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

BRITTANY DAM, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

RUBBER-CAL, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 30-2020-01176087-CU-OE-CXC

Assigned for All Purposes to:
Honorable Peter Wilson
Department CX-102

CLASS ACTION

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

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

Hearing Date: March 10, 2022
Hearing Time: 2:00 p.m.
Hearing Place: Department CX-102

Complaint Filed: December 23, 2020
FAC Filed: December 6, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 10, 2022, at 2:00 p.m., or as soon as the matter
2 may be heard, before the Honorable Peter Wilson in Department CX-102 of the Orange County
3 Superior Court, Civil Complex Center, located at 751 W. Santa Ana Blvd., Santa Ana, California
4 92701, Plaintiff Brittany Dam (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation of Class Action and PAGA
7 Settlement (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or
8 “Settlement”), attached as **Exhibit 2** to the Declaration of Douglas Han, including,
9 and not limited to, the means of allocation and distribution of funds, the allocations
10 for payments under the Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
12 Enhancement Payment, and Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class
18 Action Settlement and Setting Hearing for Final Approval of Settlement;
- 19 • Approving the Election Not To Participate or Opt-out Form (“Exclusion Form”)
20 attached as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class
21 Action Settlement and Setting Hearing for Final Approval of Settlement;
- 22 • Directing the mailing of the proposed Class Notice and Exclusion Form
23 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
24 to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and settlement administration
26 process;
- 27 • Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the
28 Settlement Administrator; and

- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the Administration Costs, and the allocation of the PAGA Payment.

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

Dated: February 8, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$240,000.00 proposed
3 wage-and-hour class action settlement by Plaintiff on behalf of herself and on behalf of all non-
4 exempt California employees of Defendant Rubber-Cal, Inc. (“Defendant”) during the Class
5 Period who did not previously sign individual separation agreements (“Class” and “Class
6 Members”). The Class Period is the time period from December 23, 2016, to December 23, 2021.
7 At the time of this filing, the number of Class Members is estimated to be one hundred sixty-
8 seven (167).

9 It is requested that this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
11 proposed settlement of \$240,000.00 is well within the range of reasonableness. Class Counsel and
12 Plaintiff are convinced that the proposed Settlement is in the best interests of the Class Members
13 based on the negotiations and a detailed knowledge of the issues present in this action.

14 **II. BACKGROUND**

15 On December 23, 2020, Plaintiff, a former hourly-paid, non-exempt employee of
16 Defendant, filed a wage-and-hour class action lawsuit against Defendant in the Orange County
17 Superior Court, alleging eight (8) causes of action for violations of the California Labor Code and
18 California Business & Professions Code. (Declaration of Douglas Han (“Han Dec.”), ¶ 10.)

19 On October 14, 2021, Plaintiff and Defendant (the “Parties”) attended a mediation
20 regarding Plaintiff’s claims with mediator Marc J. Feder. (Han Dec., *supra*, at ¶ 11.) Under the
21 auspices of the mediator, and after a full day of negotiation, the Parties were able to reach an
22 agreement on settlement of the Action. (*Ibid.*)

23 As part of the settlement, following mediation, on November 11, 2021, Plaintiff provided
24 written notice to the California Labor and Workforce Development Agency (“LWDA”) and
25 Defendant of the specific provisions of the Labor Code she contends Defendant violated and the
26 theories supporting her contentions. (Han Dec., *supra*, at ¶ 12.) On December 6, 2021, Plaintiff
27 filed a First Amended Complaint against Defendant in the Orange County Superior Court, adding
28 a cause of action for violation of Labor Code section 2698, *et seq.* (PAGA). (*Id.* at ¶ 13.)

