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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ERIKA MORROW, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ORMCO CORPORATION, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 21STCV36034

Assigned for All Purposes to:
Honorable Stuart M. Rice
Department 1

CLASS ACTION

**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); Declarations of Proposed Class
Representatives (Mayda Aguirre, Robert
Rodriguez, Erika Morrow, Kenneth Aguilera
and Daniel Alcocer); Declaration of Proposed
Administrator (Jodey Lawrence); and
[Proposed] Order filed concurrently herewith]

Hearing Date: July 13, 2023
Hearing Time: 10:30 a.m.
Hearing Place: Department 1

Complaint Filed: January 7, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 13, 2023 at 10:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Stuart M. Rice in Department 1 of the Los Angeles County
3 Superior Court (Spring Street Courthouse) located at 312 North Spring Street Los Angeles,
4 California 90012, Plaintiffs Erika Morrow, Mayda Aguirre, Daniel Alcocer, Robert Rodriguez and
5 Kenneth Aguilera (“Plaintiffs,” “Plaintiff Morrow,” and “Plaintiff Aguirre,” “Plaintiff Alcocer,”
6 “Plaintiff Rodriguez,” “Plaintiff Aguilera”) will and hereby do move for an order:

- 7 • Granting Preliminary Approval of the class action settlement described herein and
8 as set forth in the Class, Collective and PAGA Action Settlement Agreement and
9 Class Notice (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
10 **Exhibit 3** to the declaration of Douglas Han, including, and not limited to, the
11 means of allocation and distribution of funds;
- 12 • Conditionally certifying the Class for settlement purposes only;
- 13 • Appointing Plaintiffs as the class representatives;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the Court Approved Notice of Class, Collective and PAGA Action
16 Settlement and Hearing Date for Final Court Approval (“Class Notice”) attached
17 as **Exhibit A** to the Agreement;
- 18 • Directing the mailing of the Class Notice with a postage-paid return envelope to
19 the Class;
- 20 • Approving the proposed deadlines for the settlement administration process;
- 21 • Approving Phoenix Class Action Administration Solutions as the Administrator;
22 and
- 23 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
24 Agreement, at which time the Court will also consider whether to grant Final
25 Approval of the requests for the Class Counsel Award, Service Awards, and
26 Administrative Costs, and approval of the allocation of the Private Attorney General
27 Act of 2004 (“PAGA”) Penalties.

28 ///

1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declarations of Proposed Class
3 Representatives (Erika Morrow, Mayda Aguirre, Daniel Alcocer, Robert Rodriguez and Kenneth
4 Aguilera); Declaration of Proposed Administrator (Jodey Lawrence); [Proposed] Order filed
5 concurrently with this motion; pleadings and other records on file with the Court in this matter;
6 and such documentary evidence and oral argument as may be presented at the hearing on this
7 motion.

8
9 Dated: June 15, 2023

JUSTICE LAW CORPORATION

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11 By: 
12 Douglas Han
13 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$557,000 wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and : all individuals whom Ormco
4 employed in California at any time during the period from September 30, 2017 through November
5 21, 2022 who have not entered into an arbitration agreement or release agreement with Ormco.¹
6 (“Class,” “Settlement Class Members,” and “Class Period”). At the time of this filing, the number
7 of Class Members is estimated to be two hundred and twelve (212), which was which was
8 confirmed by Defendant Ormco Corporation (“Defendant” or “Ormco”). (Declaration of Douglas
9 Han In Support of Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶
10 7-8.)

11 **II. BACKGROUND**

12 On September 30, 2021, Plaintiff Morrow, a former employee of Defendant, filed a wage-
13 and-hour class action lawsuit in the Superior Court of California, County of Los Angeles, alleging
14 eight (8) causes of action (“*Morrow* Action”). (Han Decl., *supra*, at ¶ 9.) On May 18, 2022, the
15 court granted Defendant’s motion to compel arbitration, and compelled Plaintiff Morrow’s claims
16 to individual arbitration, dismissed Plaintiff Morrow’s class claims without prejudice, and stayed
17 the action pending the completion of arbitration. (*Id.*) On July 18, 2022, Plaintiff Morrow filed a
18 notice of appeal. On April 6, 2023, Plaintiff Morrow dismissed the appeal. (*Id.*)

19 On April 12, 2022, Plaintiff Aguirre and Plaintiff Rodriguez, former employees of
20 Defendant, filed a wage-and-hour class action lawsuit in the Superior Court of California, County
21 of Los Angeles, alleging eight (8) causes of action (“*Aguirre* Class Action”). (Han Decl., *supra*,
22 at ¶ 10.)

