershba v. Apple Computer,*
20 *Inc.*, *supra*, 91 Cal.App.4th at p. 245.) However, a presumption of fairness exists where: (1) the
21 settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient
22 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
23 and (4) the percentage of objectors is small. (*Ibid.*; *Dunk v. Ford Motor Co.*, at p. 1802; *7-Eleven*
24 *Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.)

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1 A Maximum Settlement Amount of up to \$225,000 represents a fair, adequate, and
2 reasonable resolution of the case. (Han Decl., *supra*, at ¶ 43.) The proposed Settlement was
3 calculated using information and data uncovered through litigation, discovery, case investigation,
4 and the informal exchange of information in the context of mediation. (*Ibid.*) The proposed
5 Settlement considers the potential risks and rewards inherent in any case and with this case. (*Ibid.*)

6 Assuming that all the requested payments, fees, and costs are approved and paid in the full
7 amounts requested, the Net Settlement Amount is currently estimated to be \$74,500. (Han Decl.,
8 *supra*, at ¶ 44.) Even at the final approval stage, “[a]n allocation formula need only have a
9 reasonable, rational basis [to warrant approval], particularly if recommended by experienced and
10 competent counsel.” (*Ibid.*; *In re American Bank note Holographics, Inc., Securities Litigation*
11 (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-430.)

12 Class Counsel believes the proposed Settlement is fair, reasonable, and adequate, and is in
13 the best interest of the Class Members. (Han Decl., *supra*, at ¶ 45.) Although the recommendations
14 of Class Counsel are not conclusive, the Court can properly consider this, particularly because Class
15 Counsel appear to be competent, have experience with this type of litigation, and significant
16 discovery and investigation have been completed. (*Ibid.*; Conte & Newberg, *supra*, § 11.47.)

17 **e. The PAGA Payment of \$20,000 Is Reasonable**

18 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
19 include but are not limited to Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7,
20 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 53.)
21 Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
22 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that, in
23 addition to its strong arguments against the underlying claims, it had a strong argument that it
24 would be unjust to award maximum PAGA penalties given the current unsettled state of the law.
25 (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by
26 30% under this authority].) Defendant argued that without stacking and limited to the initial
27 violation, the PAGA penalties would be limited to **\$3,300** (33 employees x \$100 initial violations)
28

1 on the low end and **\$19,800** (33 employees x \$100 x 6 theories of recovery) on the high end (Han
2 Decl., *supra*, at ¶¶ 54-57.)

3 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
4 (Han Decl., *supra*, at ¶ 58.) Many of the causes of action brought were duplicative of the statutory
5 claims such as violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7,
6 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$10,000 to
7 PAGA civil penalties was reasonable based on a rate of **\$7.65** per pay period [$\$10,000 / 1,307$ pay
8 periods in PAGA date range = **\$7.65**] given the fact that Defendant is also paying an additional
9 \$215,000 in the class settlement.² (*Ibid.*) When PAGA penalties are negotiated in good faith and
10 “there is no indication that [the] amount was the result of self-interest at the expense of other Class
11 Members,” such amounts are generally considered reasonable.³ (*Ibid.*)

12 Considering Defendant’s defenses, supporting evidence, and position that this case is not
13 suitable for class treatment, the settlement amount of \$225,000 is reasonable and fair.

14 **f. Discount Analysis Justifies the Settlement**

15 Excluding the civil penalties, which could be completely discretionary, for the reasons
16 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
17 be **\$1,712,327.82** on the low end and **\$1,787,991.45** on the high end. (Han Decl., *supra*, at ¶ 59.)

18 ///

19 ///

20 ///

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 \$25
to \$75 per violation and a total PAGA penalty of \$70,000,000].)

26 ³ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
28 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Meal and Rest Break Premiums	\$756,374.85	70%	60%	\$90,764.98
Overtime/Minimum Wage: Off-the-Clock Work	\$151,274.97 to \$226,938.60	50%	50%	\$37,818.74 to \$56,734.65
Unreimbursed Business Expenses	\$292,452	30%	70%	\$61,414.92
Wage Statement Penalty	\$130,350	60%	50%	\$26,070
Waiting Time Penalty	\$381,876	60%	50%	\$76,375.20
MAXIMUM TOTAL EXPOSURE	\$1,712,327.82 to \$1,787,991.45⁴			\$292,443.84 to \$311,359.75⁵

Based on this analysis, the realistic recovery for this case is **\$292,443.84** on the low end and **\$311,359.75** on the high end. (Han Decl., *supra*, at ¶ 65.) Thus, the Maximum Settlement Amount of \$225,000 is approximately twelve percent (12.58%) of the maximum potential exposure and about seventy-two percent (72.26%) of the maximum realistic exposure at trial. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”).)

g. Conditional Certification of the Class Is Appropriate

The requisites for establishing conditional class certification are met. Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all

⁴ (Han Decl., *supra*, at ¶¶ 47-52.)

