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

JOSE RIVERA, individually, and on behalf
of other members of the general public
similarly situated,

Plaintiff,

v.

ACCO BRANDS CORPORATION, a
Delaware corporation; ACCO BRANDS
USA, LLC, a Delaware limited liability
company; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: CIVDS2020490

Assigned for All Purposes To:
Honorable David Cohn
Department S-26

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: June 17, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department S-26

Complaint Filed: September 28, 2020
FAC Filed: August 11, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 17, 2022 at 10:00 a.m., or as soon as the matter
2 may be heard, before the Honorable David Cohn in Department S-26 of the San Bernardino County
3 Superior Court (San Bernardino Justice Center), located at 247 West Third Street, San Bernardino,
4 California 92415, Plaintiffs Jose Rivera, Chad Turina, and Jorge Lopez (“Plaintiffs,” “Plaintiff
5 Rivera,” “Plaintiff Turina,” and “Plaintiff Lopez”) will and hereby move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
8 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 3** to
9 the Declaration of Douglas Han, including, and not limited to, the means of
10 allocation and distribution of funds, the allocations for payments under the Labor
11 Code Private Attorneys General Act of 2004 (“PAGA”), Attorney Fee Award, Cost
12 Award, Class Representative Enhancement Payments, and Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiffs as the Class Representatives;
- 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 Agreement;
- 18 • Approving the Election Not to Participate In (“Opt Out” From) Class Action
19 Settlement (“Exclusion Form”) attached as **Exhibit B** to the Agreement;
- 20 • Directing the mailing of the proposed Class Notice and Exclusion Form
21 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
22 to the proposed Class;
- 23 • Approving the proposed deadlines for the notice and settlement administration
24 process;
- 25 • Approving ILYM Group, Inc. (“ILYM Group”) as the Settlement Administrator;
26 and

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$875,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and on behalf of all current
4 and former non-exempt California employees of Defendant ACCO Brands USA, LLC
5 (“Defendant”) who were employed by Defendant at any time during the time period from
6 September 28, 2016 through the date the Court preliminarily approves the Agreement or, in the
7 alternative, if applicable, the date identified pursuant to section III (N)(19)(b) of the Agreement
8 (“Class” and “Class Period”). At the time of this filing, the number of Class Members confirmed
9 by Defendant is estimated to be ninety (90). (Declaration of Douglas Han (“Han Dec.”), ¶¶ 8-9.)

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

15 **II. BACKGROUND**

16 On September 28, 2020, Plaintiff Rivera filed a wage-and-hour class action lawsuit against
17 ACCO Brands Corporation in the Superior Court of California, County of San Bernardino, alleging
18 eight (8) causes of action. (Han Dec., *supra*, at ¶ 10.) On August 11, 2021, Plaintiff Rivera filed
19 a First Amended Complaint that replaced ACCO Brands Corporation with Defendant and Osair
20 Technologies, LLC as the defendants. (*Id.* at ¶ 11.)

21 On December 28, 2021, Plaintiff Lopez provided the written notice to the California Labor
22 and Workforce Development Agency (“LWDA”) and Defendant. (Han Dec., *supra*, at ¶ 12.)

23 The Parties attended mediation on Plaintiffs’ claims with mediator Deborah Saxe on
24 January 18, 2022 that resulted in the settlement of this case. (Han Dec., *supra*, at ¶ 13.) Plaintiff
25 Rivera will file a Second Amended Complaint that: (a) added a cause of action for violation of
26 Labor Code sections 2698, *et seq.*; (b) added Plaintiff Lopez and Plaintiff Turina as additional
27 plaintiffs; and (c) removed Osair Technologies, LLC as one of the defendants. (*Id.* at ¶ 14.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 After Plaintiff Rivera filed his wage-and-hour class action lawsuit, both Parties engaged in
4 discovery. (Han Dec., *supra*, at ¶ 16.) After propounding formal discovery, the Parties met and
5 conferred and agreed to engage in an exchange of information and then attend mediation. (*Ibid.*)

