

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 335182)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff Blanca Sanchez

[Counsel for Plaintiff Francisco Birrueta on the following page]

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

BLANCA SANCHEZ, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

CARPENTER CO. d/b/a E.R.
CARPENTER COMPANY, INC., a
Virginia corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: RIC2004219
[Consolidated With Case No. CVRI2200511]

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

CLASS ACTION

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

*[filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Kevin Mahoney, Andrew
Russell, Holly Earnshaw, and Jodey
Lawrence; [Proposed] Order; and
Compliance Chart]*

Hearing Date: August 6, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: October 20, 2020

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FAC Filed: November 16, 2021
SAC Filed: January 6, 2022
Trial Date: None Set

FRANCISCO BIRRUETA, as an
individual and on behalf of all similarly
situated employees,

Plaintiff,

v.

CARPENTER CO. WHICH WILL DO
BUSINESS IN CALIFORNIA AS E.R.
CARPENTER COMPANY, and DOES 1
through 50, inclusive,

Defendants.

Case No.: CVRI2200511
[Consolidated With Case No. RIC2004219]

Complaint Filed: February 7, 2022

1 KEVIN MAHONEY (SBN 235367)

2 **MAHONEY LAW GROUP, APC**

3 249 East Ocean Blvd., Suite 814

4 Long Beach, California 90802

Telephone: (562) 590-5550

Facsimile: (562) 590-8400

5 *Attorneys for* Plaintiff Francisco Birrueta

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

2 PLEASE TAKE NOTICE on August 6, 2024 at 8:30 a.m., or as soon thereafter as this
3 matter may be heard, at Department 1, located at 4050 Main Street, Riverside, California 92501,
4 Plaintiffs Blanca Sanchez and Francisco Birrueta (“Plaintiffs”), on behalf of themselves and all
5 persons similarly situated, will and hereby does move this Court pursuant to Code of Civil
6 Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between Plaintiffs
8 and Defendant Carpenter Co. (“Defendant”), including granting preliminary
9 approval of the following Class: “all non-exempt hourly-paid employees who
10 worked for Defendant in California during the Class Period of October 20, 2016
11 through August 31, 2023” (“Class,” “Class Members,” and “Class Period”).
12 “Class Members” shall not include any person who submits a timely and valid
13 Request for Exclusion Form;
- 14 (2) Approving the form of notice of class action settlement and procedure for notice
15 to the Class; and
- 16 (3) Setting the Final Approval Hearing.

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

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

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1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf of the
2 Class shall be fully and finally resolved for the total sum of \$2,240,000 (“Gross Settlement
3 Amount”) to be paid on a non-reversionary basis. The amount remaining of the Gross Settlement
4 Amount after the following deductions are made (“Net Settlement Amount”) shall be available
5 for distribution to Class Members who do not submit valid and timely Requests for Exclusion
6 from the Settlement:

- 7 • up to \$784,000 to Class Counsel as the Class Counsel Fees Payment;
- 8 • up to \$23,000 to Class Counsel as the Class Counsel Litigation Expenses Payment
9 for reimbursement of attorneys’ costs and expenses incurred;
- 10 • up to \$10,000 to each Plaintiff as Class Representative Service Payments (totaling
11 \$20,000);
- 12 • up to \$10,500 to Phoenix Class Action Administration Solutions, the
13 Administrator, as the Administration Expenses Payment; and
- 14 • \$150,000 as the PAGA Penalties, seventy-five percent (75%) of which
15 (\$112,500) will be paid to the California Labor and Workforce Development
16 Agency and twenty-five percent (25%) of which (\$37,500) will be distributed to
17 all non-exempt hourly-paid employees who worked any hours for Defendant in
18 California during the PAGA Period of December 4, 2020 through August 31,
19 2023, on a pro rata basis, as their Individual PAGA Payments in accordance with
20 the Settlement Agreement.

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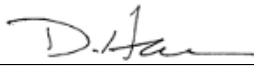
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1 This Motion is based on the fact this is a fair and reasonable settlement that benefits the
2 Class and was the product of informed, non-collusive negotiations by the Parties who were
3 represented by experienced and able counsel. (See *Dunk v. Ford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

9 This Motion is based on this Notice, and the exhibits thereto (including the Court
10 Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval,
11 Objection Form, and Request for Exclusion Form), Memorandum of Points and Authorities,
12 Declaration of Douglas Han, Declaration of Kevin Mahoney, Declaration of Andrew Russell,
13 Declaration of Holly Earnshaw, Declaration of Jodey Lawrence, pleadings, records and files in
14 the case, and such other oral and documentary evidence which may be submitted at or before the
15 hearing on this Motion.

16
17 Dated: July 9, 2024

JUSTICE LAW CORPORATION

18
19 By: 
20 Douglas Han
21 Attorneys for Plaintiff Blanca Sanchez

22 Dated: July 9, 2024

MAHONEY LAW GROUP, APC

23
24 By: 
25 Kevin Mahoney
26 Attorneys for Plaintiff Francisco Birrueta
27
28

DOUGLAS HAN (SBN 232858)
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100, inclusive;

Defendants.

Case No.: RIC2004219
[Consolidated With Case No. CVRI2200511]

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

CLASS ACTION

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

*[filed concurrently with Notice of Motion;
Declarations of Douglas Han, Kevin Mahoney,
Andrew Russell, Holly Earnshaw, and Jodey
Lawrence; [Proposed] Order; and Compliance
Chart]*

Hearing Date: August 6, 2024
Hearing Time: 8:30 a.m.
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Complaint Filed: October 20, 2020
FAC Filed: November 16, 2021
SAC Filed: January 6, 2022
Trial Date: None Set

FRANCISCO BIRRUETA, as an
individual and on behalf of all similarly
situated employees,

 Plaintiff,

 v.