⁵ (*Id.* at ¶¶ 60-64.)

1 before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)
2 California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class
3 and [2] a well-defined community of interest among class members.” (*Ibid.*)

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

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

12 This action involves approximately eighty-three (83) Class Members that was confirmed by
13 Defendant. (Han Decl., *supra*, at ¶ 66.) Thus, this Class is sufficiently numerous. (*Ibid.*)

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

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

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of
25 recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department*
26 *of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) Furthermore, the
27 commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to
28 the potential class. (*Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1534.)

1 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
2 they alleged. (Han Decl., *supra*, at ¶ 67.) All hourly-paid and non-exempt employees who worked
3 for Defendant within the State of California at any time during the Class Period were subject to the
4 same or similar employment practices, policies, and procedures, as described above. (*Ibid.*)

5 Plaintiffs are former employees of Defendant. Plaintiffs allege they and the Class Members
6 were employed by the same company and injured by Defendant’s common policies and practices
7 described above. (Han Decl., *supra*, at ¶ 68.) Plaintiffs seek relief for these claims and derivative
8 claims on behalf of the Class. (*Ibid.*) Thus, Plaintiffs’ claims arise from the same employment
9 practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

10 **h. The Settlement Is the Result of Thorough Investigation and Discovery**

11 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
12 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
13 discovery to support the settlement. (Han Decl., *supra*, at ¶¶ 16-18.) The proposed settlement was
14 only possible following discovery and evaluation of Defendant’s policies and procedures and data
15 produced for the putative class, which permitted Class Counsel to engage in a comprehensive
16 analysis of liability and potential damages. (*Id.* at ¶ 69.) The case is at the stage where “the Parties
17 certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the
18 Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

19 **i. Request for Attorneys’ Fees and Costs**

20 Class Counsel have actively investigated and litigated this case for years and were actively
21 preparing for class certification. (Han Decl., *supra*, at ¶ 70.) The ongoing work has been extensive,
22 demanding, and ultimately successful in achieving a substantial settlement resolution. (*Ibid.*) Class
23 Counsel conducted formal and informal investigation and discovery into the facts of the case,
24 including obtaining the class contact list, interviewing Plaintiffs and dozens of other putative class
25 members, and reviewing and analyzing a volume of documents and data produced by Defendant
26 and obtained through other sources. (*Ibid.*)

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1 The proposed Settlement establishes a Maximum Settlement Amount of up to \$225,000.
2 (Han Decl., *supra*, at ¶ 71.) The proposed Settlement provides for Class Counsel to apply to the
3 Court for an award of attorneys' fees in an amount not to exceed thirty-eight percent (38%) of the
4 Maximum Settlement Amount (or \$85,500) and reimbursement of litigation costs and expenses in
5 an amount not to exceed \$25,000. (*Ibid.*) The proposed Notice Packet will provide the Class
6 Members with information as to the amounts allocated toward Attorneys' Fees and Costs. (*Ibid.*)

7 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions
8 will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal.,*
9 *Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, it is long settled that the "experienced trial judge is the
10 best judge of the value of professional services rendered in his court[.]" (*Ketchum v. Moses* (2001)
11 24 Cal.4th 1122, 1132.) California law provides that attorney fee awards should be equivalent to
12 fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (See
13 *Lealao*, at p. 47.) In *Lealao*, the court held that when an action leads to a recovery that can be
14 "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee
15 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
16 litigation." (*Id.* at p. 50.) In cases where class members present claims against a maximum
17 settlement fund and the settlement agreement provides that the defendant agrees to paying the
18 attorneys a percentage of the same, use of the percentage method is appropriate. (*Id.* at p. 32.)