6 Prior to the mediation, the Parties conducted significant investigation and discovery of the
7 relevant facts and law. (Han Dec., *supra*, at ¶ 17.) Defendant produced documents relating to its
8 wage-and-hour policies, practices, and procedures. (*Ibid.*) Class Counsel reviewed time records,
9 pay records, and information relating to the size and scope of the Class. (*Ibid.*) Class Counsel also
10 interviewed about a dozen Class Members who worked for Defendant. (*Ibid.*)

11 Based upon the information provided by Defendant and interviews Class Counsel had with
12 non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant: (a) failed to
13 provide employees with legally mandated meal and rest breaks; (b) failed to pay employees for all
14 hours worked; (c) failed to include non-discretionary bonuses and/or commissions in employees’
15 regular rates of pay for purposes of overtime compensation and sick leave pay; (d) failed to
16 reimburse employees for necessary business expenses; (e) issued noncompliant wage statements;
17 and (f) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 19-27.)

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

19 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
20 **Stipulation and Settlement Agreement**

21 During the Parties’ mediation on January 18, 2022, the Parties discussed the risks of
22 continued litigation, certification, and the merits of the claims and defenses versus settlement
23 benefits. (Han Dec., *supra*, at ¶ 28.) With the assistance of the mediator, the Parties were able to
24 reach an agreement on settlement, the terms of which were memorialized in the Settlement
25 Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 3.)

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

2 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Dec.,
3 *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have always been
4 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
5 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense
7 and length of continued proceedings necessary to continue the litigation against Defendant. (Han
8 Dec., *supra*, at ¶ 43.) Plaintiffs and Class Counsel also considered the inherent uncertainty and risk
9 of further litigation, the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*)
10 Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
11 reasonable settlement, and is in the Class’s best interests. (*Ibid.*)

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

13 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
14 Plaintiffs’ claims and Defendant’s defenses before reaching the Settlement and engaged in
15 sufficient investigation, research, and discovery. (Han Dec., *supra*, at ¶ 44.) The Settlement was
16 only possible following significant investigation and evaluation of Defendant’s relevant policies
17 and procedures, as well as the data Defendant produced. (*Ibid.*) Furthermore, this case has also
18 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
19 of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*;
20 *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

22 **i. Deductions from the Settlement**

23 The Parties have agreed that this action be settled and compromised for the non-
24 reversionary total sum of \$875,000 (“Gross Settlement Amount”) which includes, subject to Court
25 approval: (a) the Attorney Fee Award to Class Counsel of \$306,250 (35% of the Gross Settlement
26 Amount); (b) the Cost Award to Class Counsel of \$20,000 for reimbursement of litigation costs
27 and expenses; (c) the Class Representative Enhancement Payments of \$10,000 to Plaintiff Rivera
28 and Plaintiff Lopez each and \$7,500 to Plaintiff Turina; (d) Administration Costs to ILYM Group,

the Settlement Administrator, of \$6,000; and (e) the PAGA Payment of \$50,000 to the LWDA and PAGA Members. (Han Dec., *supra*, at ¶ 29.)

ii. Calculation of the Class Members' Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$465,250 ("Net Settlement Amount") will be distributed to Class Members – with an average gross Individual Settlement Share estimated at \$5,169.44.¹ (Han Dec., *supra*, at ¶ 31.)

Each Participating Class Member will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Dec., *supra*, at ¶ 32.) Individual Settlement Shares will be apportioned twenty-five percent (25%) wages and seventy-five percent (75%) interest, penalties, and other non-wages. (*Ibid.*)

The Settlement Administrator shall pay each PAGA Member according to his or her proportional share of the \$12,500 of the PAGA Payment allocated to PAGA Member using the formula set forth in the Settlement Agreement. (Han Dec., *supra*, at ¶ 33.) PAGA Members' portion of the PAGA Payment will be allocated as one hundred percent (100%) penalties and will be issued an IRS form 1099 if it exceeds \$600. (*Ibid.*)

iii. Notice to the Class

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class Data. (Han Dec., *supra*, at ¶ 34.) The Settlement Administrator will mail the Notice Packets to the Class Members via first-class regular U.S. Mail within fourteen (14) calendar days after receiving the Class Data. (*Id.* at ¶ 35.)

iv. Distribution of Funds

Within fourteen (14) calendar days of the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund. (Han Dec., *supra*, at ¶ 36.) Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Agreement. (*Ibid.*)

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¹ \$465,250 (Net Settlement Amount) / 90 (Class Members) = \$5,169.44.

