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

JESUS FUENTES, individually, and on behalf
of aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

APEX CONTRACTING AND
RESTORATION, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2022-00001417-CU-OE-CTL

Assigned for All Purposes to:
Honorable Ronald F. Frazier
Department C-65

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); and [Proposed] Order filed
concurrently herewith]

Hearing Date: November 4, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department C-65

Complaint Filed: January 12, 2022
FAC Filed: June 22, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 4, 2022 at 8:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Ronald F. Frazier in Department C-65 of the San Diego County
3 Superior Court (Hall of Justice), located at 330 West Broadway San Diego, California 92101,
4 Plaintiff Jesus Fuentes (“Plaintiff”) will and hereby does move 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 and Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to
8 the declaration of Douglas Han, including, and not limited to, the means of allocation
9 and distribution of funds, the allocations for payments under the Labor Code Private
10 Attorneys General Act of 2004 (“PAGA”), Attorney Fee Award, Cost Award, Class
11 Representative Enhancement Payment, and Administration Costs;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff as the Class Representative;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the proposed tice of Notice of Class and Representative Action
16 Settlement (“Class Notice”) attached as **Exhibit A** to the Agreement;
- 17 • Approving the Election Not to Participate (“Opt Out” From) Class Action
18 Settlement (“Exclusion Form”) attached as **Exhibit B** to the Agreement;
- 19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope to
21 the proposed Class;
- 22 • Approving the proposed deadlines for settlement administration process;
- 23 • Approving Simpluris, Inc. as the Settlement Administrator; and
- 24 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
25 Agreement, at which time the Court will also consider whether to grant Final
26 Approval of the requests for the Attorney Fee Award, Cost Award, Class
27 Representative Enhancement Payment, Administration Costs, and approval of the
28 allocation of the PAGA Payment.

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

5
6 Dated: August 23, 2022

JUSTICE LAW CORPORATION

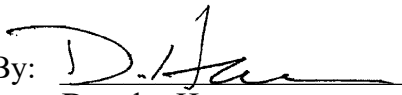
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8 By: 
9 Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$250,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and former hourly-
4 paid or non-exempt employees employed by Defendant Apex Contracting and Restoration, Inc.
5 (“Defendant”) within the State of California at any time between November 5, 2020 through May
6 20, 2022 (“Class” and “Class Period”). At the time of this filing, the number of Class Members is
7 estimated to be two hundred thirty-three (233). (Declaration of Douglas Han In Support of
8 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶¶ 8-9.)

9 **II. BACKGROUND**

10 On November 5, 2021, Plaintiff, a former employee of Defendant, provided written notice
11 to the California Labor and Workforce Development Agency and Defendant. (Han Dec., *supra*, at
12 ¶ 10.) On January 12, 2022, Plaintiff filed a representative PAGA action in the Superior Court of
13 California, County of San Diego. (*Ibid.*)

14 The Parties attended mediation on Plaintiff’s claims with mediator Lynn Frank on May 5,
15 2022, resulting in the settlement of this matter. (Han Dec., *supra*, at ¶ 11.)

16 In line with the settlement, Plaintiff provided an amended written notice to the LWDA and
17 Defendant on May 12, 2022. (Han Dec., *supra*, at ¶ 12.) Next, Plaintiff filed a First Amended
18 Complaint on June 22, 2022 that added several wage-and-hour class action causes of action. (*Ibid.*)

19 **III. INVESTIGATION/ LITIGATION HISTORY**

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

21 The Parties engaged in discovery. (Han Dec., *supra*, at ¶ 14.) Plaintiff propounded one (1)
22 set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for
23 admissions, and one (1) set of requests for production to Defendant. (*Ibid.*) Thereafter, the Parties
24 met and conferred and agreed to engage in the informal exchange of information. (*Ibid.*)

25 The Parties conducted significant investigation and discovery of the facts and law both
26 before and after this case was filed. (Han Dec., *supra*, at ¶ 15.) Defendant produced hundreds of
27 documents relating to its policies, practices, and procedures. (*Ibid.*) Plaintiff also reviewed time
28 records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) In addition,

1 Plaintiff interviewed several Class Members who worked for Defendant during the Class Period.
2 (Han Dec., *supra*, at ¶ 15.)

