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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

DAVID HERRERA, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

METAL SURFACES INTERNATIONAL,
LLC, a California limited liability
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2022-00003417-CU-OE-CTL

Assigned for All Purposes to:
Honorable Gregory W. Pollack
Department C-71

CLASS ACTION

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

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

Hearing Date: December 8, 2023
Hearing Time: 9:30 a.m.
Hearing Place: Department C-71

Complaint Filed: January 27, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 8, 2023 at 9:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Gregory W. Pollack in Department C-71 of the San Diego
3 County Superior Court (Hall of Justice) located at 330 W. Broadway, San Diego, California 92101,
4 Plaintiffs David Herrera and Ryon Delgadillo (“Plaintiffs”, “Plaintiff Herrera”, and “Plaintiff
5 Delgadillo”) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Joint Stipulation and Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Notice of Class Action Settlement (“Notice”) attached as **Exhibit**
15 **A** to the Settlement Agreement;
- 16 • Directing the mailing of the Notice by first-class regular U.S. Mail to all Class
17 Members;
- 18 • Approving the proposed deadlines for the settlement administration process;
- 19 • Approving Phoenix Class Action Administration Solutions as the Settlement
20 Administrator; and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Attorney Fee Award, Cost Award, Class
24 Representative Enhancement Payments, and Administration Costs, and approval of
25 the allocation of the Private Attorney General Act of 2004 (“PAGA”) Payment.

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

5
6 Dated: July 10, 2023

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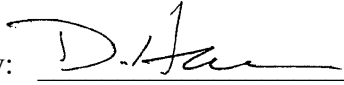
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8 By: 
9 Douglas Han
10 Attorneys for Plaintiffs
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$750,000 proposed wage-
3 and-hour class action and PAGA settlement by Plaintiffs on behalf of themselves and any and all
4 persons who have been employed by Defendant Metal Surfaces International, LLC (“Defendant”)
5 as non-exempt employees in California at any time from February 6, 2017, to August 13, 2023
6 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
7 Members is estimated to be two hundred eighty-six (286), which was confirmed by Defendant.
8 (Declaration of Douglas Han in Support of Plaintiffs’ Motion for Preliminary Approval of Class
9 Action and PAGA Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On August 5, 2021, Plaintiff Delgadillo filed a wage-and-hour class action lawsuit against
12 Defendant in the Superior Court of California, County of San Diego, alleging eight (8) causes of
13 action. (Han Decl., *supra*, at ¶ 10.)

14 On November 22, 2021, Plaintiff Herrera provided written notice to the Labor and
15 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
16 Labor Code he contends were violated by Defendant. (Han Decl., *supra*, at ¶ 11; Exhibit 3.)

17 On January 27, 2022, Plaintiff Herrera filed a representative PAGA action, pursuant to
18 Labor Code sections 2698, *et seq.*, against Defendant in the Superior Court of California, County
19 of San Diego. (Han Decl., *supra*, at ¶ 12; Exhibit 4.)

20 After engaging in extensive informal discovery, investigations, and negotiations, Plaintiff
21 Delgadillo, Plaintiff Herrera, and Defendant (“Parties”) remotely attended mediation with the
22 mediator Michael Ludwig on May 15, 2023. (Han Decl., *supra*, at ¶ 13.) Under the auspices of
23 the mediator after a full day of mediation, the Parties reached a settlement. (*Ibid.*)

24 Pursuant to the settlement, the Parties stipulated to file an amended complaint that added
25 Plaintiff Delgadillo’s wage-and-hour class action causes of action to Plaintiff Herrera’s PAGA
26 Action and added Plaintiff Delgadillo as an additional plaintiff. (Han Decl., *supra*, at ¶ 14.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiffs propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 16.) Defendant responded to Plaintiff Delgadillo's formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in an informal exchange of information and then eventually attended mediation. (*Ibid.*)

Prior to the mediation, Defendant produced several documents relating to its 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 alleged day-to-day violations. (*Ibid.*)

Based on the information provided by Defendant and interviews with putative class members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated breaks or pay premium wages in lieu thereof; (2) failed to pay employees for all hours worked; (3) maintained an illegal practice of rounding that resulted in the underpayment of wages; (4) failed to include non-discretionary bonuses and incentives in employees' regular rate of pay for purposes of overtime compensation, premium wages, and paid sick leave; (5) failed to reimburse employees for necessary business expenses; (6) issued noncompliant wage statements; and (7) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-27.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties attended mediation with an experienced mediator on May 15, 2023. (Han Decl., *supra*, at ¶ 28.) Under the auspices of the mediator, the Parties reached a settlement, and the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 28; Exhibits 2, 5.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 31.) Though cordial and professional, the settlement negotiations have always been adversarial

1 and non-collusive in nature. (Han Decl., *supra*, at ¶ 31.) At the mediation, both Parties' counsel
2 conducted extensive arm's-length settlement negotiations until an agreement was ultimately
3 reached after mediation. (*Ibid.*)

4 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
5 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
6 *supra*, at ¶ 32.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further
7 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
8 on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
9 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