1 Class Members and PAGA Members must cash or deposit their settlement payment checks
2 within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec.,
3 *supra*, at ¶ 37.) Any uncashed settlement payment checks will be canceled, and the uncashed funds
4 will be paid to the California State Controller: Unpaid Wage Fund. (*Ibid.*)

5 **v. Release of Claims**

6 Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the
7 Agreement, Plaintiffs and the Participating Class Members will fully and finally release and
8 discharge the Released Parties from the Released Claims. (Han Dec., *supra*, at ¶ 38; Exhibit 3,
9 *supra*, at §§ I.FF., III.K.)

10 Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the
11 Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not
12 limited to, any and all PAGA Members are barred from pursuing any action for civil penalties
13 under Labor Code sections 2698, *et seq.*, against the Released Parties, based on or arising out of
14 the alleged violations of Labor Code sections alleged in Plaintiff Lopez's notice sent to the LWDA
15 on December 28, 2021 and the complaints, and occurring during the PAGA Period. (Han Dec.,
16 *supra*, at ¶ 39; Exhibit 3, *supra*, at § III.L.)

17 Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the
18 Agreement, in exchange for the Class Representative Enhancement Payments of \$10,000 to
19 Plaintiff Rivera and Plaintiff Lopez each, and \$7,500 to Plaintiff Turina, and in recognition of their
20 work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation
21 costs if this matter had not successfully resolved, Plaintiffs provide a general release of claims for
22 themselves and any respective spouse, heirs, successors and assigns. (Han Dec., *supra*, at ¶ 40;
23 Exhibit 3, *supra*, at § III.M.)

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

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

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

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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

² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action and PAGA Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

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

i. The Settlement Amount of \$875,000 Is Fair and Reasonable

The proposed Settlement was only possible following significant investigation and evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant produced for the putative class, as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at 44.)

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1 This investigation and evaluation informed Plaintiffs' central theories of liability. (Han
2 Dec., *supra*, at ¶ 45.) These claims are predicated on Defendant's alleged: (a) failure to properly
3 calculate and pay overtime wages and sick leave; (b) failure to provide meal and rest breaks and
4 pay applicable premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e)
5 failure to issue compliant wage statements; (f) failure to reimburse business expenses; (g) violation
6 of Labor Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code
7 sections 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiffs' theories of liability. (*Id.* at ¶ 46.)

8 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
9 to certification are always present. (Han Dec., *supra*, at ¶ 47.) As the California Supreme Court
10 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
11 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
12 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
13 (*Ibid.*) These factors led Plaintiffs to discount calculations of potential damages.

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

15 The provisions of the Labor Code potentially triggering PAGA penalties in this case
16 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
17 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and
18 2802. (Han Dec., *supra*, at ¶ 56.) Defendant asserts that, regardless of the results of the underlying
19 causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*)
20 Defendant also maintains that, in addition to its strong arguments against the underlying claims, it
21 had a strong argument that it would be unjust to award maximum PAGA penalties given the law's
22 unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112
23 [reducing penalties by 30% under this authority].) Defendant argued that without stacking and

24 _____
25 ⁴ (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].)

1 limited to the initial violation, the PAGA penalties would be limited to **\$7,100** (71 employees x
2 \$100 initial violations) on the low end and **\$56,800** (71 employees x \$100 x 8 theories of recovery)
3 on the high end. (Han Dec., *supra*, at ¶¶ 57-60.)

