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

11 JANINE NELSON, individually, and on
12 behalf of other members of the general public
similarly situated;

13 Plaintiff,

14 v.

15 CAPTEK SOFTGEL INTERNATIONAL,
16 INC., a California corporation; and DOES 1
17 through 100, inclusive;

18 Defendants.
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Case No.: 20STCV21184

CLASS ACTION

Assigned for All Purposes To:
Hon. Elihu M. Berle
Dept.: SS-06

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Plaintiff's Notice of
Motion and Motion; Declarations of Douglas
Han, Janine Nelson, Carl Bridges, and Julie
Green; and [Proposed] Order]*

Date: March 30, 2022
Time: 10:00 a.m.

Complaint Filed: May 29, 2020
Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Stipulation”), filed
4 concurrently herewith, the class consists of all current and former individuals who are or who have
5 been employed by Defendant in California during the Class Period as a non-exempt employee (or if
6 any such person is incompetent, deceased, or unavailable due to military service, the person’s legal
7 representative or successor in interest evidenced by reasonable verification) from May 29, 2016
8 through December 31, 2021 (“Class”). After engaging in substantial investigation and extensive
9 negotiations with the assistance of a respected third-party neutral Jeffrey Ross, the parties have
10 agreed to settle all claims alleged in the lawsuit on a class-wide non-reversionary basis for
11 \$850,000.00, inclusive of all fees and costs. All estimated 1,106¹ Class Members shall receive a
12 settlement share unless they opt out.

13 The proposed settlement reflected in the Stipulation is fair, reasonable, and adequate, and in
14 the best interests of the class. Consequently, Plaintiff Janine Nelson (“Plaintiff”) with the consent of
15 Defendant CAPTEK SOFTGEL INTERNATIONAL, INC. (“Defendant”) (Plaintiff and Defendant
16 are collectively referred to herein as the “Parties”), hereby moves this Court for an order: (1)
17 granting preliminary approval of the proposed class action settlement, as embodied in the Joint
18 Stipulation of Class Action Settlement (“Stipulation”) filed concurrently herewith; (2) approving the
19 Class Notice to be sent to class members, and the notification schedule as set forth in the Stipulation
20 and the Proposed Order, also filed concurrently herewith; and (3) setting a hearing for final approval
21 of the class action settlement.

22 **II. STATUS OF THE LITIGATION**

23 **A. Procedural History**

24 On May 29, 2020, a lawsuit was commenced against Defendant by Plaintiff Janine Nelson
25 in the Superior Court of California, County of Los Angeles, on behalf of herself and all individuals
26 employed by Defendant as non-exempt employees at any time within four years of the filing of the
27

28 ¹ This was the number of Class Members at the time of the Belaire West notice administration in September 2021.
An updated number is expected shortly.

1 Action within California. This lawsuit included violations under Violation of Business &
2 Professions Code § 17200, *et seq.*: (1) Failure to Pay Wages and Overtime Under Labor Code § 510,
3 (2) (3) Meal Period Liability Under Labor Code § 226.7, (3) Rest-Break Liability Under Labor Code
4 § 226.7, (4) Failure to Pay Minimum Wages, and (5) (6) Failure to Reimburse Expenses Under
5 Labor Code § 2802. (Declaration of Douglas Han (“Han Decl.”), filed concurrently herewith, ¶ 10.)

6 On May 6, 2021, the Parties participated in mediation before Jeffrey Ross. While the
7 mediation itself was unsuccessful, informal discussions with the mediator continued for an
8 additional several months. (Han Decl., ¶ 11.) Then, in November of 2021, the Parties reached a
9 resolution of the entire case on a Class and PAGA wide basis. Thus, the mediation was a successful,
10 arms-length negotiation with the Parties agreeing to settle the above-entitled matter and enter into
11 this Stipulation. (*Id.*)