11 The Parties investigated and evaluated the strengths and weaknesses of their claims and
12 defenses before reaching the Settlement and engaged in research and discovery to support the
13 Settlement. (Han Decl., *supra*, at ¶ 33.) The Settlement was only possible following significant
14 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
15 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
16 reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses
17 of their cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han
18 Decl., *supra*, at ¶ 33; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

19 **c. Terms of the Proposed Settlement**

20 **i. Deductions from the Settlement**

21 The Parties agreed (subject to the Court's approval) this action be settled and compromised
22 for the non-reversionary total sum of \$750,000 ("Gross Settlement Amount") which includes: (a)
23 Attorney Fee Award not to exceed \$262,500 (35% of the Gross Settlement Amount); (b) Cost
24 Award not to exceed \$20,000; (c) Class Representative Enhancement Payments up to \$10,000 to
25 each Plaintiff; (d) Administration Costs not to exceed \$10,000; and (e) PAGA Payment not to
26 exceed \$50,000. (Han Decl., *supra*, at ¶ 29.)

27 **ii. Calculating Settlement Payments**

28 After all Court-approved deductions from the Gross Settlement Amount, it is estimated

1 \$387,500 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
2 *average* Individual Settlement Share estimated at \$1,354.90. (Han Decl., *supra*, at ¶ 30.)

3 Participating Class Members will receive a proportionate share of the Net Settlement
4 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28;
5 Exhibit 2, *supra*, at § III G(1).) Individual Settlement Shares will be apportioned as ten percent
6 (10%) wages and ninety percent (90%) penalties and interest. (*Id.* at § III G(2).)

7 The proportional share of the PAGA Payment that is paid to each Eligible Aggrieved
8 Employee shall be determined using the formula set forth in the Settlement Agreement. (Han
9 Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § III H(6).) Eligible Aggrieved Employees’ portion of
10 the PAGA Payment will be allocated as one hundred percent (100%) penalties. (*Id.* at § III G(2).)

11 **iii. Notice to the Class**

12 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
13 Defendant shall deliver the Class List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 28;
14 Exhibit 2, *supra*, at § III J(2)(a).) The Settlement Administrator shall mail the Notice to the Class
15 Members in the manner and timeline set forth in the Settlement. (*Id.* at § III J(2)(b).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded and distributed pursuant to the manner and
18 timeline set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at §§
19 III J(9)(a), III J(9)(b).) Uncashed Individual Settlement Share checks will be paid to the California
20 State Controller: Unpaid Wage Fund. (*Id.* at § III J(10).)

21 **v. Release of Claims**

22 Upon Defendant’s fulfillment of its payment obligations under Section III (J)(9)(a) of the
23 Agreement, Class Members, who do not submit a timely and valid request for exclusion, waive,
24 release, promise never to assert in any forum, remise and forever discharge the Released Parties
25 from the Released Claims for the time frame within the Class Period. (Han Decl., *supra*, at ¶ 28;
26 Exhibit 2, *supra*, at §§ I(GG), III(K).)

27 Upon Defendant’s fulfillment of its payment obligations under Section III (J)(9)(a) of the
28 Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not

1 limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are barred
2 from pursuing any action for civil penalties under PAGA against the Released Parties based on or
3 arising out of alleged violations of Labor Code sections alleged in Plaintiff Herrera’s letter to the
4 LWDA and Complaint. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at §§ I(BB), III(L).)

5 Upon Defendant’s fulfillment of its payment obligations under Section III (J)(9)(a) of the
6 Agreement, and in exchange for the Class Representative Enhancement Payments to the Plaintiffs,
7 Plaintiffs provide a general release of claims for themselves and their spouses, heirs, successors,
8 and assigns. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § III(M).) Plaintiffs stipulate and agree
9 that, as of the Effective Final Settlement Date, Plaintiffs shall be deemed to have, expressly waived
10 and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of
11 Section 1542 of the Civil Code, or any other similar provision under federal or state law. (*Ibid.*)

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

20 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

21 Both Parties’ counsel are experienced in wage-and-hour employment law and class actions.
22 (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
23 of employees for Labor Code violations and are experienced and qualified to evaluate the class
24 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
25 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
26 their determination to endorse the Settlement. (*Ibid.*)

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1 **IV. ARGUMENT**

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

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

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

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

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

18 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
21 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
22 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
23 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
24 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 130; see
25 also *Munoz*, at p. 409.)

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28 ¹ 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.

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

10 **i. The Settlement Amount of \$750,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and practices, as well as the additional information and the data
13 Defendant produced for the Class, as referenced in Section III above, permitting Class Counsel to
14 engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 33.)

15 The claims are predicated on the alleged: (a) failure to properly calculate and pay overtime
16 wages; (b) failure to pay minimum wages; (c) failure to provide meal and rest breaks and
17 consistently and properly pay applicable premium wages and/or failure to pay applicable
18 premiums at the correct rate of pay; (d) failure to timely pay wages; (e) failure to issue compliant
19 wage statements; (f) failure to reimburse business expenses; (g) violation of PAGA; and (h)
20 violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 34.)
21 Defendant vehemently denies the theories of liability and any and all damages. (*Id.* at ¶ 35.)