CARPENTER CO. WHICH WILL DO
BUSINESS IN CALIFORNIA AS E.R.
CARPENTER COMPANY, and DOES 1
through 50, inclusive,

 Defendants.

Case No.: CVRI2200511
[Consolidated With Case No. RIC2004219]

Complaint Filed: February 7, 2022

KEVIN MAHONEY (SBN 235367)
MAHONEY LAW GROUP, APC
249 East Ocean Blvd., Suite 814
Long Beach, California 90802
Telephone: (562) 590-5550
Facsimile: (562) 590-8400

Attorneys for Plaintiff Francisco Birrueta

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In this Motion, Plaintiffs Blanca Sanchez and Francisco Birrueta (“Plaintiffs,” “Plaintiff
4 Sanchez,” and “Plaintiff Birrueta”) seek approval of the settlement reached in the wage-and-
5 hour class action lawsuit and representative action filed against Defendant Carpenter Co.
6 (“Defendant”) (collectively, referred to herein as the “Parties”) in the Superior Court of
7 California, County of Riverside, Case Number RIC2004219 (Consolidated with Case No.
8 CVRI2200511) (“Action”).

9 The proposed settlement reflected in the Class Action and PAGA Settlement
10 Agreement (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in
11 the best interests of the Class. Plaintiffs, with the consent of Defendant, move this Court for an
12 order: (1) granting preliminary approval of the proposed class action settlement, as embodied
13 in the Agreement; (2) approving the Court Approved Notice of Class Action Settlement and
14 Hearing Date for Final Court Approval (“Class Notice”), Objection Form, and Request for
15 Exclusion Form (collectively, known as the “Notice Packet”) to be sent to Class Members; (3)
16 approving the notification schedule as set forth in the Agreement and Proposed Order; and (4)
17 setting a hearing for final approval of the class action settlement.

18 **II. STATUS OF THE LITIGATION**

19 **A. Procedural History**

20 On October 20, 2020, Plaintiff Sanchez commenced a class action by filing a complaint
21 alleging causes of action for unpaid wages, meal and rest period violations, failure to timely
22 pay final wages, non-compliant wage statements, unreimbursed business expenses, and unfair
23 business practices (Case No. RIC2004219). (Declaration of Douglas Han In Support of Motion
24 For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶ 12.)

25 On November 16, 2021, Plaintiff Sanchez filed a First Amended Complaint alleging the
26 same causes of action. (Han Decl., *supra*, at ¶ 13.)

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1 On January 6, 2022, Plaintiff Sanchez filed a Second Amended Complaint alleging
2 causes of action for unpaid wages, meal and rest period violations, unreimbursed business
3 expenses, and unfair business practices. (Han Decl., *supra*, at ¶ 14.)

4 On October 12, 2021, Plaintiff Birrueta provided written notice to the California Labor
5 and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 15.)

6 On February 7, 2022, Plaintiff Birrueta commenced a class action by filing a Complaint
7 alleging causes of action for unpaid wages, meal and rest period violations, inaccurate wage
8 statements, failure to pay wages due at separation of employment, unfair business practices,
9 and a violation of Private Attorneys General Act of 2004 (“PAGA”) (Case No. CVRI2200511).
10 (Han Decl., *supra*, at ¶ 16.)

11 On June 22, 2022, both lawsuits initiated by Plaintiffs were consolidated pursuant to
12 this Court’s Order on Defendant’s Motion to Consolidate. (Han Decl., *supra*, at ¶ 17.)

13 On May 4, 2023 and May 24, 2023, the Parties participated in all-day mediation
14 sessions presided over by Mark Rudy, resulting in a settlement of the Action. (Han Decl.,
15 *supra*, at ¶ 18.)

16 In line with the settlement, on July 3, 2024, Plaintiff Sanchez filed a Third Amended
17 Complaint adjusting the “class” definition, adding Plaintiff Birrueta as a named plaintiff,
18 adding a cause of action for violation of Labor Code sections 201-203, adding a cause of action
19 for violation of Labor Code section 226(a), and adding a cause of action for violation of Labor
20 Code section 2698 (PAGA). (Han Decl., *supra*, at ¶ 19.)

21 **B. Investigation and Discovery**

22 Before filing the lawsuit, Class Counsel investigated and researched the facts and
23 circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 20.)
24 After conducting an initial investigation, Class Counsel determined the claims were suited for
25 class and representative action adjudication. (*Ibid.*)

26 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
27 and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 21.) This included:

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

- 3 ○ Personnel records;
- 4 ○ Examples of on-duty meal break agreements and waiver of second meal
5 break agreements;
- 6 ○ Defendant's Human Resources Policies and Procedures concerning meal
7 and rest break policies that took effect in October 2016, March 2017,
8 and August 2019;
- 9 ○ Defendant's Employee Guidelines that took effect in January 2016,
10 January 2017, January 2018, January 2019, January 2020, January 2021,
11 including the corresponding addendums;
- 12 ○ A Microsoft Excel Worksheet containing the number of current and
13 former employees, number of workweeks worked, average hourly rate,
14 median rate, premium wages paid during the period from April 2016 to
15 March 2023; and
- 16 ○ A sampling of time and pay records in the form of Microsoft Excel
17 Worksheets that contained production ids, shift ids, positions, dates,
18 actual and rounded clock in and clock out times, hours worked, and
19 amount paid.