12 On February 28, 2022, Plaintiff Janine Nelson filed her Stipulation regarding First Amended
13 Complaint to include: (i) failure to pay all wages, including but not limited to regular wages,
14 minimum wages and overtime wages due; (ii) failure to provide proper meal and rest periods, and to
15 properly provide premium pay in lieu thereof; (iii) failure to provide complete, accurate or properly
16 formatted wage statements; (iv) waiting time penalties; (v) failure to reimburse business
17 expenditures; and (vi) penalties under the Private Attorneys General Act § 2698, *et seq.* (*Id.* at ¶ 12)

18 **B. Investigation**

19 Before filing the above Action, Class Counsel investigated and researched the facts and
20 circumstances underlying the pertinent issues and the law applicable thereto. (Han Decl. at ¶ 13.)
21 This required thorough discussions and interviews between Class Counsel and Plaintiff, as well as
22 preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their
23 initial investigation, Class Counsel determined that Plaintiff Janine Nelson’s claims were well suited
24 for class action adjudication owing to what appeared to be a common course of conduct affecting a
25 similarly situated group of employees. (*Id.*)

26 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and
27 claims giving rise to the action, including:

- 28 • conducting formal discovery through Form Interrogatories, Special

1 Interrogatories, Request for Production of Documents, Request for Admissions, and circulating a
2 Beldaire West Notice amongst Class Members

3 • conducting informal discovery and meeting and conferring with defense
4 counsel about same. Defendant's counsel provided Plaintiff's counsel the following documentation
5 informally:

- 6 ○ All job descriptions of Class Members during the Class Period;
- 7 ○ All applicable employment handbooks from May of 2016 through May 6,
8 2021;
- 9 ○ Payroll, timekeeping records, and paystubs for Plaintiff;
- 10 ○ Redacted payroll, timekeeping records, and paystubs comprising of a
11 random sampling of 850 employees.
- 12 ○ The Parties agreed to a 20% random sampling figure for a total of 850
13 Class Members.
- 14 • reviewing and analyzing time and pay records as well as employment
15 handbooks, Plaintiff's personnel files, relevant policies and other documentation;
- 16 • researching the applicable law and potential defenses;
- 17 • constructing damage models based on interpretations of California law;
- 18 • meeting and conferring with Plaintiff's expert on data analysis and estimated
19 exposure of Defendant; and
- 20 • reviewing information provided by Defendant at the mediation.

21 (Han Decl. at ¶ 14.)

22 The Class enumerated in this action is ascertainable because the Class Members may be
23 readily identified by reference to Defendant's records. Defendant has agreed to share the information
24 from these records with the Settlement Administrator, CPT Group, in order to identify and contact
25 the Class Members. Our investigation revealed approximately 1,106 Class Members and PAGA
26 Members at the time of the Beldaire West notice administration in September 2021. (Han Decl. at ¶¶
27 15-17.)

28 ///

1 Defendant, for its part, vigorously contested liability, the amount of claimed damages, and
2 the propriety of class certification. (*Id.* ¶ 16.) After Class Counsel analyzed the relevant documents
3 and other gathered data, Class Counsel believed that this case was appropriate for resolution via
4 mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate
5 Plaintiff’s claims and explore the possibility of settlement. (*Id.*)

6 C. Settlement Efforts

7 On May 6, 2021, the Parties mediated this case with Jeffrey Ross, a respected and highly
8 experienced mediator in wage and hour class actions. (Han Decl. ¶ 17-18.) During the mediation, the
9 Parties discussed all aspects of the case, including the risks of litigation and the risks to both parties
10 of proceeding with a motion for class certification as well as the law relating to unpaid wages, rest
11 breaks, the addition of meal break claims, and the non-reimbursement of necessary business
12 expenses. (*Id.*) As a result of ongoing discussions after the mediation, the Parties eventually agreed
13 to settle the lawsuit according to the terms set forth in the Settlement Agreement. (*Id.*; See Exhibit 1
14 attached to Han Decl. (the “Stipulation”).)