23 Also on April 12, 2022, Plaintiff Aguirre, Plaintiff Alcocer and Plaintiff Rodriguez filed a
24 PAGA Action, in the Superior Court of California, County of Los Angeles, alleging claims under
25 Labor Code section 2698 et seq., based on alleged violations of Labor Code §§ 201, 202, 203, 204,

26 _____
27 ¹ For avoidance of doubt, putative class members do not include any individuals employed by a
28 third-party staffing agency and assigned to work at Ormco’s facilities, unless those individuals
became direct employees of Ormco during the class period.

218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194,1197,1197.1, 1198, 2800 and 2802, and the IWC Wage (“PAGA action”). (Han Decl., *supra*, at ¶ 11.)

On October 12, 2022, the Court found that the *Morrow* Action, *Aguirre* Class Action and the PAGA action were related within the meaning of California Rules of Court, rule 3.300(a) and designated the *Morrow* Action as the lead case. All three cases were assigned to Judge Stuart M. Rice in Department 1 at Spring Street Courthouse for all purposes. (Han Decl., *supra*, at ¶ 12.)

After engaging in discovery, investigations, and negotiations, the Parties attended mediation with the mediator Eve Wager, Esq., on November 21, 2022. (Han Decl., *supra*, at ¶ 13.) Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

In line with the settlement, Plaintiff Morrow prepared a First Consolidated, Class, and Collective Amended Complaint attached to the Declaration of Douglas Has as Exhibit 2 for the Court’s approval (“First Amended Complaint”). The First Amended Complaint consolidates the *Morrow* action and the *Aguirre* Class action, adds Kenneth Aguilar as a class representative and adds a cause of action for violation of the Fair Labor Standards Act. (Han Decl., *supra*, at ¶ 14.)

III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions

Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of documents. (Han Decl., *supra*, at ¶ 16.) The Parties then met and conferred and agreed to engage in the informal exchange of information and then eventually attended mediation. (*Ibid.*)

Prior to the mediation, Defendants produced documents relating to their policies, practices, and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendant’s production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Several putative class members were also interviewed to attain a better understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

Based on the information provided by Defendant and interviews with putative class members, Plaintiffs contend – and Defendant deny – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) maintained a rounding practice that consistently

1 resulted in the underpayment of wages; (3) failed to pay employees for all hours worked; (4) failed
2 to properly calculate and pay overtime and sick leave pay; (5) failed to reimburse employees for
3 necessary business expenses; (4) issued noncompliant wage statements; and (5) are liable for
4 waiting time penalties. (Han Decl., *supra*, at ¶¶ 18–26.)

5 **b. The Parties Were Able to Reach an Agreement on Settlement of the Action**

6 **i. The Parties Attended Mediation Which Led to the Settlement**

7 The Parties attended mediation with an experienced mediator. (Han Decl., *supra*, at ¶ 28.)
8 During the mediation, the Parties discussed the risks of continued litigation, certification, and
9 merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator,
10 the Parties reached a settlement, memorialized in the Agreement. (*Id.* at ¶ 28; Exhibit 3.)

11 **ii. The Settlement Was Reached as a Result of Arm’s-Length Negotiations**

12 Though cordial and professional, the settlement negotiations have always been adversarial
13 and non-collusive in nature. (Han Decl., *supra*, at ¶ 39.) At mediation, the Parties conducted
14 extensive arm’s-length settlement negotiations, evaluated the strengths and weaknesses of the
15 Parties’ claims and defenses, and exchanged information until an agreement was reached. (*Ibid.*)

16 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
17 necessary to continue the litigation through trial and possible appeals. (Han Decl., *supra*, at ¶ 40.)
18 Plaintiffs and Class Counsel considered the uncertainty and risk of further litigation, potential
19 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel
20 also understood even if they negotiated a similar settlement after further litigation, it would be
21 undercut by additional costs and expenses, thereby reducing the benefits to the Class. (*Ibid.*) Based
22 on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
23 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