20 • reviewing and analyzing the personnel records, on-duty meal break agreements
21 and waiver of second meal break agreements, policies and procedures, employee guidelines
22 and addendums, Microsoft Excel Worksheets, and other documentation;

- 23 • reviewing and opposing Defendant's Motion to Strike;
- 24 • reviewing Defendant's Demurrer to the First Amended Complaint;
- 25 • reviewing and opposing Defendant's Demurrer to the initial complaint;
- 26 • reviewing and opposing Defendant's Motion to Consolidate the lawsuits;

- reviewing and opposing Defendant’s Ex Parte Application for Extension of time to Serve Pleading;
- researching the applicable law and potential defenses;
- locating and interviewing several putative class members;
- constructing damage models based on interpretations of the law; and
- reviewing information provided by Defendant at mediation. (Han Decl., *supra*, at ¶ 21.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant’s records. (Han Decl., *supra*, at ¶ 22.) Class Counsel’s investigation revealed there are about five hundred seventy-seven (577) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel’s investigation also revealed there are approximately two hundred seventy-seven (277) Aggrieved Employees within the alleged representative group under the PAGA claim. (*Ibid.*)

C. Settlement Efforts

Defendant contested liability, the amount of claimed damages, and the propriety of class certification. (Han Decl., *supra*, at ¶ 23.) Given the high level of risk present for both sides, the Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

On May 4, 2023 and May 24, 2023, the Parties remotely participated in full day mediation. (Han Decl., *supra*, at ¶ 24.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel’s prior litigation experience, Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) The Parties had to make significant compromises in the interest of reaching a full and complete settlement of this Action. (*Ibid.*) The negotiations over the final settlement terms extended months beyond the mediation. (*Ibid.*)

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

2 Defendant agreed to pay \$2,240,000 (“Gross Settlement Amount”) on a non-
3 reversionary basis to settle and release all claims asserted in the operative complaints on behalf
4 of the proposed Class. (Han Decl., *supra*, at ¶ 26.) The Settlement Agreement defines the Class
5 as “all non-exempt hourly-paid employees who worked for Defendant in California during the
6 Class Period of October 20, 2016 through August 31, 2023” (“Class,” “Class Members,” and
7 “Class Period”). (*Ibid.*) “Class Members” shall not include any person who submits a timely
8 and valid Request for Exclusion Form. (*Ibid.*) The amount remaining in Gross Settlement
9 Amount after the following deductions shall be distributed to Class Members who do not opt
10 out (“Net Settlement Amount”):

11 • up to thirty-five percent (35%) of the Gross Settlement Amount to Class
12 Counsel as the Class Counsel Fees Payment (\$784,000);

13 • up to \$23,000 to Class Counsel as the Class Counsel Litigation Expenses
14 Payment for the reimbursement of actual costs and expenses incurred;

15 • up to \$10,000 to each Plaintiff (totaling \$20,000) as the Class Representative
16 Service Payments;

17 • up to \$10,500 as the Administration Expenses Payment to Phoenix Class Action
18 Administration Solutions (“Phoenix”), the Administrator; and

19 • up to \$150,000 as the PAGA Payment (“PAGA Penalties”), seventy-five
20 percent (75%) of which (\$112,500) will be paid to the LWDA and twenty-five percent (25%)
21 of which (\$37,500) will be paid to Aggrieved Employees, on a pro rata basis, as their
22 Individual PAGA Payment even if they submit valid and timely Request for Exclusion Form.
23 (Han Decl., *supra*, at ¶ 26.)

24 The Net Settlement Amount (approximately \$1,252,500) will be distributed to the Class
25 Members. (Han Decl., *supra*, at ¶ 27.)

26 **A. Number of Class Members**

27 There are around five hundred seventy-seven (577) Class Members and two hundred
28 seventy-seven (277) Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 22, 93(a).)

1 **B. Attorney’s Estimate of the Recovery by the Average Class Member if the**
2 **Settlement Agreement Were Approved**

3 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
4 Class Payment will be about \$2,170.71. (Han Decl., *supra*, at ¶ 27.) Individual Class Payments
5 will be calculated and apportioned from the Net Settlement Amount based on the number of
6 Workweeks a Class Member worked during the Class Period. (*Id.* at ¶ 28.) Furthermore,
7 Individual PAGA Payments will be calculated and apportioned from the twenty-five percent
8 (25%) of the PAGA Penalties based on the number of pay periods an Aggrieved Employee
9 worked during the PAGA Period. (*Ibid.*)

10 **C. Discovery Exchanged**

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

13 **D. Other Pending Litigation**

14 After making reasonable inquiries (*e.g.*, PAGA search, Trellis), Class Counsel have
15 determined there are no class, representative, or other collective actions in any other court in
16 this or any other jurisdiction that asserts claims similar to those in this Action on behalf of a
17 class or group of individuals some or all of whom would also be members of the Class defined
18 in this Action. (Han Decl., *supra*, at ¶ 25.)

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

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

21 **F. Administrator**

22 The Settlement Agreement provides for up to \$10,500 to be paid to the Administrator
23 as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 89.) The fee was calculated
24 through a projected estimate from the following categories: (1) Case & Database Setup / Toll
25 Free Setup & Call Center / NCOA (USPS); (2) Data Merger & Scrub / Notice Packet, Opt-Out
26 Form & Postage / Language Translation / Website; (3) Skip Tracing & Remailing Notice
27 Packets / Tracking & Programming Undeliverables; (4) Database Programming / Processing
28 Opt-Outs, Deficiencies or Disputes; (5) Calculation & Disbursement Programming/ Create &

1 Manage QSF/ Mail Checks; and (6) Tax Reporting & Reconciliation / Re-Issuance of Checks /
2 Conclusion Reports and Declarations. (Han Decl., *supra*, at ¶ 89.)