15 From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks
16 and delays posed by further litigation, and Class Counsel’s own prior litigation experience, Class
17 Counsel believe that the recovery for each Class Member is fair and reasonable, taking into
18 consideration the amounts received in other wage and hour class actions, the risks inherent in
19 litigation of this genre, Defendant’s financial condition, and the reasonable tailoring of each Class
20 Member’s claim to the settlement award he or she will receive. (*Id.*, at ¶ 18) Further, based on the
21 settlement negotiations, which were hard-fought and conducted in good faith and at arm’s length
22 between attorneys with substantial experience litigating class actions and wage and hour cases, the
23 Stipulation was the product of a non-collusive settlement process in which the Parties were forced to
24 make significant compromises in the interest of reaching a full and complete settlement of the
25 lawsuit. (*Id.*)

26 III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

27 Under the terms of the proposed Stipulation, the Parties have agreed that all claims brought
28 on behalf of the class shall be fully and finally resolved for the amount of \$850,000.00 (“Maximum

1 Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted by Plaintiff
2 on behalf of the proposed class. (Han Decl., ¶ 19; Exh. 1, ¶ 14.) The Stipulation defines the class as
3 all current and former individuals who are or who have been employed by Defendant in California
4 during the Class Period as a non-exempt employee (or if any such person is incompetent, deceased,
5 or unavailable due to military service, the person’s legal representative or successor in interest
6 evidenced by reasonable verification) from May 29, 2016 through December 31, 2021. (Han
7 Decl., ¶ 20; Exh. 1, ¶¶ 5, 7.)

8 The “PAGA Members” or “Settlement PAGA Members” is defined as “all current and
9 former individuals who are or who have been employed by Defendant in California during the
10 PAGA Period as a non-exempt employee (or if any such person is incompetent, deceased, or
11 unavailable due to military service, the person’s legal representative or successor in interest
12 evidenced by reasonable verification) May 29, 2019, through December 31, 2021. (Han Decl., ¶
13 21; Exh. 1, ¶¶ 6, 8.)

14 The amount remaining in the Maximum Settlement Amount after the following deductions
15 have been made (called the “Net Settlement Amount”) shall be available for distribution to Class
16 Members who do not opt out: (*Id.* at ¶¶ 22-23.)

17 • up to one third of the Maximum Settlement Amount, in the amount of Two Hundred and
18 Eighty-Three, Three Hundred and Thirty-Three Thousand Dollars and Thirty-Three Cents
19 (\$283,333.33), to Class Counsel for attorneys’ fees, and not more than Twenty Thousand dollars
20 (\$20,000.00) in reasonable litigation costs² (Han Decl., ¶ 22; Exh. 1, ¶ 32.);

21 • up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to the Class Representative
22 Janine Nelson;

23 • claim administration costs expected not to exceed, via a “not to exceed” quote, in the
24 amount of Thirteen Thousand, Five Hundred Dollars and Zero Cents (\$13,500.00) (Han Decl., ¶ 22;
25 Exh. 1, ¶ 34.); and,

26 ///

27
28 ² Class Counsel’s current litigation costs are currently \$14,145.74. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 • \$25,000.00 PAGA Payment (\$6,250.00 to be paid to the participating Class Members
2 and \$18,750.00 to be paid to the LWDA). (Han Decl., ¶ 22; Exh. 1, ¶ 35.).

- 3 • Class Members' share of any employment taxes.

4 The balance (approximately \$498,166.67.00) will be distributed to Class Members who do
5 not exclude themselves from settlement. (Han Decl., ¶ 23; Exh. 1, ¶ 36.) The Settlement
6 Administrator will calculate the total of Workweeks worked by each Class Member as a non-exempt
7 employee in California during the Class Period and the aggregate total number of Workweeks
8 worked by all Class Members as non-exempt employees in California during the Class Period. (Han
9 Decl., ¶ 23; Exh. 1, ¶ 36(a)-(b).) To determine each Class Member's estimated "Individual
10 Settlement Payment," the Settlement Administrator will use the following formula: The Net
11 Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the
12 Workweek Value. (*Id.*) Each Class Member's "Individual Settlement Payment" will be calculated by
13 multiplying each individual Class Member's total number of Workweeks by the Workweek Value.
14 (*Id.*) If there are any valid and timely Requests for Exclusion from members of the Settlement Class,
15 the Settlement Administrator shall proportionately increase the Individual Settlement Payment for
16 each Class Member according to the number of Workweeks worked, so that the amount actually
17 distributed to the Settlement Class equals 100% of the Net Settlement Amount. (Han Decl., ¶ 23;
18 Exh. 1, ¶ 36(c).)