25 The Parties investigated and evaluated the strengths and weaknesses of the Parties’ claims
26 and defenses before reaching the Settlement and engaged in research and discovery to support the
27 Settlement. (Han Decl., *supra*, at ¶ 41.) The Settlement was only possible following significant
28 investigation and evaluation of the relevant policies and practices, as well as the information

provided by Defendant, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 41.) This case has reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 41; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (subject to the Court’s approval) this action be settled and compromised for the non-reversionary total sum of \$450,000 (“Gross Settlement Amount”) which includes: (1) Class Counsel Fees Payment not to exceed \$157,500; (2) Class Counsel Litigation Expenses Payment not to exceed \$20,000; (3) Class Representative Service Payments totaling \$10,000; (4) Administration Expenses Payment not to exceed \$20,000; and (5) PAGA Penalties not to exceed \$50,000. (Han Decl., *supra*, at ¶ 26.)

ii. Calculating Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$232,050 (“Net Settlement Amount”) will be distributed to all Class Members who do not submit valid and timely Requests for Exclusion from the Settlement (“Settlement Class Members”) – with a gross *average* Individual Class Payment estimated at \$1,094.57. (Han Decl., *supra*, at ¶ 30.)

Settlement Class Members will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 31.) Individual Settlement Payments will be allocated twenty percent (20%) to the settlement of wage claims and eighty percent (80%) to the settlement of claims for interest and penalties. (*Ibid.*)

PAGA Payments shall be calculated using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 32.) Individual PAGA Payments will be allocated for tax purposes solely as Form 1099 income. (*Ibid.*)

iii. Notice to the Class

Not later than fifteen (15) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will give the Settlement Administrator the Confidential Data. (Han Decl.,

1 *supra*, at ¶ 33.) No later than fifteen (15) calendar days after receiving the Confidential Data, the
2 Settlement Administrator will send to all Class Members identified in the Confidential Data, via
3 first-class United States Postal Service mail, the Class Notice. (Han Decl., *supra*, at ¶ 33.)

4 **iv. Distribution of Funds**

5 The Gross Settlement Amount will be funded and disbursed pursuant to the timeline and
6 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 34.) The amount of any uncashed
7 settlement checks will be directed to the California State Controller: Unpaid Wage Fund in the
8 Class Member's name. (*Ibid.*)

9 **v. Release of Claims**

10 Upon final approval of the Settlement Agreement, Plaintiffs and Settlement Class
11 Members, on behalf of themselves and their executors, administrators, representatives, agents,
12 heirs, successors, assigns, trustees, spouses, or guardians, release Released Parties from the
13 California Released Claims. (Han Decl., *supra*, at ¶ 35.)

14 Upon final approval of the Settlement Agreement, the Class Representatives generally
15 release claims against each Released Party through the date of Final Approval. This general release
16 includes claims arising from the Class Representatives' relationships with Defendant, including,
17 without limitation, claims arising under the California Labor Code and wage orders, claims for
18 unpaid wages and liquidated damages under the Fair Labor Standards Act, claims for
19 discrimination, harassment, or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 42
20 U.S.C. section 2000 et seq., the California Fair Employment and Housing Act, California Gov't
21 Code Section 12900 et seq., and claims for violation of public policy. (Han Decl., *supra*, at ¶ 36.)
22 Class Representatives also expressly waive and relinquish the provisions, rights, and benefits, if
23 any, of section 1542 of the Civil Code. (*Ibid.*)

24 With regards to class action releases, ““[A] court may release not only those claims alleged
25 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
26 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
27 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in
28 this case are acceptable because they are limited to the scope of the allegations in the operative

complaints. Moreover, the released claims are ““based on *the identical factual predicate* as that underlying the claims in the settled class action.”” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) In other words, the released claims do not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties’ counsel is experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*). This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the Settlement.² (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

California Rules of Court, rule 3.769 requires court approval for class action settlements.³ “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

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

...

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

² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice 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.

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

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

In weighing the strength of the case, *Kullar* instructs the court is not to “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum amount the class could recover if plaintiff prevailed on all his claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

i. The Settlement Amount of \$557,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the information Defendants produced for the Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 41.)

///

1 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
2 to pay minimum wages; (3) failure to provide meal and rest breaks and consistently pay applicable
3 premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
4 (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business
5 & Professions Code section 17200, *et seq.*; and (9) violation of the Fair Labor Standards Act. (Han
6 Decl., *supra*, at ¶ 42.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 43.)

7 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
8 certification are always present. (Han Decl., *supra*, at ¶ 44.) As the California Supreme Court
9 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
10 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
11 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
12 (Han Decl., *supra*, at ¶ 44.) Thus, the calculations for potential damages were discounted.