3 Class Counsel obtained bids from Phoenix, CPT Group, Inc. (“CPT Group”), and
4 ILYM Group, Inc. (“ILYM Group”). (Han Decl., *supra*, at ¶ 90.) Phoenix had the most
5 competitive (lowest) bid of \$10,500 when compared to the bid from CPT Group (\$12,000) and
6 ILYM Group (\$11,750). (*Ibid.*)

7 The Administrator has extensive experience in administering employment class action
8 settlements.

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

10 Class Members will receive checks for their Individual Class Payments and, if
11 applicable, Individual PAGA Payments. (Han Decl., *supra*, at ¶ 91.) Any check not cashed
12 within one hundred eighty (180) calendar days will be void and shall be distributed by the
13 Administrator to the California Controller’s Unclaimed Property Fund. (*Ibid.*)

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

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

17 All Participating Class Members, on behalf of themselves and their
18 respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors, and assigns, release Released Parties from all
20 claims that were alleged, or reasonably could have been alleged, based on
21 the facts stated in the Operative Complaints and ascertained in the course
22 of the Actions for the entirety of the Class Period. Except as set forth in
23 this Paragraph 5.2 of the Agreement, Participating Class Members do not
24 release any other claims, including claims for vested benefits, wrongful
25 termination, violation of the Fair Employment and Housing Act,
26 unemployment insurance, disability, social security, workers’
27 compensation, or claims based on facts occurring outside the Class Period
28 (“Released Class Claims”).

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 5.2.)

Pursuant to the terms set forth in the Settlement Agreement, Plaintiffs and State of
California’s Released PAGA Claims include the following:

///

1 Plaintiffs release all claims for statutory or PAGA penalties that could
2 have been sought by the Labor Commissioner or any individuals acting as
3 agents or representatives of the Labor Commissioner or State of California
4 for the violations and allegations identified in Plaintiff Birrueta's PAGA
Notice. Aggrieved Employees may not opt out of the PAGA portion of the
Settlement ("Released PAGA Claims").

5 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 5.3.)

6 Pursuant to the terms set forth in the Settlement Agreement, Released Parties is limited
7 to Defendant and each of its parent entities, related entities, dbas, current and former
8 management companies, current and former directors, officers, shareholders, employees,
9 owners, attorneys, predecessors, successors, assigns, subsidiaries, and affiliates ("Released
10 Parties"). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 1.43.)

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

12 Within twenty-one (21) calendar days of entry of the Court's Order Granting
13 Preliminary Approval, Defendant will provide the Class Data to the Administrator. (Han Decl.,
14 *supra*, at ¶ 78.) Within fourteen (14) calendar days after the Administrator receives the Class
15 Data from Defendant, it will mail a Notice Packet with a translation in Spanish to all Class
16 Members via first-class United States Postal Service ("USPS") mail. (*Ibid.*)

17 The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims
18 involved, material terms of the Agreement, Class Members' options thereunder, and how Class
19 Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 79.) The
20 Notice Packet also provides for a specific procedure to seek exclusion from the Class and for
21 lodging objections to the Agreement. (*Ibid.*)

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

23 Class Members are not required to submit claim forms to receive their share of the
24 Individual Class Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 3.1.)

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

26 Pursuant to the Agreement, no portion of the Gross Settlement Amount will revert to
27 Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 3.1.)

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

2 All Individual Class Payments will be allocated as follows: (1) ten percent (10%) to the
3 settlement of wage claims; and (2) ninety percent (90%) to the settlement claims for interest
4 and penalties. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 3.2.4.1.) All Individual PAGA
5 Payments will be allocated as one hundred percent (100%) penalties. (*Id.* at § 3.2.5.2.)

6 Defendant shall pay the employer’s share of applicable payroll taxes due on the portion
7 of Individual Class Payments allocated to wages separately and in addition to the Gross
8 Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at § 3.1.)

9 **M. Court Approved Notice of Class Action Settlement and Hearing Date for Final**
10 **Court Approval, Objection Form, and Request for Exclusion Form**

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

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

15 Express judicial policy favors maintaining wage-and-hour actions as class actions.
16 (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richmond v. Dart Industries,*
17 *Inc.* (1981) 29 Cal.3d 462.) Any doubt as to the appropriateness of class treatment should be
18 resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, at
19 pp. 473-475.) The decision to certify a class is a procedural one, and should be based on the
20 allegations in the operative complaint, and not in the perceived factual or legal merit of the
21 class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

22 To certify a settlement class, the Court must find the two primary requirements for
23 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a
24 well-defined community of interest in the questions of law and fact involving the parties to be
25 represented. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow*
26 *Cab Company* (1967) 67 Cal.2d 695, 704.) The criteria are met herein.

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

2 Ascertainability is determined by examining class definition, class size, and means to
3 identify class members. (See *Vasquez v. Superior Court, supra*, 4 Cal.3d at pp. 821, 822; *Reyes*
4 *v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class
5 members are “ascertainable” where they may be readily identified without unreasonable
6 expense or time.

7 Plaintiffs contend, and Defendant does not dispute for purposes of settlement, the
8 requirement of numerosity is met. The documents and information exchanged reflect a Class of
9 approximately five hundred seventy-seven (577) Class Members. (Han Decl., *supra*, at ¶
10 93(a).) The Class Members were identified by Defendant’s payroll and personnel records. (*Id.*
11 at ¶ 93(b).)