1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 After Plaintiff filed her wage-and-hour class action lawsuit, both Parties engaged in
4 discovery. (Han Dec., *supra*, at ¶ 16.) Plaintiff propounded one (1) set of form interrogatories,
5 one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of
6 requests for production of documents. (*Ibid.*) Thereafter, the Parties met and conferred and agreed
7 to an informal exchange of information and to attend mediation. (*Ibid.*)

8 Prior to the mediation on October 14, 2021, and both before and after the lawsuit was
9 filed, the Parties conducted significant investigation of the facts and law. (Han Dec., *supra*, at ¶
10 17.) Specifically, Defendant produced documents relating to its wage-and-hour policies,
11 practices, and procedures, time and pay records, and information and data relating to the size and
12 scope of the Class and the number of workweeks in the Class Period. (*Ibid.*) Class Counsel also
13 interviewed Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

14 Based upon the information provided by Defendant and interviews Class Counsel had
15 with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant: (a)
16 failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay
17 employees for all hours worked; (c) failed to reimburse employees for necessary business
18 expenses; (d) issued noncompliant wage statements; and (e) is liable for waiting time penalties.
19 (Han Dec., *supra*, at ¶¶ 19-24.)

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

21 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
22 **Stipulation of Class Action and PAGA Settlement**

23 During the Parties’ mediation on October 14, 2021, the Parties discussed the risks of
24 continued litigation, the likelihood of certification, and the merits of the Parties’ claims and
25 defenses versus the benefits of settlement. (Han Dec., *supra*, at ¶ 26.) With the assistance of the
26 mediator, the Parties were able to reach an agreement on settlement, the terms of which were
27
28

1 memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval of.¹
2 (Han Dec., *supra*, at ¶ 26; Exhibit 2.)

3 **ii. The Settlement Was Reached as a Result of Arm's-length Negotiations**

4 At the mediation on October 14, 2021, both Parties' counsel engaged in extensive arm's-
5 length settlement negotiations until an agreement, the terms of which were memorialized in the
6 Settlement Agreement, was ultimately reached by all Parties. (Han Dec., *supra*, at ¶ 45.) Though
7 cordial and professional, the settlement negotiations have always been adversarial and non-
8 collusive in nature. (*Ibid.*)

9 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
10 and length of additional proceedings necessary to continue the litigation against Defendant. (Han
11 Dec., *supra*, at ¶ 46.) Plaintiff and Class Counsel have also considered the uncertainty and risk of
12 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
13 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
14 adequate, and reasonable settlement, and is in the Class Members' best interests. (*Ibid.*)

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

16 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
17 of Plaintiff's claims and Defendant's defenses before reaching the proposed Settlement and
18 engaged in sufficient investigation, research, and discovery to support the Settlement. (Han Dec.,
19 *supra*, at ¶ 47.) The Settlement was only possible following significant investigation and
20 evaluation of Defendant's relevant policies and procedures and the data Defendant produced for
21 the putative class. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly
22 have a clear view of the strengths and weaknesses of their cases" sufficient to support the
23 Settlement's reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal.
24 1979) 485 F.Supp. 610, 617.)

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26 ¹ Attached as **Exhibit 3** to the Declaration of Douglas Han is a true and correct copy of the
27 email confirmation and LWDA submission evidencing the submission to the LWDA of Plaintiff's
28 Notice of Motion and Motion for Preliminary Approval of Class Action Settlement and the
Settlement Agreement.

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$240,000.00 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
6 Class Counsel in an amount not to exceed \$84,000.00 (35% of the Gross Settlement Amount);
7 (b) the Cost Award to Class Counsel in an amount not to exceed \$15,000.00 for reimbursement
8 of litigation costs and expenses;² (c) the Class Representative Enhancement Payment in the
9 amount of \$7,500.00 to Plaintiff for her service as the Class Representative; (d) Administration
10 Costs to Phoenix, the Settlement Administrator, in an amount currently estimated at \$8,500.00,
11 but not to exceed \$10,000.00; and (e) the PAGA Payment of \$15,000.00, seventy-five percent
12 (75%) of which (\$11,250.00) will be paid to the LWDA and twenty-five percent (25%) of which
13 (\$3,750.00) shall be distributed to the Eligible Aggrieved Employees, on a pro rata basis. (Han
14 Dec., *supra*, at ¶ 27.)