19 Each PAGA Members Individualized Settlement Payment will be calculated and
20 apportioned from the PAGA Payment amount based on the number of Pay Periods a PAGA Member
21 worked during the PAGA Period as a non-exempt employee in California. (Han Decl., ¶ 24; Exh. 1,
22 ¶ 37(a)-(c).) The Settlement Administrator will calculate the total number of Pay Periods worked by
23 each PAGA Member as a non-exempt employee in California during the PAGA Period and the
24 aggregate total number of Pay Periods worked by all PAGA Members as non-exempt employees in
25 California during the PAGA Period ("Pay Period Value"). (*Id.*) To determine each PAGA Members
26 estimated "Individual Settlement Payment," the Settlement Administrator will use the following
27 formula: The PAGA Payment amount's portion allocated to the PAGA Period will be divided by the
28 aggregate total number of Pay Periods within the PAGA Period, resulting in the Pay Period Value.

1 Each PAGA Member’s “Individual Settlement Payment” will be calculated by multiplying each
2 individual PAGA Member’s total number of Pay Periods by the Pay Period Value. (Han Decl., ¶ 24;
3 Exh. 1, ¶ 37(a)-(c).) PAGA Members will not be able to opt out or request exclusion from the PAGA
4 Payment. (Han Decl., ¶ 24; Exh. 1, ¶ 37(c).)

5 The amounts distributed to the Participating Class Members will be characterized as 15%
6 alleged wages, 85% as alleged interest and penalties. (Han Decl., ¶ 25; Exh. 1, ¶ 53.) Defendant shall
7 pay the employer’s share of payroll taxes due on the portion of Settlement Payments allocated to
8 wages separately and in addition to the Maximum Settlement Amount. (Han Decl., ¶ 25; Exh. 1, ¶
9 14.)

10 The settlement amount was a compromise figure, factoring in the inherent risks related to
11 certification, liability, damages, and Defendant’s economic solvency. (Han Decl., ¶ 26.) However,
12 taking into account all of the circumstances of the action and the defenses raised by Defendant
13 against certification, liability and damages, Class Counsel believes that the settlement is fair and
14 reasonable. (*Id.*)

15 Attached to the Stipulation as **Exhibit A** is the Notice of Class Action Settlement (the
16 “Notice”). The Notice includes a summary of the case and settlement terms and provides Class
17 Members with instructions on how to exclude themselves and object to the settlement. The Parties
18 have approved the Notice, which is to be disseminated to Class Members consistent with the manner
19 and timing set out in the Stipulation and Proposed Order. (Han Decl., ¶¶ 27-28; Exh. A to the
20 Stipulation). The Parties request that this Court approve the Notice as well.

21 The Parties have also agreed that CPT Group (“CPT”) shall handle the notice and claims
22 administration (Exh. 1, ¶ 27), and the Parties respectfully request this Court to appoint CPT to
23 handle those procedures. The procedures for mailing notice and processing exclusions and
24 objections as well as distribution of the Net Settlement Amount is detailed in the Stipulation. (Han
25 Decl., ¶ 27-28; Exh. 1, ¶¶ 43-48.)

26 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

27 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v.*
28 *CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29

1 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor of
2 class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75. The
3 decision to certify a class is a procedural one and should be based on the allegations in the operative
4 complaint, and not in the perceived factual or legal merit of the class claims. *Linder v. Thrifty Oil*
5 *Co.* (2000) 23 Cal. 4th 429, 439-41.

6 To certify a settlement class, the Court must find the two primary requirements for
7 maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-
8 defined community of interest in the questions of law and fact involving the parties to be
9 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*
10 *Company* (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

11 **A. There Is a Numerous and Ascertainable Class**

12 Whether a class is ascertainable is determined by examining the class definition, the size of
13 the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d at
14 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.
15 Class members are “ascertainable” where they may be readily identified without unreasonable
16 expense or time.

