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

SHONIE SHOEMAKER, 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");

Plaintiff,

v.

BROKEN ARROW COMMUNICATIONS,
INC., a New Mexico corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 21CV-03517

Honorable Brian L. McCabe
Courtroom 8

CLASS ACTION

**PLAINTIFF'S 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**

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

Hearing Date: December 13, 2021
Hearing Time: 8:15 a.m.
Hearing Place: Courtroom 8

Complaint Filed: October 20, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 13, 2021 and at 8:15 a.m., or as soon as the
2 matter may be heard, before the Honorable Brian L. McCabe of Courtroom 8 at the Superior Court
3 of California, County of Merced (Old Courthouse) located at 627 West 21st Street, Merced,
4 California 95340, Plaintiff Shonie Shoemaker (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Joint Stipulation of Class Action Settlement and
7 Release (“Agreement,” “Stipulation of Settlement,” or “Settlement”), attached as
8 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds, the allocations for penalties under the
10 California Labor Code Private Attorneys General Act of 2004 (“PAGA”), the
11 Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, and the
12 Claims Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement attached as **“EXHIBIT**
17 **A”** to the Settlement Agreement;
- 18 • Approving the proposed Claim Form attached as **“EXHIBIT B”** to the Settlement
19 Agreement;
- 20 • Directing the mailing of the proposed Notice of Class Action Settlement and Claim
21 Form (collectively, known as the “Notice Packet”) with a postage-paid return
22 envelope to the proposed Class Members;
- 23 • Approving the proposed deadlines for the notice and claims administration process;
- 24 • Approving CPT Group, Inc. (“CPT Group”) as the Claims Administrator; and
- 25 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement,
26 at which time the Court will also consider whether to grant Final Approval of the
27 requests for Attorneys’ Fees and Costs, the Class Representative Enhancement
28 Payment, the PAGA Payment, and the Claims Administration Costs.

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

6
7 Dated: November 12, 2021

JUSTICE LAW CORPORATION

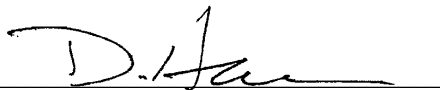
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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	11
III.	INVESTIGATION/LITIGATION HISTORY	12
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	12
b.	The Parties Attended Mediation Which Led to the Joint Stipulation	13
c.	Terms of the Proposed Settlement	13
i.	Deductions from the Settlement.....	13
ii.	Calculation of the Individual Settlement Payments to Class Members	14
iii.	The <i>Cy Pres</i> Recipient is Appropriate.....	15
iv.	Release of Claims	16
v.	Range of Individual Settlement Payments That Will Likely Be Issued to Class Members.....	17
IV.	ARGUMENT	17
a.	Class Action Settlements Are Subject to Court Review	17
b.	Preliminary Approval of the Proposed Settlement is Appropriate	19
c.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	19
d.	The Settlement Agreement is Fair, Reasonable, and Adequate	20
e.	Value of Settlement.....	21
i.	Discount Analysis Justifies the Settlement.....	23
f.	Conditional Certification of the Class is Appropriate.....	24
i.	The Proposed Class is Ascertainable and Sufficiently Numerous.....	24
ii.	The Class Members Share a Well-Defined Community of Interest	24
g.	The Settlement Is the Result of Thorough Investigation and Discovery	25
h.	Request for Attorney's Fees and Costs	26
i.	Counsel for Both Parties Are Experienced in Similar Litigation	28
j.	Appointment of CPT Group as the Claims Administrator.....	28
k.	Notice to Class Members Complies with California Rule of Court 3.769(f)	28

1	l.	Proposed Deadlines for the Notice Process	30
2	m.	Appointment of the Class Representatives and Approval of the Class	
3		Representative Enhancement Payments	31
4	V.	CONCLUSION.....	32

TABLE OF AUTHORITIES

Cases

<i>7-Eleven Owners for Fair Franchising v. Southland Corp.</i>	
(2000) 85 Cal.App.4th 1135	19
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	17
<i>In re American Bank note Holographics Inc., Securities Litigation</i>	
(S.D.N.Y. 2001) 127 F.Supp.2d 418	20
<i>In re Ampicillin Antitrust Litigation</i>	
(D.D.C. 1981) 526 F.Supp. 494.....	27
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	24
<i>Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.</i>	
(S.D.N.Y. 1979) 480 F.Supp. 1195	27
<i>Bernstein v. Virgin Am., Inc.</i>	
(9 th Cir. 2021) 990 F.3d 1157.....	21
<i>In re Beef Industry Antitrust Litigation</i>	
(5 th Cir. 1979) 607 F.2d 167	18
<i>Bell v. Farmers Ins. Exchange</i>	
(2004) 115 Cal.App.4th 715	31
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp. 610.....	26
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	25
<i>Carrington v. Starbucks Corp.</i>	
(2018) 30 Cal.App.5th 504	22
<i>Cartt v. Superior Court</i>	
(1975) 50 Cal.App.3d 960	29

1	<i>Cellphone Termination Fee Cases</i>	
2	(2010) 186 Cal.App.4th 1380	31
3	<i>Chavez v. Netflix, Inc.</i>	
4	(2008) 162 Cal.App.4th 43	27
5	<i>City of Detroit v. Grinnell Corporation</i>	
6	(2nd Cir. 1974) 495 F.2d 448	18, 23
7	<i>Dunk v. Ford Motor Co.</i>	
8	(1996) 48 Cal.App.4th 1794	19, 20, 28
9	<i>Estrada v. Dr. Pepper/Seven-Up</i>	
10	Los Angeles County Superior Court, Case No. BC262247 (May 2005)	27
11	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
12	(2008) 169 Cal.App.4th 1524	24, 25
13	<i>Green v. Obledo</i>	
14	(1981) 29 Cal.3d 126	17
15	<i>Hanlon v. Chrysler Corp.</i>	
16	(9th Cir. 1998) 150 F.3d 1011	19
17	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
18	(2001) 89 Cal.App.4th 908	24
19	<i>Hopson v. Hanesbrands Inc.</i>	
20	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844) 2009 U.S.Dist.LEXIS 33900	22
21	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
22	(1981) 452 U.S. 905	18
23	<i>In re Janney Montgomery Scott LLC Financial Consultant Litig.</i>	
24	(E.D.Pa. July 16, 2009) 2009 U.S.Dist.LEXIS 60790	31
25	<i>Ketchum v. Moses</i>	
26	(2001) 24 Cal.4th 1122	27
27	<i>Kullar v. Foot Locker Retail, Inc.</i>	
28	(2008) 168 Cal.App.4th 116	21