15 **ii. Calculation of the Class Members’ Individual Settlement Shares**

16 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
17 that \$108,500.00 (“Net Settlement Amount”) will be distributed to the Participating Class
18 Members, which equates to a value of \$13.55 per workweek.³ (Han Dec., *supra*, at ¶ 29.)

19 _____
20 ² The amount of actual litigation costs will be provided to the Court in conjunction with
21 Plaintiff’s motion for final approval. (Han Dec., *supra*, at ¶ 28.) At that time, Plaintiff will ask the
22 Court to approve the amount of these costs. (*Ibid.*) If Plaintiff’s actual litigation costs exceed
23 \$15,000.00, Plaintiff will only seek reimbursement in the amount of \$15,000.00. (*Ibid.*) If the
24 amount awarded is less than the amount requested by Class Counsel for the Cost Award, the
25 difference shall become part of the Net Settlement Amount and be available for distribution to all
26 Participating Class Members. (*Ibid.*)

27 ³ \$108,500.00 (Net Settlement Amount) / 8,006 (workweeks in the Class Period) = \$13.55;
28 Class Counsel cannot provide the expected high, average, and low Individual Settlement Shares
or Plaintiff’s expected Individual Settlement Share because, pursuant to the Settlement
Agreement, Defendant will provide the Settlement Administrator with the Class Data, which the
Settlement Administrator needs to calculate these amounts, within thirty (30) calendar days after
entry of the Preliminary Approval Order. Thus, the Settlement Administrator will not have the
information needed to calculate the expected high, average, and low Individual Settlement Shares

1 Only the following individuals will receive Individual Settlement Shares under the
2 Settlement Agreement: (a) Plaintiff and (b) Participating Class Members. (Han Dec., *supra*, at ¶
3 30.) The Settlement Administrator will pay an Individual Settlement Share from the Net
4 Settlement Amount to each Participating Class Member in accordance with the formula included
5 in the Settlement Agreement. (*Ibid.*) The Settlement Administrator will also pay each Eligible
6 Aggrieved Employee his or her pro-rata share of the PAGA Payment in accordance with the
7 formula included in the Settlement Agreement. (*Id.* at ¶ 31.)

8 **iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is**
9 **Justified Under the Claims of this Action**

10 Each Participating Class Member's Individual Settlement Share will be apportioned as
11 twenty percent (20%) wages and eighty percent (80%) penalties and interest. (Han Dec., *supra*,
12 at ¶ 33.)

13 The allocation of wages, penalties, and interest described above was reached based on
14 Defendant's realistic exposure for meal penalties, rest penalties, and unpaid wages due to off-the-
15 clock work if this case were to go to trial. (Han Dec., *supra*, at ¶ 34.) While unpaid wages due to
16 off-the-clock work qualify as wages, premium wages owed for noncompliant rest and meal breaks
17 could be characterized as wages or penalties. (*Ibid.*) Thus, the Parties added Defendant's realistic
18 exposures for rest penalties and meal penalties (\$7,859.98+ \$18,883.37 = \$26,743.35) and divided
19 the sum in half to represent one-half (1/2) for wages and one-half (1/2) for penalties (\$13,371.68).
20 (*Ibid.*) Because unpaid wages due to off-the-clock work qualify as wages, the Parties then added
21 the \$36,315.22 representing the high end of Defendant's realistic exposure for unpaid wages due
22 to off-the-clock work to the wages portion of Defendant's realistic exposure for rest and meal
23 penalties (\$13,371.68 + \$36,315.22 = \$49,686.90). (*Ibid.*) This realistic exposure of \$49,686.90
24 for the wages portion of rest and meal penalties and for unpaid wages due to off-the-clock work
25 equates to approximately eighteen percent (17.99%) of the high end of the realistic maximum
26 total exposure (\$276,153.01). (*Ibid.*) Because this represents approximately eighteen percent

27 _____
28 or Plaintiff's expected Individual Settlement Share until after entry of the Preliminary Approval
Order.