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

13 A community of interest is established by the predominance of common issues of law
14 and fact. (See *Vasquez v. Superior Court, supra*, 4 Cal.3d at p. 811.) The requirement of a
15 community of interest:

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

23 (*Vasquez v. Superior Court, supra*, 4 Cal.3d. at p. 809.)

24 Plaintiffs contend, and Defendant does not dispute for purposes of settlement, common
25 issues of fact and law predominate as to each of the claims alleged. Because Plaintiffs alleged a
26 single scheme, “the relevant proof [does] not vary among class members” and “clearly presents
27 a common question fundamental to all class members.” (See *In Re NASDAQ Market-Makers*
28 *Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers*

1 *Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no
2 hesitancy” in inferring class-wide causation, class-wide injury, and class-wide damages when a
3 common course of action has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d
4 1341, 1350.) This inference ““eliminates the need for each class member to prove individually
5 the consequences of the defendants’ actions to him or her.”” (*Id.* at p. 1351 (quoting *Rosack v.*
6 *Volvo of America Corp* (1982) 131 Cal.App.3d 741, 753 [emphasis added])).)

7 This Action involves, *inter alia*, a determination about the alleged: (1) failure to
8 provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
9 business expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate
10 overtime wages; (5) failure to pay final wages when required; (6) failure to provide accurate
11 wage statements; and (7) largely derivative claims under the Business & Professions Code and
12 PAGA. (Han Decl., *supra*, at ¶ 93(e).) Plaintiffs contend these practices affected Class
13 Members in the same way. (*Ibid.*) While Defendant maintained otherwise, these issues will not
14 be decided based on facts peculiar to each Class Member but based on facts common to the
15 Class. Finally, these issues of liability can be determined on a class-wide basis.

16 **C. The Plaintiffs’ Claims Are Typical**

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

28 ///

1 Plaintiffs contend, and Defendant does not dispute for purposes of settlement, the
2 claims are typical of Class Members' claims because they arose from the same factual basis
3 and are based on the same legal theories. (Han Decl., *supra*, at ¶ 93(c).) Plaintiffs were
4 employed by Defendant during the Class Period and subject to the allegedly unlawful meal and
5 rest break policies and practices, and other practices alleged in this litigation. (*Ibid.*) The
6 central issues of this litigation (whether Defendant failed to pay all wages, failed to provide
7 meal and breaks, failed to pay premium wages, etc.), which would arise if this were an
8 individual action brought by Plaintiffs, apply to the other Class Members. (*Ibid.*) The answer to
9 these questions would determine Defendant's liability to the Class. (*Ibid.*)

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

11 Class Counsel are experienced in class actions, have represented their clients zealously,
12 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 93(d); Exhibit 2.) Plaintiffs'
13 interests are aligned with those of the Class Members, suffered the same injuries as the Class
14 Members, and have no conflicts of interest. (*Id.* at ¶ 93(d).)

15 **E. Predominance and Superiority**

16 Individual issues do not predominate over those common to the Class. (Han Decl.,
17 *supra*, at ¶ 93(f).) Furthermore, the class action mechanism is superior to individualized actions
18 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 93(g).)

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

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

24 "Approval of class action settlements involves a two-step process. First,
25 counsel submits the proposed terms of settlement and the court makes a
26 preliminary fairness evaluation. If the preliminary evaluation of the
27 proposed settlement does not disclose grounds to doubt its fairness or
28 other obvious deficiencies, such as unduly preferential treatment of class
representatives or of segments of the class, or excessive compensation for
attorneys, and appears to fall within the range of possible approval, the
court should direct that notice ... be given to the class members of a

1 formal fairness hearing, at which arguments and evidence may be
2 presented in support of and in opposition to the settlement.” (§ 30.41.)

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

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

12 When the parties to an action reach a monetary settlement, they will
13 usually prepare and execute a joint stipulation of settlement, which is
14 submitted to the court for preliminary approval. The stipulation should
15 set forth the central terms of the agreement, including but not limited to,
16 the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause, *Newberg on Class
Actions*. (§ 11.24.)

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

18 As a matter of public policy, the courts both encourage the use of the class action
19 device and favor settlement over continued litigation. (See e.g. *Linder v. Thrifty Oil Co.*, *supra*,
20 23 Cal.4th at p. 434 (“Courts have long acknowledged the importance of class actions as a
21 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
22 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
23 where complex class action litigation is concerned.”).)

24 The courts presume the absence of fraud or collusion in the negotiation of a settlement
25 unless evidence to the contrary is offered. There is a presumption the negotiations were
26 conducted in good faith. (*Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
27 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24, 25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
28 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when

1 settlement was reached by experienced counsel familiar with the litigation. (*Rodriguez*, at p.
2 24; *Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087.)

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

10 The Agreement satisfies these factors. Class Counsel conducted extensive discoveries
11 before entering meaningful settlement negotiations, including a detailed analysis of the policies
12 and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 20, 21.) This
13 discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and
14 risks associated with litigation. (*Id.* at ¶ 24.) Class Counsel are also experienced in the handling
15 of wage-and-hour class actions and support the Settlement. (*Id.* at ¶¶ 3-10; Exhibit 2.)

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

17 The claims in this action include: (1) failure to provide meal and rest breaks; (2) failure
18 to pay minimum wages; (3) failure to pay and properly calculate overtime wages and sick
19 leave; (4) failure to pay final wages when due; (5) failure to provide accurate wage statements;
20 (6) failure to reimburse necessary business expenses; and (7) related claims for violations of
21 the Business & Professions Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 32.)

22 Class Counsel felt confident the claims would be certified given the policies and
23 practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 33-71.)