1	<i>Lealao v. Beneficial Cal., Inc.</i>	
2	(2000) 82 Cal.App.4th 19	26, 27
3	<i>Linder v. Thrifty Oil Co.</i>	
4	(2000) 23 Cal.4th 429	24
5	<i>Linney v. Cellular Alaska Partnership</i>	
6	(9th Cir. 1998) 151 F.3d 1234	23
7	<i>Moore v. IKEA</i>	
8	Los Angeles County Superior Court, Case No. BC263646 (Sept. 2006).....	27
9	<i>Nordstrom Com. Cases</i>	
10	(2010) 186 Cal.App.4th 576	22
11	<i>Officers for Justice v. Civil Service Commission on City and County of San Francisco</i>	
12	(9th Cir. 1982) 688 F.2d 615	18
13	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
14	(2004) 34 Cal.4th 319	24, 25, 31
15	<i>Stevens v. Safeway, Inc.</i>	
16	(C.D.Cal. Feb. 25, 2008, No. CV 05-01988 MMM (SHx)) 2008 U.S.Dist.LEXIS	
17	17119.....	31
18	<i>In re Tableware Antitrust Litig.</i>	
19	(N.D.Cal. 2007) 484 F.Supp.2d 1059.....	23
20	<i>Thurman v. Bayshore Transit Mgmt.</i>	
21	(2012) 203 Cal.App.4th 1112	21
22	<i>Vasquez v. Superior Court</i>	
23	(1971) 4 Cal.3d 800	17
24	<i>Wershba v. Apple Computer, Inc.</i>	
25	(2001) 91 Cal.App.4th 224	19
26	<u>Statutes</u>	
27	Code of Civil Procedure § 382	20, 24
28	Federal Rule 23.....	17

1	Labor Code § 201	21, 22
2	Labor Code § 202	21, 22
3	Labor Code § 203	21, 22
4	Labor Code § 204	21
5	Labor Code § 226	21, 22
6	Labor Code § 226.2	21
7	Labor Code § 226.3	21
8	Labor Code § 226.7	21, 22
9	Labor Code § 246	21
10	Labor Code § 510	21, 22
11	Labor Code § 512	21, 22
12	Labor Code § 1174	21
13	Labor Code § 1194	21, 22
14	Labor Code § 1197	21, 22
15	Labor Code § 1197.1	21
16	Labor Code § 1198	21, 22
17	Labor Code § 2698, <i>et seq.</i>	10
18	Labor Code § 2800	21, 22
19	Labor Code § 2802	21, 22
20	Rule 3.769	17, 18, 28

21 **Other Authorities**

22	Conte & Newberg, Newberg on Class Actions (4th ed. 2002 supp.)	18, 21, 27, 29, 30
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1 **I. INTRODUCTION**

2 Plaintiff seeks preliminary approval of the Settlement Agreement entered into by and
3 between Plaintiff, individually and on behalf of the proposed Class, and Defendant Broken Arrow
4 Communications, Inc. (“Defendant”). Subject to Court approval, Plaintiff and Defendant (“Parties”)
5 have agreed to settle this lawsuit for a Maximum Settlement Amount of up to \$1,000,000. A copy
6 of the Agreement is attached as “**EXHIBIT 2**” to the Declaration of Douglas Han (“Han Decl.”).

7 The Maximum Settlement Amount includes the following: (a) the attorneys’ fees of up to
8 \$333,333.33 to Class Counsel; (b) the litigation costs in the sum not to exceed \$20,000 to Class
9 Counsel; (c) the Class Representative Enhancement Payment in the amount not to exceed \$10,000
10 to Plaintiff; (d) the allocation of Claims Administration Costs to CPT Group in the sum currently
11 estimated at \$20,000; (e) the payment of \$50,000 for penalties pursuant Labor Code sections 2698,
12 *et seq.* (PAGA), seventy-five (75%) of which (\$37,500) will be paid to the Labor and Workforce
13 Development Agency (“LWDA”) (“LWDA Payment”) and twenty-five (25%) of which (\$12,500)
14 will be distributed, pro rata, based on weeks worked to all PAGA Aggrieved Employees; and (f)
15 employer-side payroll taxes relating to the portion of the Individual Settlement Payments paid as
16 wages. (Settlement Agreement, *supra*, at ¶¶ 13, 17, 23, 29-30, 34, 55-57, 59-60, & 78.)

17 Plaintiff seeks to certify the following Class for settlement purposes, consisting of
18 approximately four hundred seventy-one (471) Class Members:

19
20 All current and former non-exempt California employees of Defendant from
21 October 13, 2016, through the earlier of December 9, 2021 or date of preliminary
22 approval of the settlement (“Class” and “Class Period”). (Settlement Agreement,
supra, at ¶¶ 20-21.)

23 As the following sections show, Class Counsel is convinced that the proposed Settlement is
24 in the best interests of the Class based on the negotiations and their detailed knowledge of the issues
25 existing in this action. The length and risks of trial and the perils of litigation that affect the value of
26 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, particularly
27 the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of
28

1 establishing specific damages, and the various possible delays and appeals, were also carefully
2 considered by Class Counsel in arriving at the proposed Settlement.