19 Considering the facts and circumstances surrounding this case, Class Counsel's application
20 for attorneys' fees is well within the range of reasonableness. Historically, courts have awarded fees
21 as high as fifty percent (50%) of the settlement fund, depending on the circumstances of the case.
22 (Conte & Newberg, *supra*, § 14.03; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526
23 F.Supp. 494 [awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement fund];
24 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
25 [awarding approximately 53% of the settlement fund as attorney fees].) California Courts routinely
26 approve attorneys' fees "averag[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.*
27 (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found 20-40% range of contingency fee in
28 marketplace was appropriate in class actions]; see also *Estrada v. Dr. Pepper/Seven-Up*, Los

1 Angeles County Superior Court, Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*,
2 Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage and hour).) Here, Class
3 Counsel have borne all the risks and costs of litigation and will not receive any compensation until
4 recovery is obtained. (Han Decl., *supra*, at ¶ 72.) Considering the amount of the fees requested, the
5 work performed, and the risks incurred, the requested fees and costs are reasonable. (*Ibid.*)

6 **j. Counsel for Both Parties Are Experienced in Similar Litigation**

7 Both Parties' counsel are experienced in wage-and-hour employment law and class actions.
8 Class Counsel have significant experience in litigating unpaid wages, non-compliant meal and rest
9 breaks, and unfair business practices class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.)
10 Specifically, Class Counsel have prosecuted numerous cases on behalf of employees for Labor
11 Code violations and are thus experienced and qualified to evaluate the class claims, the benefits,
12 and disadvantages of settlement versus trial, and the viability of Defendant's defenses. (*Ibid.*) This
13 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
14 their determination to endorse the proposed settlement.⁶ (*Ibid.*)

15 **k. Appointment of Simpluris as the Claims Administrator**

16 The Parties have agreed to select Simpluris as the Claims Administrator to administer the
17 proposed Settlement. (Han Decl., *supra*, at ¶ 73.) Claims Administration Costs currently estimated
18 not exceed \$10,000 are the costs payable from the Maximum Settlement Amount to the Claims
19 Administrator for administering the Settlement and distributing payments from the Maximum
20 Settlement Amount. (*Ibid.*) Considering the number of Class Members, the estimated Claims
21 Administration Costs are reasonable. (*Ibid.*)

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27 ⁶ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Notice Packet has been provided to the Class and they have had an opportunity to respond. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **I. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

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

3 If the court has certified the action as a class action, notice of the final approval
4 hearing must be given to class members in the manner specified by the court. The
5 notice must contain an explanation of the proposed settlement and procedures for
6 class members to follow in filing written objections to it and in arranging to
 appear at the settlement hearing and state any objections to the proposed
 settlement.

7 The proposed Notice Packet will provide: (a) information regarding the nature of this case;
8 (b) a summary of the Settlement’s principal terms; (c) the Class definition; (d) the total number of
9 Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each
10 Class Member’s estimated Individual Settlement Payment and the formula for calculating
11 Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on
12 how to submit valid Claim Forms, disputes regarding Workweeks, Requests for Exclusion, or
13 objections; (h) the requirements relating to, and deadlines by which the Class Members must submit
14 Claim Forms, disputes regarding Workweeks, Requests for Exclusion, and objections to the
15 Settlement; (i) the claims to be released, as set forth in the Settlement Agreement; and (j) the date
16 for the Final Approval Hearing. (Han Decl., *supra*, at ¶ 74; Exhibits A and B to Exhibit 2.)

17 The proposed Notice Packet will include the Claim Form that will provide pertinent
18 employment information, including each Class Member’s number of Individual Workweeks. (Han
19 Decl., *supra*, at ¶ 75.) The proposed Claim Form will state the estimated gross amount of each
20 Class Member’s Individual Settlement Payment and provide detailed instructions on how to
21 properly complete the Claim Form and timely submit it, as well as the procedure and deadline for
22 challenging the number of Individual Workweeks provided on the Claim Form. (*Ibid.*)

23 The proposed notice procedure provided by the proposed Settlement fulfills the requirement
24 of neutrality in class notices. (Conte & Newberg, *supra*, § 8.39.) “Sufficient information about the
25 case should be provided to enable class members to make an informed decision about their
26 participation.” (Manual for Complex Litigation, Fourth (2004) § 21.311.) The proposed Notice
27 Packet summarizes the proceedings to date and the terms and conditions of the proposed Settlement
28 in an informative and coherent manner. The proposed Notice Packet also recognizes that the Court

has not yet granted Final Approval and appries the Class Members of how to object to the proposed Settlement. The proposed Notice Packet satisfies all due process requirements and complies with the standards of fairness, completeness, and neutrality. (Cal. Rules of Court, rule 3.766; Conte & Newberg, *supra*, §§ 8.21 and 8.39; Manual for Complex Litigation, *supra*, §§ 21.311 and 21.312; see *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960.) Accordingly, the Court should approve the proposed Notice Packet.