24 **B. The Risks Associated with the Merits of the Underlying Claim.**

25 Plaintiffs contend that Defendant's rest break policies were not code-compliant, that
26 Defendant regularly assigned heavy workloads, and that managers would pressure employees
27 into cutting their meal and rest breaks short. (Han Decl., *supra*, at ¶¶ 34, 37, 38.) This was
28 purportedly made worse by Defendant failing to authorize and permit employees to take

1 additional meal and rest breaks. (Han Decl., *supra*, at ¶¶ 34, 37, 38.) Defendant countered that
2 it always maintained compliant meal and rest break policies during the relevant time period,
3 rarely, if ever, assigned employees heavy workloads, and expected managers to remind
4 employees to take their breaks. (*Id.* at ¶¶ 35, 39.) Defendant may even produce evidence to
5 demonstrate that employees were advised of their right to take additional meal and rest breaks,
6 but most employees did not work the requisite hours to qualify. (*Ibid.*) Finally, Defendant
7 contended that Class Counsel will have to gather declarations from putative class members to
8 prove the existence of improper, uniform policies and practices. (*Ibid.*)

9 As the consideration concerning meal and rest breaks would likely depress the damages
10 ultimately awarded, Class Counsel applied significant and appropriate discounts to the meal
11 and rest break claims. (Han Decl., *supra*, at ¶¶ 36, 40.) If Defendant's counterarguments are
12 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
13 would be no recovery for the Class Members.

14 Plaintiffs also allege that Defendant failed to pay and properly calculate all applicable
15 wages owed, including minimum wages, overtime wages, and sick leave. (Han Decl., *supra*, at
16 ¶¶ 41, 44.) Employees were purportedly forced to arrive at work earlier than their scheduled
17 shifts to avoid potential late clock ins because Defendant did not have in place enough
18 timeclocks. (*Ibid.*) Defendant also supposedly allowed managers to order employees to begin
19 working before clocking in and continue working after clocking out. (*Ibid.*) This was
20 apparently made worse by Defendant paying employees non-discretionary bonuses but failing
21 to factor them into employees' regular rate of pay. (*Ibid.*) Defendant countered that these
22 claims are not suitable for class treatment. (*Id.* at ¶¶ 42, 44.) Defendant argued that it expressly
23 prohibited off-the-clock work, maintained enough timeclocks on the work premises, and was
24 never made aware of employees working off-the-clock. (*Ibid.*) Defendant contended that any
25 payment of bonuses was completely discretionary, meaning the bonuses did not need to be
26 factored into employees' regular rate of pay. (*Ibid.*) Defendant also asserted that any
27 unrecorded hours would likely be subject to individual inquiries and unlikely to be certified.
28 (*Ibid.*) Given the difficulty in certifying this claim, Class Counsel applied a discount to

1 damages. (Han Decl., *supra*, at ¶¶ 43, 45.) If Defendant’s counterarguments held true, the
2 outcome of this claim would be little to no recovery for employees.

3 Plaintiff further allege that Defendant failed to reimburse employees for all necessary
4 business-related expenses and costs. (Han Decl., *supra*, at ¶¶ 55, 57.) Defendant contended that
5 employees were reimbursed for all business-related expenses and costs and provided evidence
6 it contends supports this position. (*Id.* at ¶ 56.)

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

8 To establish liability for wage statement violations and waiting time penalties, Plaintiffs
9 would first have to establish liability for the underlying claims. But Defendant argued that the
10 claim for Labor Code section 226(e) penalties would depend on the underlying rest break, meal
11 break, and wage claims, meaning it would be subject to the same defenses listed above. (Han
12 Decl., *supra*, at ¶ 48.) Defendant argued that the above-mentioned violations did not occur
13 every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Defendant also
14 argued that employees need to show they suffered injury because of its noncompliance and that
15 such noncompliance was knowing and intentional. (*Ibid.*)

16 Defendant also countered that the claim for section 203 penalties is dependent on the
17 underlying meal and rest break and wage claims, meaning it would be subject to the same
18 defenses listed and described above. (Han Decl., *supra*, at ¶¶ 52, 53.) As discussed above,
19 Plaintiffs allege that Defendant failed to pay for all hours worked and premiums for
20 noncompliant meal and rest breaks. (*Id.* at ¶¶ 34, 37, 38, 41, 44.) Plaintiffs also contend that the
21 Class Members are entitled to minimum wages, overtime wages, and premium wages, which
22 were allegedly not paid at the time of their termination or resignation. (*Id.* at ¶¶ 50, 51.)
23 Defendant countered that it provided employees with reasonable opportunities to take breaks,
24 asked employees to confirm the accuracy of their time records, and had good-faith defenses
25 under *Brinker* and its progeny. (*Id.* at ¶¶ 53, 54.)

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

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

13 The provisions of the Labor Code potentially triggering PAGA penalties include
14 sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
15 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 9.)
16 Defendant asserted, regardless of the results of the underlying causes of action, PAGA
17 penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained that it had a
18 strong argument it would be unjust to award maximum PAGA penalties given the law’s
19 unsettled state. (Han Decl., *supra*, at ¶ 59; See *Thurman v. Bayshore Transit Management, Inc.*
20 (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Without
21 stacking and limited to the initial violation, PAGA penalties would be **\$27,700** (277 employees
22 x \$100 initial violation) on the low end and **\$193,900** (277 employees x \$100 initial violation x
23 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 60-63.)