3 **II. BACKGROUND**

4 Defendant is a leader in providing systems and facility services for the wireless
5 telecommunications industry in the western United States. (Han Decl., *supra*, at ¶ 11.) This case
6 involves all current and former non-exempt California employees of Defendant from October 13,
7 2016, through the earlier of December 9, 2021 or date of preliminary approval of the settlement.
8 (*Ibid.*) Plaintiff alleges that employees worked for Defendant on an hourly basis. (*Ibid.*)

9 On April 12, 2021, Plaintiff, a former employee of Defendant, filed a wage-and-hour class
10 action lawsuit against Defendant in the Superior Court of California, County of Los Angeles, Case
11 Number 21STCV13873, alleging eight (8) causes of action. (Han Decl., *supra*, at ¶ 12.)

12 On May 14, 2021, Plaintiff's wage-and-hour class action lawsuit was removed to the United
13 States District Court, Central District of California, Case Number 2:21-cv-04070-MAA. (Han
14 Decl., *supra*, at ¶ 13.)

15 On September 10, 2021, the Parties participated in mediation before Deborah Crandall Saxe,
16 Esq., a respected mediator of wage-and-hour class actions. (Han Decl., *supra*, at ¶ 14.) After a full
17 day of negotiations, under the auspices of Ms. Saxe, the Parties agreed to settle and stipulated to the
18 material terms of the Settlement now before this Court. (*Ibid.*)

19 In line with the Parties' decision to enter a settlement, Plaintiff agreed to dismiss her wage-
20 and-hour class action lawsuit pending in United States District Court, Central District of California,
21 Case Number 2:21-cv-04070-MAA, without prejudice and to file a new wage-and-hour class action
22 lawsuit in the Superior Court of California, County of Merced. (Han Decl., *supra*, at ¶ 15.)

23 On October 19, 2021, Plaintiff provided written notice to the LWDA and Defendant of the
24 specific provisions of the California Labor Code she contends were violated and the theories
25 supporting her contentions. (Han Decl., *supra*, at ¶ 16.)

26 On October 20, 2021, Plaintiff filed a wage-and-hour class action lawsuit against Defendant
27 in the Superior Court of California, County of Merced, Case Number 21CV-03517, alleging nine
28 (9) causes of action. (Han Decl., *supra*, at ¶ 17.)

1 Defendant generally and specifically denies all liability or wrongdoing of any sort regarding
2 any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends
3 that for any purpose other than settlement, the case is not appropriate for class or representative
4 treatment. (Han Decl., *supra*, at ¶ 18.) Defendant also asserts several defenses to the claims and has
5 denied any wrongdoing or liability arising out of any of the alleged facts or conduct here. (*Ibid.*)

6 **III. INVESTIGATION/ LITIGATION HISTORY**

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

8 After Plaintiff originally filed her complaint, the Parties engaged in discovery. (Han Decl.,
9 *supra*, at ¶ 19.) Specifically, Class Counsel propounded one (1) set of form interrogatories, one (1)
10 set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for
11 production. (*Ibid.*) Afterwards, the Parties met and conferred regarding discovery. (*Ibid.*)

12 Prior to the mediation with Deborah Crandall Saxe., Esq., and both before and after this case
13 was filed, the Parties conducted significant investigation and discovery of the facts and law. (Han
14 Decl., *supra*, at ¶ 20.) Specifically, Defendant produced hundreds of documents relating to its
15 employment policies, practices, and procedures. (*Ibid.*) As part of Defendant's production, Plaintiff
16 also reviewed time records, pay records, and information relating to the size and scope of the Class,
17 as well as data permitting Plaintiff to understand the number of workweeks in the Class Period.
18 (*Ibid.*) Furthermore, Plaintiff interviewed several Class Members who worked for Defendant
19 throughout the Class Period. (*Ibid.*)

20 Based upon the informal exchange of information, Defendant's document production, and
21 interviews Class Counsel had with non-exempt employees, Plaintiff contends – and Defendant
22 denies – that Defendant did not allow employees to take compliant meal and rest breaks. (Han
23 Decl., *supra*, at ¶¶ 22-23.) Specifically, Defendant allegedly maintained improper, uniform policies
24 and practices that prevented employees from receiving compliant meal and rest breaks. (*Ibid.*)

25 Next, Plaintiff allege – and Defendant denies – that Defendant failed to compensate
26 employees for all hours worked. (Han Decl., *supra*, at ¶ 24.) Specifically, Defendant's purportedly
27 stringent policies coupled with the nature of their work and time-sensitive assignments forced
28 employees to work additional hours off-the-clock. (*Ibid.*)

1 Plaintiff also contends – and Defendant denies – that Defendant maintained a rounding
2 practice that consistently resulting in underpayment of wages. (Han Decl., *supra*, at ¶ 25.) In other
3 words, Defendant’s rounding policy was supposedly neither fair nor neutral. (*Ibid.*)

4 Next, Plaintiff alleges – and Defendant denies – that Defendant failed to factor non-
5 discretionary bonuses, as well as per diem payments, into employees’ regular rates for overtime
6 purposes. (Han Decl., *supra*, at ¶ 26.) This apparently extended to Defendant failing to properly
7 calculate and pay sick leave pursuant to Labor Code section 246 (l). (*Ibid.*)

8 Additionally, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse
9 employees for incurring business expenses. (Han Decl., *supra*, at ¶ 27.) Specifically, despite
10 employees using their personal cell phones and vehicles for work-related purposes and making
11 business purchases, Defendant allegedly failed to reimburse them. (*Ibid.*)

12 Finally, Plaintiff alleges – and Defendant denies – that Defendant is liable for wage
13 statement penalties and waiting time penalties. (Han Decl., *supra*, at ¶¶ 28-29.) Defendant has
14 denied Plaintiff’s contentions in their entirety. (*Id.* at ¶ 30.)

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

16 Under the auspices of the mediator Deborah Crandall Saxe, Esq., the Parties were able to
17 reach an agreement on settlement, the terms of which were memorialized in the Agreement that the
18 Parties seek preliminary approval of in the instant motion. (Han Decl., *supra*, at ¶ 31; Exhibit 2.)