(17.99%) wages, the Parties determined that allocating twenty percent (20%) as wages and eighty percent (80%) as penalties and interest was appropriate. (Han Dec., *supra*, at ¶ 34.)

iv. Notice to the Class

Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 35.) Within forty (40) calendar days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Notice Packet, in both English and Spanish, to the Class Members via first-class regular U.S. Mail, using the most current mailing address information available.⁴ (*Id.* at ¶ 36.) Class Members are not required to submit a claim form to receive their Individual Settlement Shares. (*Ibid.*)

If a Notice Packet is returned because of an incorrect address, within ten (10) calendar days after receipt of the returned Notice Packet, the Settlement Administrator will conduct a skip trace and will take reasonable steps to trace the mailing address of any Class Member for whom a Notice Packet is returned by U.S. Postal Service as undeliverable. (Han Dec., *supra*, at ¶ 37.) The Settlement Administrator will re-mail the Notice Packet to the Class Member at the Class Member's new address, if one is found, or to the Class Member's original address if a new address is not found. (*Ibid.*) Class Members who receive a re-mailed Notice Packet will have an additional ten (10) calendar days to postmark a request for exclusion from or an objection to the Settlement. (*Ibid.*) The Settlement Administrator shall mark on the envelope whether the Notice Packet is a re-mailed packet. (*Ibid.*)

v. Distribution of Funds

No later than thirty (30) calendar days after the Effective Final Settlement Date and upon satisfaction of the preconditions described in the Settlement Agreement, Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund. (Han Dec., *supra*, at ¶ 38.) Within twenty-one (21) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement. (*Ibid.*)

⁴ A translated version of the Notice Packet will be submitted along with Plaintiff's Motion for Final Approval of Class Action Settlement.

1 If a Participating Class Member's Individual Settlement Share check is returned because
2 of an incorrect address, within ten (10) calendar days after receipt of the returned check, the
3 Settlement Administrator will conduct a skip trace and will take reasonable steps to trace the
4 mailing address of any Participating Class Member for whom a check is returned by U.S. Postal
5 Service as undeliverable. (Han Dec., *supra*, at ¶ 39.) The Settlement Administrator will re-mail
6 the check to the Class Member at the Class Member's new address, if one is found, or to the Class
7 Member's original address if a new address is not found. (*Ibid.*)

8 Participating Class Members must cash or deposit their Individual Settlement Share
9 checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han
10 Dec., *supra*, at ¶ 40.) If any checks are not redeemed or deposited within ninety (90) calendar
11 days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any
12 checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the
13 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after
14 the checks are initially mailed, cancel the check(s), and pay the amount of the Individual
15 Settlement Share(s) to the California State Controller's Unpaid Property Division in accordance
16 with California Unclaimed Property Law. (*Ibid.*)

17 **vi. Release of Claims**

18 As of the Effective Final Settlement Date and upon Defendant's fulfillment of its payment
19 obligations under Section III(H)(2) of the Settlement Agreement, all Participating Class Members
20 will be bound by a release of all claims and causes of action falling under the definition of
21 Released Claims occurring during the Class Period. (Han Dec., *supra*, at ¶ 41; Exhibit 2, *supra*,
22 at ¶¶ I(HH), I(II), III(L).) Participating Class Members agree not to sue or otherwise make a claim
23 against any of the Released Parties for any of the Released Claims. (Han Dec., at ¶ 41;
24 Exhibit 2, at ¶¶ I(HH), I(II), III(L).)