24 Class Counsel believe they would successfully prove Defendant’s alleged wage-and-
25 hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 65.) Plaintiffs allege that
26 Defendant intentionally failed to maintain code-compliant rest break policies and regularly
27 assigned employees heavy workloads. (*Ibid.*) Defendant purportedly knew that managers were
28 pressuring employees into cutting their meal and rest breaks short and forcing employees to

1 prioritize completing incoming orders. (Han Decl., *supra*, at ¶ 65.) Defendant supposedly
2 knowingly and intentionally failed to consistently pay employees premium wages for
3 noncompliant meal and rest breaks. (*Ibid.*) Defendant apparently intentionally failed to
4 maintain sufficient timeclocks on the work premises and had in place strict attendance policies.
5 (*Ibid.*) Defendant also allegedly knew that employees were being asked by managers to begin
6 working before clocking in and continue working after clocking. (*Ibid.*) Finally, Defendant
7 purportedly intentionally paid employees non-discretionary bonuses but knowingly failed to
8 factor such payments into employees' regular rate of pay. (*Ibid.*)

9 Plaintiffs recognized the risks any PAGA award could be reduced. (Han Decl., *supra*, at
10 ¶ 64.) The maximum penalties for each pay period are not justified, and it was arguable the
11 Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$150,000 to
12 PAGA civil penalties was reasonable based on a rate of \$7.25 per pay period [$\$150,000 \div$
13 $20,700$ pay periods in the PAGA Period] given that Defendant is paying an additional
14 \$2,090,000 in the class settlement.¹ (*Ibid.*) If PAGA penalties are negotiated in good faith and
15 "there is no indication that [the] amount was the result of self-interest at the expense of other
16 Class Members," such amounts are considered reasonable.² (*Ibid.*)

17 **E. The Risk of Maintaining Class Action Status Through Trial.**

18 In class actions, decertification is always a possibility. There is always a risk a trial of
19 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*
20 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class
21 actions, decertification is a real risk Class Counsel must consider.

22
23
24 ¹ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
26 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

27 ² (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
28 Dist. LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579
("[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims.").)

F. The Amount Offered in Settlement.

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

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$6,721,774.96** on the low end and **\$7,420,374.96** on the high end. (Han Decl., *supra*, at ¶ 67.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,707,831.49	75%	65%	\$149,435.26
Meal Break Premiums	\$435,427.40	65%	55%	\$68,579.82
Overtime/Minimum Wage: Off-the-Clock	\$1,397,200 to \$2,095,800	65%	55%	\$220,059 to \$330,088.50
Regular Rates	\$30,105.87	35%	55%	\$8,805.97
Unreimbursed Business Expenses	\$424,055	20%	65%	\$118,735.40
Wage Statement Penalty	\$1,108,000	30%	30%	\$542,920
Waiting Time Penalty	\$1,619,155.20	30%	30%	\$793,386.05
MAXIMUM TOTAL EXPOSURE	\$6,721,774.96 to \$7,420,374.96			\$1,901,921.50 to \$2,011,951

Based on this analysis, the total estimated realistic exposure for this case would be approximately **\$1,901,921.50** on the low end and **\$2,011,951** on the high end. (Han Decl., *supra*, at ¶ 68.) The Gross Settlement Amount is about thirty percent (30.19%) of the high end total potential exposure at trial and around one hundred eleven percent (111.33%) of the high end total realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure that Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 69.) Plaintiffs added the realistic exposure for rest break premiums and meal break premiums (\$149,435.26 + \$68,579.82 = \$218,015.08). (*Ibid.*)

1 Plaintiffs then added the \$218,015.08 to the low end realistic exposure for unpaid wages due to
2 off-the-clock work and underpaid overtime wages and sick leave (\$218,015.08 + \$220,059 +
3 \$8,805.97 = \$446,880.05). (Han Decl., *supra*, at ¶ 69.) The realistic exposure of \$446,880.05
4 that Plaintiffs can expect to receive if they were to prevail at trial for meal and rest break
5 premiums, low end unpaid wages due to off-the-clock work, and underpaid overtime wages
6 and sick leave represents about eleven percent (11.23%) of the low end total realistic exposure
7 and PAGA penalties ($\$446,880.05 \div \$3,979,421.50 = 0.11230 \times 100 = 11.23\%$). (*Ibid.*)
8 Because this represents close to ten percent (10%) of wages, it is appropriate to allocate ten
9 percent (10%) to the settlement of wage claims and ninety percent (90%) to the settlement of
10 claims for interest and penalties pursuant to the Settlement Agreement. (*Ibid.*)

11 Class Members have been represented by experienced counsel with many years of
12 experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)
13 Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶
14 20-24.) This included, among other things: (1) interviewing Plaintiffs at length on repeated
15 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with
16 Defendant's counsel; (3) reviewing and analyzing documents produced by Defendant and other
17 sources; (4) researching the law; (5) locating and interviewing several putative class members;
18 (6) preparing for and attending mediation; and (7) negotiating and finalizing the Settlement
19 Agreement. (Han Decl., *supra*, *passim*.)

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

24 **VII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND**
25 **REASONABLE**

26 It is appropriate to provide a relatively modest additional incentive payment to the class
27 representative. (See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
28 901 F.Supp. 294.)