19 **c. Terms of Proposed Settlement**

20 **i. Deductions from the Settlement**

21 Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement
22 Amount of up to \$1,000,000 to all Class Members on a claims-made basis. Subject to Court
23 approval, the Net Settlement Amount, which is the maximum amount that will be made available to
24 pay the Class Members, will be calculated by deducting the following amounts from the Maximum
25 Settlement Amount: (a) attorneys’ fees of up to \$333,333.33 to compensate Class Counsel; (b) the
26 litigation costs in amount not to exceed \$20,000 to Class Counsel as reimbursement of litigation
27 costs and expenses; (c) the Class Representative Enhancement Payment of up to \$10,000 to
28 Plaintiff; (d) the allocation of Claims Administration Costs to CPT Group, the Claims

1 Administrator, in the sum currently estimated at \$20,000; (e) the PAGA Payment in an amount not
2 to exceed \$50,000, seventy-five percent (75%) of which (\$37,500) will be paid to the LWDA
3 (“LWDA Payment”) and twenty-five percent (25%) of which (\$12,500) will be distributed, pro rata,
4 to PAGA Aggrieved Employees; and (f) employer-side payroll taxes relating to the portion of the
5 Individual Settlement Payments paid as wages. (Han Decl., *supra*, at ¶ 33.)

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

7 To receive Individual Settlement Payments, all Class Members will be required to submit a
8 timely and valid Claim Form within forty-five (45) calendar days of the initial mailing of the Notice
9 Packet) by the Claims Administrator (“Response Deadline”). (Han Decl., *supra*, at ¶ 34.) All Claim
10 Forms must be signed and returned to the Claims Administrator via first class mail or fax and
11 postmarked or faxed by the Response Deadline. (*Ibid.*)

12 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
13 Amount based on the number of Workweeks Class Member worked during the Class Period. (Han
14 Decl., *supra*, at ¶ 35.) The calculations of Individual Settlement Payments will be made as follows:

15 (a) The Claims Administrator will calculate the total number of Workweeks worked by each
16 individual Class Member (“Individual Workweeks”) to determine the total number of
17 Workweeks worked by all Class Members (“Class Workweeks”) during the Class
18 Period. Defendant shall provide the Claims Administrator such information to calculate
19 the Individual Workweeks and Class Workweeks. (*Id.* at ¶ 35, subd. (a).)

20 (b) To determine each Class Member’s estimated Individual Settlement Payment, the
21 Claims Administrator will use the following formula: Estimated Individual Settlement
22 Payment = (Net Settlement Amount ÷ Class Workweeks) x Individual Workweeks for
23 each individual Class Member. (*Id.* at ¶ 35, subd. (b).)

24 (c) If the total Individual Settlement Payments actually claimed by Claimants equals less
25 than fifty percent (50%) of the Net Settlement Amount, the Individual Settlement
26 Payments will proportionately increase for each Claimant submitting a Claim Form such
27 that the total Individual Settlement Payments equal not less than fifty percent (50%) of
28 the Net Settlement Amount. (*Id.* at ¶ 35, subd. (c).)

1 The Claims Administrator will also calculate the total number of Workweeks worked by
2 each individual PAGA Aggrieved Employee to determine the total number of Workweeks worked
3 by all PAGA Aggrieved Employees (“Total PAGA Workweeks”) between October 19, 2020, and
4 the earlier of December 9, 2021 or date of preliminary approval of the settlement. (Han Decl.,
5 *supra*, at ¶ 36.) Defendant shall provide the Claims Administrator such information as is necessary
6 to calculate the individual PAGA Aggrieved Employee’s Workweeks and Total PAGA
7 Workweeks. (*Ibid.*) To determine each PAGA Aggrieved Employee’s estimated PAGA Payment,
8 the Claims Administrator will use the following formula: Estimated individual PAGA Payment =
9 $(\$12,500 \div \text{Total PAGA Workweeks}) \times \text{individual Workweeks}$ for each individual PAGA
10 Aggrieved Employee. (*Ibid.*)

11 All Individual Settlement Payments will be allocated as follows: one-third (1/3) of each
12 Individual Settlement Payment will be allocated as wages, one-third (1/3) will be allocated as
13 interest, and one-third (1/3) will be allocated as penalties. (Han Decl., *supra*, at ¶ 37.) Any and all
14 applicable employer-side payroll taxes relating to the portion of the Individual Settlement Payments
15 paid as wages shall be paid out of the Net Settlement Amount. (*Id.* at ¶ 38.)

16 **iii. The *Cy Pres* Recipient is Appropriate**

17 Any checks issued by the Claims Administrator to Claimants will be negotiable for at least
18 one hundred eighty (180) calendar days. (Han Decl., *supra*, at ¶ 42.) Those funds represented by
19 settlement checks returned as undeliverable and those settlement checks remaining un-cashed for
20 more than one hundred eighty (180) calendar days after issuance will be sent to Legal Aid At Work
21 (“LAAW”). (*Ibid.*)

22 The Parties have agreed to designate the nonprofit organization LAAW as the *cy pres*
23 recipient. LAAW satisfies the requirements of Code of Civil Procedure section 384(a): “to ensure
24 that the unpaid cash residue and unclaimed or abandoned funds in class action litigation are
25 distributed, to the fullest extent possible, in a manner designed to further the purposes of the
26 underlying class action or causes of action, or to promote justice for all Californians.” (Han Decl.,
27 *supra*, at ¶ 43.) Code of Civil Procedure section 384(d) adds:

28 ///

1 [T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid
2 residue or unclaimed or abandoned class member funds, plus any interest that has accrued
3 thereon, to nonprofit organizations or foundations to support projects that will benefit the
4 class or similarly situated persons, or that promote the law consistent with the objectives and
purposes of the underlying cause of action, to child advocacy programs, or to nonprofit
organizations providing civil legal services to the indigent.