13 **ii. The PAGA Penalties of \$50,000 Is Reasonable**

14 The provisions of the Labor Code potentially triggering PAGA penalties in this case
15 include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a),
16 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 52.) Defendant
17 asserts, regardless of the results of the underlying causes of action, PAGA penalties are not
18 mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains they had a strong
19 argument it would be unjust to award maximum PAGA penalties given the law's current unsettled
20 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 52; *Thurman v. Bayshore Transit Mgmt.*
21 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argue
22 that without stacking and limited to the initial violation, the PAGA penalties would be limited to
23

24 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
25 of class claiming misclassification and ordering summary adjudication in favor of employees],
26 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
27 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
28 decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

1 **\$13,800** (138 employees x \$100 penalty for initial violation) on the low end and **\$110,400** (138
2 employees x \$100 penalty for initial violation x 8 theories of recovery) on the high end. (Han
3 Decl., *supra*, at ¶¶ 54.)

4 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
5 at ¶ 56.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
6 Allocating \$50,000 to PAGA civil penalties was reasonable given the fact Defendant is paying an
7 additional \$507,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good
8 faith and “there is no indication that [the] amount was the result of self-interest at the expense of
9 other Class Members,” such amounts are reasonable.⁵ (*Ibid.*)

10 Considering Defendant’s defenses, supporting evidence, and position the case is not
11 suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

12 ///

13 ///

14 ///

25
26 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
28 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$4,752,029.25** on the low end and around **\$4,827,640.23** on the high end. (Han Decl., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,934,568.21	75%	60%	\$193,456.82
Meal Break Premiums	\$1,289,712.14	50%	60%	\$257,942.42
Overtime/Minimum Wage: Off-the-Clock Work	\$322,428.03 to \$483,579.25	50%	70%	\$48,364.20 to \$72,536.88
Overtime/Minimum Wage: Rounding	\$151,221.97 to \$226,832.95	30%	50%	\$52,927.68 to \$79,391.53
Overtime/Minimum Wage: Regular Rate	\$38,390.00	30%	40%	\$16,123.80
Unreimbursed Business Expenses	\$216,780.00	60%	75%	\$21,678.00
Wage Statement Penalty	\$552,00.00	40%	60%	\$132,480.00
Waiting Time Penalty	\$67,538.90	70%	75%	\$5,065.41
MAXIMUM TOTAL EXPOSURE	\$4,752,029.25 to \$4,827,640.23			\$728,038.33 to \$778,674.86

Thus, the realistic recovery for this case is **\$728,038.33** on the low end and **\$778,674.86** on the high end. (Han Decl., *supra*, at ¶ 66.) The Gross Settlement Amount is about eleven percent (11.5%) of the maximum potential exposure and around seventy-one percent (71.53%) of the maximum realistic exposure at trial, which is a fair 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 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce

consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators’.) Nevertheless, this settlement is in line with the realistic exposure if Plaintiffs prevailed at trial and provides a significant recovery for Class Members.

d. Conditional Certification of the Class Is Appropriate

Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 67.) Plaintiffs contend the claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately two hundred twelve (212) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 68; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

11 **1. Common Issues Predominate**

12 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
13 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
14 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
15 other words, courts determine whether the elements necessary to establish liability are susceptible
16 to common proof, even if the class members must individually prove their damages. (*Brinker*
17 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
18 regularly granted class certification when the plaintiff can present evidence of common policies.
19 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
20 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
21 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
22 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

23 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 69.) Plaintiffs contend all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

26 **2. Plaintiffs’ Claims Are Typical of the Class Claims**

27 Typical claims rely on legal theories and facts that are substantially like those of other class
28 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