22 While Plaintiffs believe the case is suitable for certification uncertainties with respect to
23 certification are always present. (Han Decl., *supra*, at ¶ 36.) As the California Supreme Court
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
25 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
26 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.²

27 ² (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
28 of class claiming misclassification and ordering summary adjudication in favor of employees],

(*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319). Thus, Plaintiffs' calculations for potential damages were discounted.

ii. The PAGA Payment of \$50,000 Is Reasonable

According to Plaintiffs, the provisions of the Labor Code potentially triggering PAGA penalties in this case include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 46.) Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a strong argument it would be unjust to award maximum PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 46; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Based on Defendant's arguments, and without stacking and limited to the initial violation, PAGA penalties would be limited to at least **\$12,100** (121 employees x \$100 penalty for initial violation) (or lower) on the low end and **\$96,800** (121 employees x \$100 penalty for initial violation x 8 theories of recovery) on the higher end. (Han Decl., *supra*, at ¶¶ 47-49.)

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 50.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$50,000 to PAGA civil penalties was reasonable given the fact Defendant is also paying an additional \$700,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are reasonable.³ (*Ibid.*)

review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming 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].)

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

Considering Defendant's defenses, supporting evidence, and its position that the case is not suitable for class treatment nor manageable on any representative class or PAGA basis, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, Plaintiffs calculated the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$3,419,253.54** on the low end and around **\$3,838,855.14** on the high end. (Han Decl., *supra*, at ¶ 51.)

Category	Exposure Assessment	Certification Risk	Merits Risk	Exposure Assessment
Rest Break Premiums	\$756,215.46	70%	60%	\$90,745.86
Meal Break Premiums	\$955,508.40	60%	50%	\$191,101.68
Overtime/Minimum Wage: Off-the-Clock Work	\$839,203.20 to \$1,258,804.80	50%	50%	\$209,800.80 to \$314,701.20
Overtime/Minimum Wage: Rounding	\$81,988.83	30%	50%	\$28,696.09
Overtime/Minimum Wage: Regular Rate	\$46,871.65	30%	40%	\$19,686.09
Unreimbursed Business Expenses	\$122,410	20%	70%	\$29,378.40
Wage Statement Penalty	\$484,000	50%	50%	\$121,000
Waiting Time Penalty	\$133,056	50%	50%	\$33,264
MAXIMUM TOTAL EXPOSURE	\$3,419,253.54 to \$3,838,855.14⁴			\$723,672.92 to \$828,573.32⁵

Based on this analysis, Plaintiffs assessed the realistic recovery for this case is **\$723,672.92** on the low end and **\$828,573.32** on the high end. (Han Decl., *supra*, at ¶ 60.) The Gross Settlement Amount is about twenty percent (19.54%) of the maximum potential exposure and around ninety-

⁴ (Han Decl., *supra*, at ¶¶ 37-45.)

⁵ (*Id.* at ¶¶ 52-59.)

one percent (90.52%) of the maximum realistic exposure at trial, which is an excellent settlement. (Han Decl., *supra*, at ¶ 60.)

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.*)

Plaintiffs contend 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 ¶ 61.) Plaintiffs contend the claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the Class’s interests. (*Ibid.*) Plaintiffs 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.)

Plaintiffs contend this case involves approximately two hundred eighty-six (286) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 62; *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].)

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

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

1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-

O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

Plaintiffs assert alleged common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 63.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiffs' Claims Are Typical of the Class Claims

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

Plaintiffs are former non-exempt employees of Defendant and allege they and Class Members were employed by the same company and were injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 64.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs contend the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs contend they have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 65.) Plaintiffs contend they have conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and contend they have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs contend they have no interest averse to the interests of the other Class Members. (*Ibid.*)

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

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

1 settlement purposes simultaneously in a single forum without the duplication of effort and expense
2 that numerous individual actions would necessitate. Because several Class Members are also
3 current employees, Plaintiffs believe fear of retaliation further supports the superiority of class-
4 wide relief as this fear often discourages current employees from seeking legal redress.

5 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

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

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

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

20 The Notice meets all these requirements. The Notice advises Class Members of their right
21 to participate in the Settlement, how and when to object to or opt-out of the Settlement, and date,
22 time, and location of the Final Approval Hearing.

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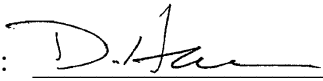
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1 **V. CONCLUSION**

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

6 Dated: July 10, 2023

JUSTICE LAW CORPORATION

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8 By: 
9 Douglas Han
10 *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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On July 10, 2023, I served the foregoing document described as

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

for the following case: **Herrera, et al. v. Metal Surfaces International, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM- 853998-21**
Court Case No.: 37-2022-00003417-CU-OE-CTL
San Diego 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, 2023, at Pasadena, California.



Mariah Anderson