5 (Code of Civil Procedure section 384(d))

6 LAAW directly satisfies the legislature's purpose and goal under Code Civil Procedure
7 section 384. (Han Decl., *supra*, at ¶ 44.) The core of LAAW's work is providing free legal services
8 to low-wage workers with employment claims. (*Ibid.*) LAAW litigates cases that address an array
9 of issues important to low-wage workers, including (a) violations of wage-and-hour laws; (b)
10 workplace retaliation; (c) discrimination on account of race, national origin, disability, sex, gender
11 identity, sexual orientation, immigration status and language proficiency; (d) harassment; and (e)
12 failure to comply with equal pay laws and family medical leave laws. (*Ibid.*) Additionally, LAAW's
13 Community Legal Services Program provides advice and counseling to low-wage workers on the
14 full range of employment law issues they face through twelve statewide Workers' Rights Clinic
15 locations throughout California. (*Ibid.*) There can be no doubt LAAW is the type of non-profit
16 organization the legislature had in mind when drafting and amending Code Civil Procedure section
17 384. (*Ibid.*) The Parties are not affiliated with and do not have any financial interest in LAAW.
18 (*Ibid.*) Specifically, neither Class Counsel nor Plaintiff have any affiliation with or have any interest
19 pertaining to LAAW. (*Ibid.*)

20 **iv. Release of Claims**

21 Upon the Effective Date, Plaintiff and Settlement Class Members will be deemed to have
22 fully, finally, and forever released, settled, compromised, relinquished, and discharged with respect
23 to all the Released Parties all Released Claims for any period during the Released Claims Period
24 ("Released Claims"). (Han Decl., *supra*, at ¶ 45; Exhibit 2, ¶¶ 40-41 and 87.)

25 The Released Parties include Defendant, its parents, subsidiaries, its officers and employees,
26 successors, assigns, insurers, and attorneys, etc. ("Released Parties"). (Han Decl., *supra*, at ¶ 46;
27 Exhibit 2, ¶ 42.)

28 ///

1 Pursuant to the Settlement, and solely with respect to the Released Claims, Plaintiff
2 expressly waives and relinquishes any rights or benefits available to her under the provisions of
3 section 1542 of the California Civil Code. (Han Decl., *supra*, at ¶ 47; Exhibit 2, ¶ 88.)

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

12 **v. Range of Individual Settlement Payments that Will Likely Be Issued**
13 **to Class Members**

14 Class Members who submit claims to the Claims Administrator will be issued payments
15 based on the total number of Individual Workweeks they worked as Class Members during the
16 Class Period. (Han Decl., *supra*, at ¶ 48.) As discussed *supra*, the Individual Settlement Payments
17 will be calculated by dividing the Net Settlement Amount by the Class Workweeks and multiplying
18 that number by the Individual Workweeks for each individual Class Member. (Ibid.)

19 **IV. ARGUMENT**

20 **a. Class Action Settlements Are Subject to Court Review**

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

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26 _____
27 ¹ The California Supreme Court also has authorized California’s trial courts to use Federal
28 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 (a) A settlement or compromise of an entire class action, or a cause of action
2 in a class action, or as to a party, requires the approval of the court after
3 hearing.

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

8 Courts act within their discretion in approving settlements that are fair and not collusive and
9 that take into account “all the normal perils of litigation as well as the additional uncertainties
10 inherent in complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d
11 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981)
12 452 U.S. 905.)

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

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

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

2 To grant preliminary approval of a class action settlement, the trial court must preliminarily
3 determine whether the settlement is fundamentally fair, adequate, and reasonable. (*Dunk v. Ford*
4 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court has broad powers to determine whether a
5 proposed settlement is fair under the circumstances of the case. (*Id.* at p. 1801.) To make this
6 fairness determination, courts must consider several relevant factors, including “the strength of the
7 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
8 maintaining class action status through trial, the amount offered in settlement, the extent of
9 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
10 [.]” (*Ibid.*) “The list of factors is not exclusive and the court is free to engage in a balancing and
11 weighing of the factors depending on the circumstances of each case.” (*Wershba v. Apple*
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) Furthermore, courts give “proper deference to the
13 private consensual decision of the parties[.]” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d
14 1011, 1027 (citation omitted).)

15 The burden is on the proponent of the settlement to show that it is fair and reasonable.
16 (*Wershba v. Apple Computer, Inc.*, *supra*, 91 Cal.App.4th at p. 245.) However, a presumption of
17 fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2)
18 investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)
19 counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Ibid.*;
20 *Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802; *7-Eleven Owners for Fair Franchising*
21 *v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.)

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

23 The Settlement was reached through arm’s-length negotiations. (Han Decl., *supra*, at ¶ 49.)
24 Though cordial and professional, the settlement negotiations were always adversarial and non-
25 collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive arm’s-length
26 settlement negotiations until the Parties finally reached an agreement on settlement. (*Ibid.*)

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1 Plaintiff believes in the merits of her case but also recognizes the inherent risks of litigation
2 and understands the benefit of the Class receiving settlement funds immediately as opposed to
3 risking continued litigation with no guarantee of success. (Han Decl., *supra*, at ¶ 50.)

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

5 In deciding whether to approve a proposed class action settlement under Code of Civil
6 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
7 reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action
8 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
9 after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and
10 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage
11 of objectors is small. (*Id.* at p. 1802.)

12 A Maximum Settlement Amount of up to \$1,000,000 represents a fair, adequate, and
13 reasonable resolution of the case. (Han Decl., *supra*, at ¶ 51.) The proposed Settlement was
14 calculated using information and data uncovered through litigation, discovery, case investigation,
15 and the informal exchange of information in the context of mediation. (*Ibid.*) The proposed
16 Settlement considers the potential risks and rewards inherent in any case and with this case. (*Ibid.*)

17 Assuming that all the requested payments, fees, and costs are approved and paid in the full
18 amounts requested, the Net Settlement Amount is currently estimated to be \$566,666.67. (Han
19 Decl., *supra*, at ¶ 52.) There is no reason to doubt the fairness of the proposed plan of allocation of
20 the Settlement funds. (*Ibid.*) Even at the final approval stage, “[a]n allocation formula need only
21 have a reasonable, rational basis [to warrant approval], particularly if recommended by experienced
22 and competent counsel.” (*In re American Bank note Holographics, Inc., Securities Litigation*
23 (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-30.) (Han Decl., *supra*, at ¶ 52.)