17 Plaintiff contends, and Defendant does not dispute for settlement purposes only, this
18 requirement and the requirement of numerosity is met. Class Members are all current and former
19 individuals who are or who have been employed by Defendant in California during the Class Period
20 as a non-exempt employee (or if any such person is incompetent, deceased, or unavailable due to
21 military service, the person’s legal representative or successor in interest evidenced by reasonable
22 verification). (Exh. 1, ¶ 5.) PAGA Member(s)” or “Settlement PAGA Members” means all current
23 and former individuals who are or who have been employed by Defendant in California during the
24 PAGA Period as a non-exempt employee (or if any such person is incompetent, deceased, or
25 unavailable due to military service, the person’s legal representative or successor in interest
26 evidenced by reasonable verification). (Exh. 1, ¶ 6.)

27 Documents and information exchanged between the Parties reflect a class of approximately
28 1,106 combined Class Members and PAGA Members. (Han Decl. ¶¶ 15, 74(a).) Defendant has

1 substantially complete records of each such person, including contact information and social security
2 numbers. (Han Decl. ¶ 15.)

3 Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.
4 (Han Decl. ¶ 74(a)-(b).)

5 **B. There Is a Well-Defined Community of Interest**

6 A community of interest is established by the predominance of common issues of law and
7 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

8 [D]oes not depend upon an identical recovery, and the fact that each
9 member of the class must prove his separate claim to a portion of
10 any recovery by the class is only one factor to be considered ... The
11 mere fact that separate transactions are involved does not of itself
12 preclude a finding of the requisite community of interest so long as
every member of the alleged class would not be required to litigate
numerous and substantial questions to determine his individual right
to recover subsequent to the rendering of any class judgment which
determined in plaintiffs' favor whatever questions were common to
the class.

13 *Id.* at 809.

14 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
15 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
16 class is united in its proof. (Han Decl. ¶ 74(f).) Because Plaintiff has alleged a single scheme, “the
17 relevant proof [does] not vary among class members” and “clearly presents a common question
18 fundamental to all class members.” *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY
19 1997) 172 F.R.D. 119, 123 (*citing In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY
20 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-wide
21 causation, class-wide injury, and class-wide damages when a common course of action has been
22 shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference ““eliminates the need for
23 each class member to prove individually the consequences of the defendants’ actions to him or
24 her.”” *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1351 (*quoting Rosack v. Volvo of America Corp*
25 (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

26 This action involves, *inter alia*, a determination about Defendant’s alleged failure to pay
27 wages and overtime, failure to provide timely meal and/or rest breaks or premium payments in lieu
28 thereof, the resulting failure to pay final wages when required, the failure to reimburse necessary

1 business expenditures, the failure to provide accurate paystubs, and largely derivative claims under
2 the Business & Professions Code and PAGA. (Han Decl. ¶ 74(f).) Plaintiff contends these practices
3 effected Class Members and PAGA Members in the same way. Plaintiff contends these practices
4 resulted in a failure to compensate employees at termination, and incomplete wages displayed on
5 wage statements. The outcome of litigation on this matter depends upon questions that are common
6 to class members. (Han Decl. ¶ 74(f).) While Defendant maintained otherwise, these issues will not
7 be decided on the basis of facts peculiar to each Class Member and/or PAGA Member, but rather on
8 the basis of facts common to them all. It is also true that these issues of liability can be determined
9 on a class-wide basis. (*Id.*)

10 C. The Named Plaintiff's Claims Are Typical

11 A class representative's claims are typical when they arise from the same event, practice, or
12 course of conduct that gives rise to the claims of other putative class members, and if their claims
13 rest on the same legal theories. The class representative's claims must be "typical" but not
14 necessarily identical to the claims of other class members. It is sufficient that the representative is
15 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
16 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
17 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
18 representative must have identical interests with the class members."). Thus, it is not necessary that
19 the class representative should have personally incurred all of the damages suffered by each of the
20 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