3 Based upon the information provided by Defendant and interviews with Class Members,
4 Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees with proper
5 meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to reimburse
6 employees for necessary business expenses; (4) issued noncompliant wage statements; and (5) is
7 liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 17-23.)

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

9 **i. The Parties Attended Mediation Which Ultimately Led to the**
10 **Settlement Agreement**

11 The Parties attended mediation with experienced wage-and-hour mediator, Lynn Frank on
12 May 5, 2022. (Han Dec., *supra*, at ¶ 24.) With the mediator’s assistance, the Parties reached an
13 agreement, the terms of which were memorialized in the Agreement. (*Id.* at ¶ 24; Exhibit 2.)

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

15 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Dec.,
16 *supra*, at ¶ 36.) Though cordial and professional, the settlement negotiations have always been
17 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
18 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

19 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
20 and length of continued proceedings necessary to continue the litigation against Defendant. (Han
21 Dec., *supra*, at ¶ 37.) Plaintiff and Class Counsel considered the inherent uncertainty and risk of
22 further litigation, the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*)

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

24 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties’
25 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
26 research, and discovery. (Han Dec., *supra*, at ¶ 38.) The Settlement was only possible following
27 significant investigation and evaluation of Defendant’s relevant policies and procedures. (*Ibid.*)
28 This case reached the stage where “the Parties certainly have a clear view of the strengths and

1 weaknesses of their cases” sufficient to support the Settlement. (Han Dec., *supra*, at ¶ 38; *Boyd v.*
2 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

4 **i. Deductions from the Settlement**

5 The Parties agreed this action be settled and compromised for the non-reversionary total
6 sum of \$250,000 (“Gross Settlement Amount”) which includes: (a) Attorney Fee Award of \$87,500
7 (35% of the Gross Settlement Amount); (b) Cost Award of up to \$20,000; (c) Class Representative
8 Enhancement Payment of \$10,000; (d) Administration Costs of up to \$12,500; and (e) PAGA
9 Payment of \$20,000. (Han Dec., *supra*, at ¶ 25.)

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

11 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
12 \$105,000 (“Net Settlement Amount”) will be distributed to Class Members – with an *average* gross
13 Individual Settlement Share estimated at \$450.64. (Han Dec., *supra*, at ¶ 26.)

14 Each Participating Class Member will receive a proportionate share of the Net Settlement
15 Amount that will be calculated by the Settlement Administrator in accordance with the formula set
16 forth in the Agreement. (Han Dec., *supra*, at ¶ 27.) Individual Settlement Shares will be apportioned
17 twenty percent (20%) wages and eighty percent (80%) penalties and interests. (*Ibid.*)

18 The Settlement Administrator will pay each Class Member their portion of the twenty-five
19 percent (25%) of the PAGA Payment (\$5,000) from the Gross Settlement Amount using the formula
20 set forth in the Agreement. (Han Dec., *supra*, at ¶ 28.) Each Class Member’s share of the PAGA
21 Payment will be apportioned as one hundred percent (100%) penalties. (*Ibid.*)

22 **iii. Notice to the Class**

23 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
24 Defendant shall deliver to the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶
25 30.) Within fourteen (14) calendar days after Defendant’s deadline to provide the Class Data to the
26 Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all identified
27 Class Members via first-class regular U.S. Mail. (*Ibid.*)

28 ///

1 **iv. Distribution of Funds**

2 The Settlement will be funded pursuant to the timeline and manner set forth in the
3 Agreement. (Han Dec., *supra*, at ¶ 31.) Uncashed settlement checks will be mailed to the California
4 State Controller’s Unclaimed Property Division. (*Ibid.*)

5 **v. Release of Claims**

6 As of the Effective Final Settlement Date, in exchange for the consideration set forth in the
7 Agreement, Plaintiff and the Participating Class Members release the Released Parties from the
8 Released Claims for the Class Period. (Han Dec., *supra*, at ¶ 32.)