24 Class Counsel believes the proposed Settlement is fair, reasonable, and adequate, and is in
25 the best interest of the Class Members. (Han Decl., *supra*, at ¶ 53.) Although the recommendations
26 of Class Counsel are not conclusive, the Court can properly take the recommendations into account,
27 particularly because Class Counsel appear to be competent, have experience with this type of
28

litigation, and significant discovery and investigation have been completed. (Conte & Newberg, Newberg on Class Actions (4th ed. 2002 supp.) § 11.47.) (Han Decl., *supra*, at ¶ 53.)

e. Value of Settlement

Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, Plaintiff has conducted a significant amount of discovery and investigation in order to evaluate the potential value and merit of all the claims. (Han Decl., *supra*, at ¶ 54.) The discovery and information obtained in this case allowed Plaintiff to develop a damages model and complete evaluation of the defenses that Defendant has asserted. (*Ibid.*)

Moreover, the provisions of the Labor Code potentially triggering PAGA penalties, in this case, include but are not limited to Labor Code sections 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 246(l), 510, 512(a), 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 63.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the current unsettled state of the law. (*Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) (Han Decl., *supra*, at ¶ 63.)

Given the state of the law and the range of PAGA penalties requested and actually awarded in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA penalties. (Han Decl., *supra*, at ¶ 65.) However, if PAGA penalties are granted on any one of the violations alleged in Plaintiff's operative complaint, the total penalties exposure for the eligible pay periods could be approximately **\$1,019,900** ([47 x \$100] x 217 employees).² (*Ibid.*) Plaintiff calculated Defendant's PAGA exposure using one hundred percent (100%) violation rate based on the average number of pay periods (47) during the one-year statutory period. (*Ibid.*) Multiplying

² Recent Ninth Circuit ruling suggests there may be no "subsequent" violation until an actual finding of a violation by a Labor Commissioner or court. (*Bernstein v. Virgin Am., Inc.* (9th Cir. 2021) 990 F.3d 1157, 1172-1173.) As a result, Plaintiff estimated the amount of PAGA penalties using the "initial" penalty amount of \$100 under PAGA.

1 the PAGA exposure by the number of alleged violations under the PAGA theories of recovery (7)
2 gives potential civil penalties of **\$7,139,300**. (Han Decl., *supra*, at ¶ 65.)

3 Although Plaintiff argued she could obtain over \$7 million for PAGA penalties, it seems
4 highly unlikely that the Court would award such a large amount. (Han Decl., *supra*, at ¶ 66.) Under
5 a more conservative approach, Class Counsel considered the possibility that the Court could assess
6 only the initial violation rate, bringing the basic PAGA penalty to **\$151,900** [217 employees x \$100
7 x 7 theories of recovery]. (*Id.* at ¶ 67.)

8 Plaintiff recognized the risk that any PAGA award could be significantly reduced. Many of
9 the causes of action brought were duplicative of the statutory claims such as violations of Labor
10 Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, 2800 and 2802. (Han
11 Decl., *supra*, at ¶ 68.) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It
12 was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*)
13 Thus, allocating \$50,000 to PAGA civil penalties was reasonable based on a rate of \$4.89 per pay
14 period [\$50,000 / 10,220 pay periods in PAGA date range = \$4.89] given the fact that Defendant is
15 also paying an additional \$950,000 in the class settlement.³ (*Ibid.*) Where PAGA penalties are
16 negotiated in good faith and “there is no indication that [the] amount was the result of self-interest
17 at the expense of other Class Members,” such amounts are generally considered reasonable.⁴ (*Ibid.*)

18 Considering Defendant’s defenses, supporting evidence, and position that the Action is not
19 suitable for class treatment, the settlement amount of \$1,000,000 is reasonable and fair.

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24 ³ (See *Carrington*, *supra*, 30 Cal.App.5th at p. 529 [affirming a rate of \$5 per violation and
25 a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation
26 and a total PAGA penalty of \$70,000,000].)

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

i. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$5,792,325.02** on the low end and **\$6,097,762.16** on the high end. (Han Decl., *supra*, at ¶ 69.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$370,944.57	70%	60%	\$44,513.35
Meal Break Premiums	\$708,079.68	60%	50%	\$141,615.94
Overtime/Minimum Wage: Off-the-Clock Work	\$570,111.08 to \$855,286.04	50%	60%	\$114,022.22 to \$171,057.21
Overtime/Minimum Wage: Rounding	\$29,668.02	40%	50%	\$8,900.41
Overtime/Minimum Wage: Non-Discretionary Bonuses	\$413,115.00	30%	40%	\$173,508.30
Unreimbursed Business Expenses	\$237,512.00	30%	70%	\$49,877.52
Wage Statement Penalty	\$868,000.00	50%	50%	\$217,000.00
Waiting Time Penalty	\$1,764,470.40	50%	50%	\$441,117.60
MAXIMUM TOTAL EXPOSURE	\$4,961,950.75 to \$5,247,075.71⁵			\$1,190,555.34 to \$1,247,590.33⁶

Based on this analysis, the realistic recovery for this case is **\$1,318,658.37** on the low end and **\$1,367,528.31** on the high end. (Han Decl., *supra*, at ¶ 78.) Thus, the Maximum Settlement Amount of \$1,000,000 is approximately sixteen percent (16.40%) of the maximum potential exposure and about seventy-three percent (73.12%) of the maximum realistic exposure at trial, which is an excellent settlement. (*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

⁵ Han Decl., *supra*, at ¶¶ 55-62.

⁶ *Id.* at ¶¶ 70-77.

1 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
2 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
3 speculative measure of what might have been achieved by the negotiators”).)

4 **f. Conditional Certification of the Class Is Appropriate**

5 For settlement purposes only, the requisites for establishing conditional class certification
6 are met. Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of
7 a common or general interest, of many persons, or when the parties are numerous, and it is
8 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
9 (2004) 34 Cal.4th 319, 326.) California courts certify class actions where the plaintiff identifies
10 “both [1] an ascertainable class and [2] a well-defined community of interest among class
11 members.” (*Ibid.*)

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

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

20 This action involves approximately four hundred seventy-one (471) Class Members, which
21 was confirmed by Defendant. (Han Decl., *supra*, at ¶ 79.) This Class is sufficiently numerous. (*See*
22 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a
23 proposed class of “as many as 190 current and former employees” is sufficiently numerous].) (Han
24 Decl., *supra*, at ¶ 79.)