1 Plaintiffs are entitled to reasonable service payment for their efforts in this matter. (Han
2 Decl., *supra*, at ¶ 84.) Plaintiffs spent significant time better apprising themselves of their
3 rights, deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

4 By suing Defendant, Plaintiffs increased the risk of retaliation by future employers.
5 (Han Decl., *supra*, at ¶ 85.) The lawsuit has cost Defendant resources, and such conduct will
6 not be lost on prospective employers. (*Ibid.*) This risk of losing employment opportunities is
7 real in the information age that contains quick background checks. (*Ibid.*)

8 Plaintiffs did not allow fears of the potential repercussions of being class
9 representatives to deter them from acting for the benefit of Class Members. (Han Decl., *supra*,
10 at ¶ 86.) Plaintiffs have been intimately involved in this case since its inception and have
11 devoted a substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

12 Plaintiffs spent hours with Class Counsel detailing their knowledge of Defendant's
13 practices. (Han Decl., *supra*, at ¶ 87.) Plaintiffs diligently, adequately, and fairly represented
14 Class Members and did not place their interests above the Class Members. (*Ibid.*) The Parties
15 agree that Plaintiffs is entitled to the Class Representative Service Payments for their time and
16 effort in this matter. (*Ibid.*)

17 Class Counsel believe the Class Representative Service Payments of \$10,000 to each
18 Plaintiff is fair and reasonable. (Han Decl., *supra*, at ¶ 88.)

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

21 Under the Agreement, Class Counsel request, without opposition from Defendant, an
22 award of Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment
23 consisting of: (1) up to \$784,000 as the Class Counsel Fees Payment; and (2) up to \$23,000 as
24 the Class Counsel Litigation Expenses Payment. (Han Decl., *supra*, at ¶ 81.) The requested fees
25 are fair compensation for a law firm involved in undertaking complex, risky, expensive, and
26 time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 81, 82.)

27 ///

28 ///

1 California courts look to the federal courts on class action approvals. The Ninth Circuit
2 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
3 percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*
4 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
5 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
6 active beneficiary does not bear the entire burden alone." (*Ibid.*) Courts have discretion to
7 choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
8 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295, 1296.)

9 Courts have expressed frustration with the lodestar approach to deciding fee awards.
10 The percentage approach can be preferable in certain situations because it: (1) aligns the
11 interests of class counsel and absent class members; (2) encourages efficient resolution of the
12 litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the
13 demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378,
14 1379.) The Ninth Circuit has used the percentage of the common fund approach to determine
15 the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47
16 F.3d 373, 378, 379 (approving attorneys' fee of 33 1/3% of settlement fund).)

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

24 The requested fees is commensurate with judicial precedent. Both state and federal
25 courts approve fee awards equal to or greater than the percentage requested in this case. (See
26 e.g. *In re Pacific Enterprises Securities Litigation*, *supra*, 47 F.3d at p. 379 (affirming an award
27 equal to 33% of the common fund); *In re Activision Securities Litigation*, *supra*, 723 F.Supp. at
28 p. 1375 (awarding plaintiffs' counsel 32.8% of the common fund created to settle the

litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of recovery achieved).)

In similar lawsuits, courts approved attorney's fees consistent with or greater than the percentage requested herein. (See *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC 262247 (May 2005) (Honorable Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004) (Honorable Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Superior Court, Case No. 01CC00140 (Honorable Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359 (Sept. 2006) (Honorable Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*, Orange County Superior Court, Case No.02CC10201 (2006) (Honorable Ronald L. Bauer).)

Class Counsel have borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 81, 82.) The Court should also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the Class Counsel Fees Payment is reasonable.

A. Fee and Cost Sharing Agreement

Class Counsel have entered into a Fee and Cost Sharing Agreement that was executed on June 3, 2024. (Han Decl., *supra*, at ¶ 92; Exhibit 3.) Under the Fee and Cost Sharing Agreement, the Class Counsel Fees Payment will be divided 66.67% to Justice Law Corporation and 33.33% to Mahoney Law Group, APC. (*Ibid.*) Plaintiffs have been given written notice of the Fee and Cost Sharing Agreement. (*Ibid.*)

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

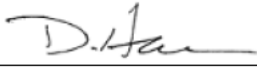
The Parties respectfully request this Court, as part of the preliminary approval process, grant the following relief and make the following orders:

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

2. Review and approve the Class Notice, Objection Form, and Request for Exclusion Form attached to the Proposed Order as **Exhibits A-C** respectively;
3. Consider and determine the proposed class action settlement, as set forth in the Settlement Agreement, preliminarily appears fair, reasonable, and adequate;
4. Conditionally certify the action as a class action for settlement purposes only and preliminarily approve the proposed class action settlement and Settlement Agreement;
5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Lizette Rodriguez of Justice Law Corporation and Kevin Mahoney of Mahoney Law Group, APC to serve as Class Counsel for settlement purposes;
6. Approve and appoint Phoenix as the Administrator to handle the notice procedures as set forth in the Settlement Agreement;
7. Approve the proposed allocation of funds to the claims made under PAGA;
8. Order Defendant to disclose the Class Data to the Administrator in accordance with the manner set forth in the Settlement Agreement;
9. Order the Administrator to mail the Notice Packet to Class Members;
10. Set a date for the Final Approval Hearing.

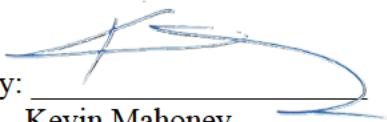
Dated: July 9, 2024

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff Blanca Sanchez

Dated: July 9, 2024

MAHONEY LAW GROUP, APC

By: 
Kevin Mahoney
Attorneys for Plaintiff Francisco Birrueta

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 10, 2024, I served the foregoing document described as

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

for the following case: **Sanchez, et al. v. Carpenter Co. d/b/a E.R. Carpenter Company, Inc., et al.**
LWDA/Court Case No.: **LWDA-CM-848222-21**
RIC2004219 [Consolidated with Case No. CVRI2200511]
Riverside County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on July 10, 2024, at Pasadena, California.



Mariah Anderson