9 As of the Effective Final Settlement Date, the LWDA, and each Class Member, including
10 Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives,
11 attorneys, successors, and assigns voluntarily and knowingly are barred from bringing a lawsuit for
12 the PAGA Released Claims. (Han Dec., *supra*, at ¶ 33.) The release of the PAGA Released Claims
13 is effective, regardless of whether the Class Member purports to submit a timely and valid request
14 for exclusion. (*Ibid.*)

15 As of the Effective Final Settlement Date, and in exchange for the Class Representative
16 Enhancement Payment to Plaintiff, in recognition of his work and efforts in obtaining the benefits
17 for the Class and undertaking the risk for the payment of costs if this matter had not successfully
18 resolved, Plaintiff provide a general release of claims for himself and his spouse, heirs, successors
19 and assigns. (Han Dec., *supra*, at ¶ 34.) Plaintiff’s Release of Claims includes a waiver of Civil
20 Code section 1542. (*Ibid.*)

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

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

2 Both Parties' counsel are experienced in wage-and-hour employment law and class actions.
3 (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel prosecuted numerous cases on behalf of
4 employees for Labor Code violations and are experienced and qualified to evaluate the class claims,
5 settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
6 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
7 their determination to endorse the Settlement.¹ (*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.²
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 a class
 action, or as to a party, requires the approval of the court after hearing.
15
16 (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
17 notice to class members must be filed with the motion, and the proposed order must
 be lodged with the motion.

18
19 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
20 the normal perils of litigation as well as the additional uncertainties inherent in complex class
21 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
22 *nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

23 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
24 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
25 had an opportunity to respond. This information will be provided to the Court in conjunction with
26 the Motion for Final Approval of Class Action Settlement.

27 ² The California Supreme Court has also authorized California's trial courts to use Federal
28 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
Court (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, 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 of
4 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
5 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
6 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
7 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see
8 also *Munoz*, at p. 409.)

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

18 **i. The Settlement Amount of \$250,000 Is Fair and Reasonable**

19 The Settlement was possible after significant investigation and evaluation of Defendant’s
20 relevant policies and procedures, as well as the data produced for the Class, as referenced in Section
21 III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential
22 damages. (Han Dec., *supra*, at ¶ 38.)

23 Plaintiff’s claims are predicated on Defendant’s purported: (1) failure to pay overtime
24 wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and pay
25 applicable premiums; (4) failure to timely pay wages; (5) failure to issue compliant wage
26 statements; (6) failure to reimburse business expenses; (7) violation of Labor Code section 2698, *et*
27 *seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec.,
28 *supra*, at ¶ 39.) Defendant denies Plaintiff’s theories of liability. (*Id.* at ¶ 40.)

1 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Dec., *supra*, at ¶ 41.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
6 (*Ibid.*) These factors led Plaintiff to discount the calculations of potential damages.

7 **ii. The PAGA Payment of \$20,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case include,
9 but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.2,
10 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han
11 Dec., *supra*, at ¶ 49.) Defendant asserted PAGA penalties are not mandatory but permissive and
12 discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments against the
13 underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties
14 given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th
15 1112 [reducing penalties by 30% under this authority].) Defendant argued without stacking and
16 limited to the initial violation, the PAGA penalties would be limited to **\$23,300** (233 employees x
17 \$100) on the low end and **\$209,700** (233 employees x \$100 x 9 theories of recovery) on the high
18 end. (Han Dec., *supra*, at ¶¶ 50-53.)

19 Plaintiff recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶
20 54.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) Thus,
21 allocating \$20,000 to PAGA civil penalties was reasonable based on a rate of **\$3.05** per pay period
22 [\$20,000 ÷ 6,556 pay periods in PAGA date range = **\$3.05**], given Defendant is already paying an
23

24
25 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 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].)

additional \$230,000 in the class settlement.⁴ (Han Decl., *supra*, at ¶ 54.) 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 generally considered reasonable.⁵ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position the case is not suitable for class treatment, the Settlement of \$250,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be **\$3,153,477.35** on the low end and **\$3,258,783.10** on the high end. (Han Dec., *supra*, at ¶ 55.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$363,071.28	70%	60%	\$43,568.55
Meal Break Premiums	\$544,606.92	60%	60%	\$87,137.11
Overtime/Minimum Wage: Off-the-Clock Work	\$226,919.55 to \$332,225.30	60%	50%	\$45,383.91 to \$66,445.06
Unreimbursed Business Expenses	\$42,364	30%	70%	\$8,896.44
Wage Statement Penalty	\$640,750	65%	65%	\$78,491.88
Waiting Time Penalty	\$1,335,765.60	65%	65%	\$163,631.29
MAXIMUM TOTAL EXPOSURE	\$3,153,477.35 to \$3,258,783.10⁶			\$427,109.18 to \$448,170.33⁷

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⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$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].)