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

26 The community of interest requirement “embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
28 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*

1 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
2 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
3 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis
4 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . . .
5 in order to assess whether that common behavior toward similarly situated plaintiffs renders class
6 certification appropriate.” (*Id.* citing *Sav-On Drug Stores, Inc.*, at p. 333.)

7 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of
8 recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department*
9 *of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added), citing *Sav-On Drug*
10 *Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 327.) Furthermore, the commonality inquiry
11 centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class.
12 (*Ghazaryan v. Diva Limousine, Ltd., supra*, 169 Cal.App.4th at p. 1534.)

13 Plaintiff asserts that common issues of fact and law predominate as to each of the claims she
14 alleged. (Han Decl., *supra*, at ¶ 80.) All hourly-paid and non-exempt employees who worked for
15 Defendant during the Class Period were subject to the same or similar employment practices,
16 policies, and procedures that are described in the Declaration of Douglas Han. (*Ibid.*) Plaintiff
17 concludes the proposed Class is readily certifiable in this case. (*Ibid.*) Accordingly, the Court
18 should provisionally certify the Class for settlement purposes only. (*Ibid.*)

19 Plaintiff was a non-exempt employee and alleges she and the Class Members were
20 employed by the same company and injured by Defendant’s common policies and practices
21 described in the Declaration of Douglas Han. (Han Decl., *supra*, at ¶ 81.) Plaintiff seeks relief for
22 these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiff’s claims arise from
23 the same practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

24 **g. The Settlement Is the Result of Thorough Investigation and Discovery**

25 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
26 before reaching the proposed settlement, and engaged in sufficient investigation, research, and
27 discovery to support the settlement. (Han Decl., *supra*, at ¶¶ 19-21.) The proposed settlement was
28 only possible following discovery and evaluation of Defendant’s policies and procedures and data

1 produced for the putative class, permitting Class Counsel to engage in a comprehensive analysis of
2 liability and damages. (Han Decl., *supra*, at ¶ 82.) The case is at the stage where “the Parties
3 certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the
4 Settlement. (*Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.) (Han Decl., *supra*, at ¶
5 82.)

6 **h. Request for Attorneys’ Fees and Costs**

7 Class Counsel have actively investigated and litigated this case for months and were
8 actively preparing for class certification. (Han Decl., *supra*, at ¶ 83.) The ongoing work has been
9 extensive, demanding, and ultimately successful in achieving a substantial settlement resolution.
10 (*Ibid.*) Class Counsel conducted formal and informal investigations and discovery into the facts of
11 the case, including obtaining the class contact list, interviewing Plaintiff and dozens of other
12 putative class members, and reviewing and analyzing a volume of documents and data produced by
13 Defendant and obtained through other sources. (*Ibid.*) These documents and data included, but
14 were not limited to, personnel records for Plaintiff (including detailed time and pay records),
15 payroll and pay history data for Class Members, and Defendant’s operations and employment
16 policies, procedures, and practices. (*Ibid.*) Class Counsel also prepared multiple forms of written
17 discovery requests and met and conferred with Defendant’s Counsel on numerous occasions
18 regarding issues relating to the pleadings, discovery, and proper jurisdiction and venue, among
19 other issues. (*Ibid.*)

20 The proposed Settlement establishes a Maximum Settlement Amount of up to \$1,000,000.
21 (Han Decl., *supra*, at ¶ 84.) The proposed Settlement provides for Class Counsel to apply to the
22 Court for an award of attorneys’ fees in an amount not to exceed one-third (1/3) of the Maximum
23 Settlement Amount (or \$333,333.33) and reimbursement of litigation costs and expenses in an
24 amount not to exceed \$20,000. (*Ibid.*) The proposed Notice Packet will provide the Class Members
25 with information as to the amounts allocated toward Attorneys’ Fees and Costs. (*Ibid.*)

26 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
27 will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal.,*
28 *Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, it is long settled that the “experienced trial judge is the

best judge of the value of professional services rendered in his court[.]” (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (See *Lealao*, at p. 47.) In *Lealao*, the court held that when an action leads to a recovery that can be “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation.” (*Id.* at p. 50.) In cases where class members present claims against a maximum settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of the percentage method is appropriate. (*Id.* at p. 32.)

Class Counsel’s application for attorneys’ fees considering the facts and circumstances surrounding the case is well within the range of reasonableness. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement fund, depending on the circumstances of the case. (Conte & Newberg, *supra*, § 14.03; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement fund]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195 [awarding approximately 53% of the settlement fund as attorney fees].) California Courts routinely approve attorneys’ fees “averag[ing] around one-third of the recovery.” (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions]; see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage and hour).) Here, Class Counsel have borne all the risks and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶ 85.) Considering the amount of the fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. (*Ibid.*)

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1 **i. Counsel for Both Parties Are Experienced in Similar Litigation**

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

11 **j. Appointment of CPT Group as the Claims Administrator**

12 The Parties have agreed to select CPT Group as the Claims Administrator to administer the
13 proposed Settlement. (Han Decl., *supra*, at ¶ 86.) The Claims Administration Costs, which are
14 currently estimated at \$20,000, are the costs payable from the Maximum Settlement Amount to the
15 Claims Administrator for administering the Settlement and distributing payments from the
16 Maximum Settlement Amount. (*Ibid.*) Considering the number of Class Members, the estimated
17 costs are reasonable. (*Ibid.*)

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

19 California Rule of Court, rule 3.769(f), provides:

20
21 If the court has certified the action as a class action, notice of the final approval
22 hearing must be given to class members in the manner specified by the court. The
23 notice must contain an explanation of the proposed settlement and procedures for
24 class members to follow in filing written objections to it and in arranging to
25 appear at the settlement hearing and state any objections to the proposed
26 settlement.