m. Proposed Deadlines for the Notice Process

At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines for the notice and claims administration process. (Han Decl., *supra*, at ¶ 76; Conte & Newberg, *supra*, § 11.26.) The notice process entails the mailing of the Notice Packet to all known and reasonably ascertainable Class Members based on Defendant's payroll records. (Han Decl., *supra*, at ¶ 76.) Within twenty (20) business days of Preliminary Approval, Defendant will provide the Class List(s) to the Claims Administrator. (*Ibid.*)

Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator will perform a search based on the National Change of Address Database ("NCOA"), or any other similar services available, and mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (Han Decl., *supra*, at ¶ 77.)

Class Members will have forty-five (45) calendar days from the initial mailing of the Notice Packet to submit their Claim Forms, Requests for Exclusion, or Notices of Objection to Simpluris, measured by the date of the postmark on the mailing envelope. (Han Decl., *supra*, at ¶¶ 28, 33-34.)

Within three (3) business days after final approval, the Claims Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant pursuant to the terms of the Settlement. (Han Decl., *supra*, at ¶ 35.) Defendant will deposit all Court-approved costs, fees and payments, and claim amounts from the Maximum Settlement Amount into a Qualified Settlement Fund ("QSF") account to be established by the Claims Administrator within fifteen (15) business days of the Effective Date. (*Ibid.*) Within three (3) business days of the Court granting final approval, the Claims Administrator will calculate all payments due. (*Ibid.*) Individual Settlement Payments shall be mailed by regular First-Class U.S. Mail to the respective Claimant's last known

mailing address within fourteen (14) calendar days after Defendant deposits all Court-approved and claim amounts from the Maximum Settlement Amount into a QSF. (Han Decl., *supra*, at ¶ 35.)

n. Appointment of the Class Representatives and Approval of the Class Representative Enhancement Payments

A named plaintiff is eligible for payment that reasonably compensates him for undertaking and fulfilling a fiduciary duty to represent absent class members. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th 715, 726 [upholding “service payments” to named plaintiffs for their efforts in bringing the case]; *Stevens v. Safeway, Inc.* (C.D.Cal. Feb. 25, 2008, No. CV 05-01988 MMM (SHx)) 2008 U.S.Dist.LEXIS 17119 [\$20,000.00 and \$10,000.00 to two class representatives]; *In Re Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D.Pa. July 16, 2009) 2009 U.S.Dist.LEXIS 60790 [\$20,000.00 each to three class representatives].)

Plaintiffs have proven to be adequate Class Representatives. (Han Decl., *supra*, at ¶ 78.) Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have also spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interests that are averse to the interests of other Class Members. (*Ibid.*; see *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 340.)

The requested Class Representative Enhancement Payments are fair and reasonable compensation for Plaintiffs’ efforts in bringing the action; assisting counsel with the investigation, litigation, and settlement; regularly conferring with Class Counsel on the status of the case and the strategies for prosecuting the claims; and reviewing the proposed Settlement to ensure that its terms are fair and that it provides adequate relief to the proposed Class. (Han Decl., *supra*, at ¶ 79.) Accordingly, it is appropriate and just for Plaintiffs serving as the Class Representatives to receive reasonable Class Representative Enhancement Payments, in addition to their shares of the Net Settlement Amount, for their services on behalf of the Class. (*Ibid.*)

///

1 **V. CONCLUSION**

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

6
7 Dated: January 26, 2022

JUSTICE LAW CORPORATION

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10 Douglas Han
11 *Attorneys for Plaintiffs*
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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 mking@justicelawcorp.com

On January 27, 22, I served the foregoing document described as

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

for the following case: **Hammond, et al. v. Paul Durham Electric, Inc. f/k/a Harold
E. Nutter & Son, Inc.**
LWDA/Court Case No.: **LWDA-CM-849588-21
34-2020-00291142-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**

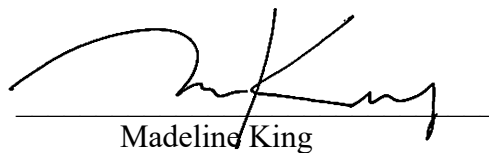
[X] BY ELECTRONIC SUBMISSION

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 January 27, 2022, at Pasadena, California.


Madeline King