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 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”.)

⁶ (Han Dec., *supra*, at ¶¶ 42-48.)

⁷ (*Id.* at ¶¶ 56-61.)

1 Based on this analysis, the realistic recovery for this case is **\$427,109.18** on the low end and
2 **\$448,170.33** on the high end. (Han Dec., *supra*, at ¶ 62.) The Gross Settlement Amount of \$250,000
3 is about seven percent (7.67%) of the maximum potential exposure and fifty-six percent (55.78%)
4 of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

5 The only question at preliminary approval is whether the settlement is within the range of
6 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
7 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
8 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
9 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also
10 *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
11 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
12 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
13 speculative measure of what might have been achieved by the negotiators”). This settlement is in
14 line with the realistic exposure had Plaintiff prevailed at trial and provides a significant recovery.

15 **d. Conditional Certification of the Class Is Appropriate**

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

21 The Class is ascertainable and numerous to make it unfeasible to join all Class Members,
22 and there are common questions of law and fact predominating over any individual questions. (Han
23 Dec., *supra*, at ¶ 63.) Plaintiff contends as a former hourly-paid, non-exempt employee of
24 Defendant, his claims are typical of the claims of the Class, and Class Counsel will fairly and
25 adequately protect the Class’s interests. (*Ibid.*) Plaintiff also asserts the prosecution of separate
26 actions by individual Class Members would create the risk of inconsistent adjudications. (*Ibid.*)

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

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

9 This case involves about two hundred thirty-three (233) Class Members. (Han Dec., *supra*,
10 at ¶ 64.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008)
11 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and
12 former employees” is sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of
25 recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department*
26 *of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In other words,
27 courts determine whether the elements necessary to establish liability are susceptible to common
28 proof, even if the class members must individually prove their damages. (*Brinker Restaurant*

1 *Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly granted
2 class certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v.*
3 *JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012
4 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi*
5 *South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS
6 [court certified class of dancers on state law claims].)

7 Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged.
8 (Han Dec., *supra*, at ¶ 65.) Plaintiff contends all Class Members were subject to the same or similar
9 employment practices, policies, and procedures described in detail above. (*Ibid.*)

10 **2. Plaintiff's Claims Are Typical of the Class Claims**

11 Typical claims rely on legal theories and facts substantially like those of other class
12 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of
13 Defendant and alleges he and the Class Members were employed by the same company and injured
14 by Defendant's common policies and practices related to the claims described above. (Han Dec.,
15 *supra*, at ¶ 66.) Plaintiff now seeks relief for these claims and derivative claims on behalf of all
16 Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are
17 based on the same legal theories as those applicable to the Class. (*Ibid.*)

18 **3. Plaintiff Is Adequate to Represent the Class**

19 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 67.)
20 Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation,
21 understands his fiduciary obligations, and actively participated in the prosecution of this case.
22 (*Ibid.*) Plaintiff also spent time in meetings and conferences with Class Counsel to provide Class
23 Counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Finally,
24 Plaintiff has no interest averse to the interests of the other Class Members. (*Ibid.*)

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

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

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

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

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

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

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

24 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
25 advises the Class Members of their right to participate in the Settlement, how and when to object
26 to or request exclusion from the Settlement, and the date, time, and location of the Final Approval
27 Hearing. (See Han Dec., *supra*; Exhibits A, B to Exhibit 2.)

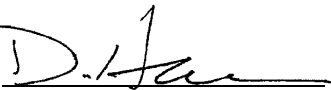
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1 **V. CONCLUSION**

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

6
7 Dated: August 23, 2022

JUSTICE LAW CORPORATION

8
9 By. 
10 Douglas Han
11 *Attorneys for Plaintiff*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On August 24, 2022, 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: **Fuentes v. Apex Contracting and Restoration, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-851399-21**
Court Case No.: 37-2022-00001417-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 August 24, 2022, at Pasadena, California.



Mariah Anderson