1 Plaintiffs are former employees of Defendants and allege they and Class Members were
2 employed by the same company and injured by the common policies and practices related to the
3 claims described above. (Han Decl., *supra*, at ¶ 70; Declaration of Erika Morrow Re Adequacy
4 (“Morrow Decl.”), ¶¶ 2-8, 12-15; Declaration of Daniel Alcocer Re Adequacy (“Alcocer Decl.”),
5 ¶¶ 2-8, 12-15; Declaration of Kenneth Aguilera Re Adequacy (“Aguilera Decl.”), ¶¶ 2-8, 12-15;
6 Declaration of Mayda Aguirre Re Adequacy (“Aguirre Decl.”), ¶¶ 2-8, 12-15; Declaration of
7 Robert Rodriguez Re Adequacy (“Rodriguez Decl.”), ¶¶ 2-8, 12-15.) Plaintiffs seek relief for these
8 claims and derivative claims on behalf of all Class Members. (Han Decl., *supra*, at ¶ 70; Morrow
9 Decl., *supra*, at ¶¶ 2-8, 12-15; Alcocer Decl., *supra*, at ¶¶ 2-8, 12-15; Aguilera Decl., *supra*, at ¶¶
10 2-8, 12-15; Aguirre Decl., *supra*, at ¶¶ 2-8, 12-15; Rodriguez Decl., *supra*, at ¶¶ 2-8, 12-15.) Thus,
11 the claims arise from the same employment practices and are based on the same legal theories
12 applicable to the Class. (Han Decl., *supra*, at ¶ 70; Morrow Decl., *supra*, at ¶¶ 2-8, 12-15; Alcocer
13 Decl., *supra*, at ¶¶ 2-8, 12-15; Aguilera Decl., *supra*, at ¶¶ 2-8, 12-15; Aguirre Decl., *supra*, at ¶¶
14 2-8, 12-15; Rodriguez Decl., *supra*, at ¶¶ 2-8, 12-15.)

15 3. Plaintiffs Are Adequate to Represent the Class

16 Plaintiffs contend they have proven to be adequate class representatives. (Han Decl.,
17 *supra*, at ¶ 71; Morrow Decl., *supra*, at ¶¶ 9-11, 16-19; Alcocer Decl., *supra*, at ¶¶ 9-11, 16-19;
18 Aguilera Decl., *supra*, at ¶¶ 10-12, 17-20; Aguirre Decl., *supra*, at ¶¶ 10-12, 17-20; Rodriguez
19 Decl., *supra*, at ¶¶ 9-11, 16-19.) Plaintiffs contend they conducted themselves diligently and
20 responsibly in representing the Class in this litigation, understand the fiduciary obligations, and
21 actively participated in the prosecution of this case. (Han Decl., *supra*, at ¶ 71; Morrow Decl.,
22 *supra*, at ¶¶ 9-11, 16-19; Alcocer Decl., *supra*, at ¶¶ 9-11, 16-19; Aguilera Decl., *supra*, at ¶¶ 10-
23 12, 17-20; Aguirre Decl., *supra*, at ¶¶ 10-12, 17-20; Rodriguez Decl., *supra*, at ¶¶ 9-11, 16-19.)
24 Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a
25 complete understanding of the work experience and environment. (Han Decl., *supra*, at ¶ 71;
26 Morrow Decl., *supra*, at ¶¶ 9-11, 16-19; Alcocer Decl., *supra*, at ¶¶ 9-11, 16-19; Aguilera Decl.,
27 *supra*, at ¶¶ 10-12, 17-20; Aguirre Decl., *supra*, at ¶¶ 10-12, 17-20; Rodriguez Decl., *supra*, at ¶¶
28 9-11, 16-19.) Plaintiffs have no interest averse to the interests of the other Class Members. (Han

Decl., *supra*, at ¶ 71; Morrow Decl., *supra*, at ¶¶ 9-11, 16-19; Alcocer Decl., *supra*, at ¶¶ 9-11, 16-19; Aguilera Decl., *supra*, at ¶¶ 10-12, 17-20; Aguirre Decl., *supra*, at ¶¶ 10-12, 17-20; Rodriguez Decl., *supra*, at ¶¶ 9-11, 16-19.)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

Plaintiffs contend a class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are also current employees, Plaintiffs believe fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors is small. (*Id.* at p. 1802.) These elements are present.

f. Notice to the Class Complies with California Rules of Court, Rule 3.769(f)

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

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

1 The Class Notice meets all these requirements. The Class Notice advises Class Members
2 of their right to participate in the Settlement, how and when to object to or request exclusion from
3 the Settlement, and date, time, and location of the Final Approval Hearing.

4 **V. CONCLUSION**

5 Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class
6 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
7 should be conditionally certified for settlement purposes, and Class Notice should be approved.

8
9 Dated: June 15, 2023

JUSTICE LAW CORPORATION

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11 By: 
12 Douglas Han
13 *Attorneys for Plaintiffs*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 7, 2023, I served the foregoing document described as

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: **Aguirre, et al. v. Ormco Corporation**
LWDA/Court Case No.: **LWDA-CM-855085-21**
22STCV12358
Los Angeles 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 7, 2023, at Pasadena, California.



Mariah Anderson