27 The proposed Notice Packet will provide: (a) information regarding the nature of the Action;
28 (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of

⁷ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice Packet has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 Workweeks each respective Class Member worked for Defendant during the Class Period; (e) each
2 Class Member's estimated Individual Settlement Payment and the formula for calculating
3 Individual Settlement Payments; (f) the dates which comprise the Class Period; (g) instructions on
4 how to submit valid Claim Forms, Requests for Exclusion, Notices of Objection, or written disputes
5 regarding Workweeks; (h) the requirements relating to, and deadlines by which the Class Member
6 must submit Claim Forms, Requests for Exclusions, Notices of Objection, and written disputes
7 regarding Workweeks; (i) the claims to be released, as set forth in the Agreement; and (j) the date
8 for the Final Approval Hearing. (Han Decl., *supra*, at ¶ 87; Exhibits A and B to Exhibit 2.)

9 The proposed Notice Packet will include the Claim Form, attached to the Settlement
10 Agreement as Exhibit B, which will provide pertinent employment information for each Class
11 Member, including the number of his or her Workweeks. (Han Decl., *supra*, at ¶ 88.) The proposed
12 Claim Form will state the estimated gross amount of each Class Member's Individual Settlement
13 Payment and provide detailed instructions on how to properly complete the Claim Form and timely
14 submit it to the Claims Administrator, as well as the procedure and deadline for challenging the
15 number of Workweeks provided on the Claim Form. (*Ibid.*)

16 The proposed notice procedure provided by the proposed Settlement fulfills the requirement
17 of neutrality in class notices. (Conte & Newberg, *supra*, § 8.39.) "Sufficient information about the
18 case should be provided to enable class members to make an informed decision about their
19 participation." (Manual for Complex Litigation, Fourth (2004) § 21.311.) The proposed Notice
20 Packet summarizes the proceedings to date and the terms and conditions of the proposed Settlement
21 in an informative and coherent manner. The proposed Notice Packet recognizes that the Court has
22 not yet granted final approval and appries the Class Members of how to object to the proposed
23 Settlement. The proposed Notice Packet satisfies all due process requirements and complies with
24 the standards of fairness, completeness, and neutrality. (Cal. Rules of Court, rule 3.766; Conte &
25 Newberg, *supra*, §§ 8.21 and 8.39; Manual for Complex Litigation, *supra*, §§ 21.311 and 21.312;
26 see *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960.) Accordingly, the Court should approve the
27 proposed Notice Packet (composed of the Notice of Class Action Settlement and Claim Form.)

28 ///

1 **I. Proposed Deadlines for the Notice Process**

2 At this preliminary approval stage, Plaintiff also seeks approval of the proposed deadlines
3 for the notice and claims administration process. (Conte & Newberg, *supra*, § 11.26.) (Han Decl.,
4 *supra*, at ¶ 89.) The notice process entails the mailing of the Notice Packet to all known and
5 reasonably ascertainable Class Members based on Defendant’s payroll records. (Han Decl., *supra*,
6 at ¶ 89.) Within twenty (20) business days of Preliminary Approval, Defendant will provide the
7 Class List(s) to the Claims Administrator. (*Ibid.*)

8 Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator
9 will perform a search based on the National Change of Address Database (“NCOA”), or any other
10 similar services available, and mail a Notice Packet to all Class Members via regular First-Class
11 U.S. Mail, using the most current, known mailing addresses available. (Han Decl., *supra*, at ¶ 90.)

12 Class Members will have forty-five (45) calendar days from the initial mailing of the Notice
13 Packet to submit their Claim Forms, Requests for Exclusion, or Notices of Objection to CPT Group,
14 measured by the date of the postmark on the mailing envelope. (Han Decl., *supra*, at ¶¶ 34, 39-40.)

15 Within three (3) business days after the Final Approval of the Settlement, the Claims
16 Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant
17 pursuant to the terms of the Settlement. (Han Decl., *supra*, at ¶ 41.) Defendant will deposit all
18 Court-approved costs, fees, and payments, and claim amounts from the Maximum Settlement
19 Amount into a Qualified Settlement Fund (“QSF”) account to be established by the Claims
20 Administrator within fifteen (15) business days of the Effective Date. (*Ibid.*) Moreover, within
21 three (3) business days of the Court granting final approval, the Claims Administrator will calculate
22 all payments due. (*Ibid.*) Individual Settlement Payments shall be mailed by regular First-Class
23 U.S. Mail to the respective Claimant’s last known mailing address within fourteen (14) calendar
24 days after Defendant deposits all Court-approved and claim amounts from the Maximum Settlement
25 Amount into a QSF. (*Ibid.*)

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m. Appointment of the Class Representative and Approval of the Class Representative Enhancement Payment

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 and \$10,000 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 each to three class representatives].)

Plaintiff has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶ 91.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has also spent time in meetings and conferences with counsel to provide counsel with a complete understanding of her work environment and requirements. (*Ibid.*) Furthermore, Plaintiff does not have any interest that is averse to the interest of other Class Members. (See *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340.) (Han Decl., *supra*, at ¶ 91.)

The requested Class Representative Enhancement Payment is fair and reasonable compensation for Plaintiff’s 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 ¶ 92.) Accordingly, it is appropriate and just for Plaintiff serving as the Class Representative to receive a reasonable Class Representative Enhancement Payment, in addition to her share of the Net Settlement Amount, for her services on behalf of the Class. (*Ibid.*)

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1 **V. CONCLUSION**

2 Plaintiff submits 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.

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7 Dated: November 12, 2021

JUSTICE LAW CORPORATION

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10 Douglas Han
11 *Attorneys for Plaintiff*
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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 Avenue, Suite 101, Pasadena, California 91103 and my electronic service address is mking@justicelawcorp.com.

On November 12, 21, I served the foregoing document described as

**PLAINTIFF'S 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: **Shoemaker v. Broken Arrow Communications, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM- 849177-21**
Court Case No.: 21CV-03517
Merced County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on November 12, 2021, at Pasadena, California.



Madeline King