4 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
5 (Han Decl., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the statutory
6 claims, such as violations of Labor Code sections 203, 226, 226.7, 510, 512(a), 1194, 1197, 1197.1,
7 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable
8 based on a rate of **\$10.76** per pay period [$\$50,000 \div 4,647$ pay periods in PAGA date range =
9 **\$10.76**], given the fact that Defendant is also paying an additional \$825,000 in the class
10 settlement.⁵ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication
11 that [the] amount was the result of self-interest at the expense of other Class Members,” such
12 amounts are generally considered reasonable.⁶ (*Ibid.*)

13 Considering Defendant’s defenses, its supporting evidence, and its position that the case is
14 not suitable for class treatment, the settlement of \$875,000 is reasonable, adequate, and fair.

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

16 Excluding the civil penalties, which could be completely discretionary, for the reasons
17 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
18 be **\$2,658,047.96** on the low end and **\$2,835,867.96** on the high end. (Han Dec., *supra*, at ¶ 62.)

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24 ⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
25 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 ⁶ (*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, 579,
28 “[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	\$450,551.95	70%	60%	\$54,066.23
Meal Break Premiums	\$1,053,968.55	60%	50%	\$210,793.71
Overtime/Minimum Wage: Off-the-Clock Work	\$355,470 to \$533,290	50%	40%	\$106,641 to \$159,987
Overtime/Minimum Wage: Rounding	\$146,031.26	30%	40%	\$61,333.13
Overtime/Minimum Wage: Regular Rate	\$13,095	30%	50%	\$4,583.25
Unreimbursed Business Expenses	\$114,048	20%	70%	\$27,371.52
Wage Statement Penalty	\$284,000	30%	40%	\$119,280
Waiting Time Penalty	\$240,883.20	30%	40%	\$101,170.94
MAXIMUM TOTAL EXPOSURE	\$2,658,047.96 to \$2,835,867.96⁷			\$685,239.78 to \$738,585.78⁸

Based on this analysis, the realistic recovery for this case is **\$685,239.78** on the low end and **\$738,585.78** on the high end. (Han Dec., *supra*, at ¶ 71.) The Gross Settlement Amount of \$875,000 is about thirty percent (29.68%) of the maximum potential exposure and approximately one hundred one hundred thirteen percent (113.28%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or

⁷ (Han Decl., *supra*, at ¶¶ 48-55.)

⁸ (*Id.* at ¶¶ 63-70.)

speculative measure of what might have been achieved by the negotiators”). Nevertheless, this Settlement is in line with the realistic exposure had Plaintiffs prevailed at trial and provides a 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 ¶ 72.) Plaintiffs contend that as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. Also, Plaintiffs assert that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior. (*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 ninety (90) Class Members. (Han Dec., *supra*, at ¶ 73.) 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 common
3 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
4 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*
5 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
6 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
7 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis
8 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . .
9 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
10 certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

11 **1. Common Issues Predominate**

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

23 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 74.) Plaintiffs contend all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 76.) Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of their work environment. (*Ibid.*)

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

e. The Settlement Is Fair, Reasonable, and Adequate

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.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement

1 after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel
2 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
3 percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)
4 All these elements are present in this case.

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

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

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

11 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
12 advises the Class Members of their right to participate in the Settlement; how and when to object
13 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
14 hearing. (See Han Dec., *supra*; Exhibits A and B to Exhibit 3.)

15 **V. CONCLUSION**

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

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21 Dated: May 23, 2022

JUSTICE LAW CORPORATION

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24 By: 

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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On May 23, 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: **Rivera v. Acco Brands Corporation**
LWDA/Court Case No.: **LWDA Case No.: CM-859965-21**
Court Case No.: CIVDS2020490
San Bernardino 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

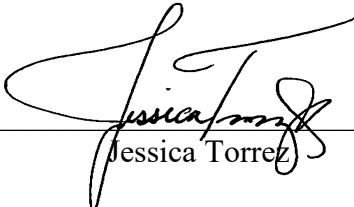
[X] BY ELECTRONIC SUBMISSION

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 May 23, 2022, at Pasadena, California.



Jessica Torrez