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1 As of the Effective Final Settlement Date and upon Defendant’s fulfillment of its payment
2 obligations under Section III(H)(2) of the Settlement Agreement, the LWDA, and any other
3 representative, proxy, or agent thereof, including, but not limited to, any and all Eligible
4 Aggrieved Employees, including Plaintiff, are hereby voluntarily and knowingly barred from
5 bringing any and all claims against the Released Parties seeking civil penalties under the
6 California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section
7 2698, *et seq.*, based on or arising out of the Labor Code violations alleged in Plaintiff’s letter to
8 the LWDA and the operative Complaint, occurring during the PAGA Period. (Han Dec., *supra*,
9 at ¶ 42; Exhibit 2, *supra*, at ¶¶ I(II), III(M).)

10 As of the Effective Final Settlement Date and upon Defendant’s fulfillment of its payment
11 obligations under Section III(H)(2) of the Agreement, in exchange for the Class Representative
12 Enhancement Payment in an amount not to exceed \$7,500.00, and in recognition of her work and
13 efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs
14 in the event this matter had not successfully resolved, Plaintiff hereby provides a general release
15 of claims for herself and any spouse, heirs, successors and assigns. (Han Dec., *supra*, at ¶ 43;
16 Exhibit 2, *supra*, at ¶ III(N).)

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

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

2 Counsel for both Parties are particularly experienced in wage-and-hour employment law
3 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
4 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
5 qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial,
6 and the viability of the defenses. (*Ibid.*) Class Counsel’s experience also guided their
7 determination to endorse the proposed Settlement.⁵ (*Ibid.*)

8 **IV. ARGUMENT**

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

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

- 14 (a) A settlement or compromise of an entire class action, or a cause of action in
15 a class action, or as to a party, requires the approval of the court after
16 hearing.
17 ...
18 (b) Any party to a settlement agreement may serve and file a written notice of
19 motion for preliminary approval of the settlement. The settlement
20 agreement and proposed notice to class members must be filed with the
21 motion, and the proposed order must be lodged with the motion.

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

26 ⁵ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
27 number of objectors – is not determinable until the Class Notice has been provided to the Class
28 Members, 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.

⁶ 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129;
8 see also *Munoz*, at p. 409.)

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

19 **i. The Settlement Amount of \$240,000 Is Fair and Reasonable**

20 The proposed Settlement was only possible following significant investigation and
21 evaluation of Defendant’s relevant policies and procedures and the data Defendant produced for
22 the putative class, as referenced in Section III(b)(iii) above, which permitted Class Counsel to
23 engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 47.)

24 This investigation and evaluation informed Plaintiff’s central theories of liability, which
25 are predicated on Defendant’s alleged: (a) failure to properly calculate and pay overtime wages;
26 (b) failure to provide meal and rest breaks and pay applicable premiums; (c) failure to pay
27 minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements;
28 (f) failure to reimburse business expenses; (g) violation of Labor Code section 2698, *et seq.*

(PAGA); and (h) violation of Business & Professions Code section 17200, *et seq.* (Han Dec., *supra*, at ¶ 48.) Defendant denies Plaintiff's theories of liability. (*Id.* at ¶ 49.)

Although Plaintiff believes the case is suitable for certification, uncertainties are always present. (Han Dec., *supra*, at ¶ 50.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁷ (*Ibid.*) These factors led Plaintiff to discount the calculations of potential damages.

ii. The PAGA Payment of \$15,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 57.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$11,100.00** (111 employees x \$100 initial violations) on the low end and **\$66,600.00** (111 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec., at ¶ 60.)

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⁷ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], 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]; *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 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Decl., *supra*, at ¶ 62.) Many of the causes of action brought were duplicative of the statutory
3 claims such as violations of Labor Code sections 201, 202, 203, 204, 218.5, 226.3, 226.7, 510,
4 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$15,000.00 to PAGA
5 civil penalties was reasonable based on a rate of **\$6.42** per pay period [$\$15,000.00 \div 2,336$ pay
6 periods in PAGA date range = **\$6.42**], given the fact that Defendant is also paying an additional
7 \$225,000.00 in the class settlement.⁸ (*Ibid.*) When PAGA penalties are negotiated in good faith
8 and “there is no indication that [the] amount was the result of self-interest at the expense of other
9 Class Members,” such amounts are generally considered reasonable.⁹ (*Ibid.*)

10 Considering Defendant’s defenses, its supporting evidence, and its position that the case
11 is not suitable for class treatment, the settlement of \$240,000 is reasonable, adequate, and fair.

12 **c. Discount Analysis Justifies the Settlement**

13 Excluding the civil penalties, which could be discretionary, for the reasons stated, the total
14 estimated potential exposure, assuming certification and prevailing at trial, would be about
15 **\$941,001.98** on the low end and **\$1,001,527.34** on the high end. (Han Dec., *supra*, at ¶ 63.)

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24 ⁸ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25
to \$75 per violation and a total PAGA penalty of \$70,000,000].)

26 ⁹ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
28 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$39,299.90	760%	50%	\$7,859.98
Meal Break Premiums	\$62,944.56	50%	40%	\$18,883.37
Overtime/Minimum Wage: Off-the-Clock Work	\$121,050.72 to \$181,576.08	50%	60%	\$24,210.14 to \$36,315.22
Unreimbursed Business Expenses	\$14,784.00	50%	70%	\$2,217.60
Wage Statement Penalty	\$227,550.00	40%	50%	\$68,265.00
Waiting Time Penalty	\$475,372.80	40%	50%	\$142,611.84
MAXIMUM TOTAL EXPOSURE	\$941,001.98 to \$1,001,527.34¹⁰			\$264,047.93 to \$276,153.01¹¹

Based on this analysis, the realistic recovery for this case is **\$264,047.93** on the low end and **\$276,153.01** on the high end. (Han Dec., *supra*, at ¶ 70.) The Gross Settlement Amount of \$240,000.00 is approximately twenty-four percent (23.96%) of the maximum potential exposure and approximately eighty-seven percent (86.91%) of the maximum realistic exposure at trial. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular 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 had Plaintiff prevailed at trial and provides

¹⁰ (Han Dec., *supra*, at ¶¶ 52-56.)

¹¹ (*Id.* at ¶¶ 64-69.)

significant recovery for the 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 where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

The proposed 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 Dec., *supra*, at ¶ 71.) Plaintiff contends that as a former hourly-paid, non-exempt employee of Defendant, her claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiff asserts that 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 one hundred sixty-seven (167) Class Members. (Han Dec., *supra*, at ¶ 72.) Thus, the Class is sufficiently numerous. (*Ibid.*)

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

2 The community of interest requirement “embodies three factors: (1) predominant
3 common questions of law or fact; (2) class representatives with claims or defenses typical of the
4 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores,*
5 *Inc. v. 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
8 (emphasis in original).) Rather, courts focus on the defendant’s internal policies and “pattern and
9 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
10 renders class certification appropriate.” (*Ibid.*) The application of each of these factors is
11 discussed below.

12 **1. Common Issues Predominate**

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

24 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
25 alleged. (Han Dec., *supra*, at ¶ 73.) Plaintiff contends that all Class Members were subject to the
26 same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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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.) Plaintiff is a former employee of Defendant and alleges that she and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 74.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 75.) She has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of her work environment and requirements. (*Ibid.*) Further, Plaintiff has no interest that is averse to the interests of the other Class Members. (*Ibid.*)

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In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the 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) the percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

The proposed Notice Packet meets all these requirements. The proposed Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing. (See Han Dec., *supra*; Exhibits A and B.)

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

JUSTICE LAW CORPORATION

Douglas Han
Attorneys for Plaintiff

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On February 8, 22, I served the foregoing document described as

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

for the following case: **Dam v. Rubber-Cal, Inc.**
LWDA/Court Case No.: **LWDA-CM-852055-21**
30-2020-01176087-CU-OE-CXC
Orange 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 February 8, 2022, at Pasadena, California.


Mariah Anderson