21 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
22 Plaintiff's claims are typical of class members' claims because they arose from the same factual
23 basis and are based on the same legal theories. (Han Decl. ¶ 74(c)). Plaintiff worked as hourly non-
24 exempt-employees in California during the Class Period. (*Id.*) Accordingly, Plaintiff is a member of
25 the class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages and
26 subjected its employees to a detrimental rounding policy, etc.), which would arise if this were
27 individual actions of Plaintiff applies to the other Class Members as well. As noted in the operative
28 Complaint, ¶¶ 12-55, Plaintiff contends Defendant had an alleged practice of failing to provide her

1 all minimum wages owed, rounding time keeping records that reflect total hours worked, failing to
2 properly compensate all hours worked, failing to pay all premiums payments associated with late
3 and/or missed meal and rest breaks, and failed to reimburse all necessary business expenses, which
4 they also contend applied to the class. (Amended Complaint, ¶ 12-55; Han Decl. ¶ 74(c).) The
5 answer to these questions would determine Defendant's liability to the putative class. (Han Decl. ¶
6 74(c)). Thus, the claims of Plaintiff are typical of the claims of the putative class. (*Id.*) Accordingly,
7 the typicality requirement is satisfied. (*Id.*)

8 **D. Adequacy of Class Counsel and Class Representatives**

9 Class Counsel are experienced in class actions, have represented their clients zealously and
10 have no conflicts of interest. (Han Decl., ¶¶ 3-9, 74(d)). The Class Representative's interests are
11 aligned with those of the Class Members, she has suffered the same injuries as the Class Members,
12 and she has no conflicts of interest. (*Id.*) Therefore Class Counsel and the Class Representatives are
13 adequate.

14 **E. Predominance and Superiority**

15 Individual issues do not predominate over those common to the class. (Han Decl., ¶¶ 74(f)-
16 (g).) The class action mechanism is superior to individualized actions because class members have
17 little incentive to bring claims that are small. (*Id.*)

18 **V. THE TWO-STEP APPROVAL PROCESS**

19 Any settlement of class action litigation must be reviewed and approved by the Court. This
20 is accomplished in two steps: (1) an early (preliminary) review by the trial court, and (2) a detailed
21 review after the notice has been distributed to the class members for their comments or objections. In
22 this regard, the Manual for Complex Litigation (Second) explains:

23 A two-step process is followed when considering class
24 settlements... If the proposed settlement appears to be the product
25 of serious, informed, non-collusive negotiations, has no obvious
26 deficiencies, does not improperly grant preferential treatment to
27 class representatives or segments of the class, and falls within the
28 range of possible approval, then the court should direct that notice
be given to the class members of a formal fairness hearing, at which
evidence may be presented in support of and in opposition to the
settlement.

1 *Manual for Complex Litigation (Second)* (1985) at § 30.44. The preliminary approval of the class
2 action settlement by the trial court is simply a conditional finding that the settlement appears to be
3 within the range of acceptable settlements. *See, e.g., Newberg*, § 11.25; *North County Contractor's*
4 *Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95. Thus, the preliminary
5 approval of the class action settlement by the trial court is simply a “conditional finding that the
6 settlement appears to be within the range of acceptable settlements.

7 Settlements to resolve PAGA claims also require court approval. Labor Code § 2699(l)(2).
8 There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as
9 \$0 have been approved. *See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving
10 PAGA settlement and release that allocated \$0 to PAGA claim). Courts have also approved
11 settlements for \$20,000.00 or less. *See, e.g., Hicks v. Toys 'R' Us—Delaware, Inc.*, (C.D. Cal. Sept. 2,
12 2014) 2014 WL 4703915, at *1 (approving \$5,000 PAGA payment in \$4 million settlement); *Chu v.*
13 *Wells Fargo Invest.LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA
14 payment of \$7,500 in \$6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb.
15 6, 2017) 2017 WL 490901, at *5 (\$10,000 PAGA settlement in \$300,000 settlement).

16 A review of the preliminary approval criteria demonstrates a substantial basis for granting the
17 instant Motion and proceeding to a full settlement hearing.

18 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

19 As a matter of public policy, courts both encourage the use of the class action device and
20 favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429,
21 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure
22 of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276
23 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is
24 concerned.”).

25 Moreover, courts presume the absence of fraud or collusion in the negotiation of a
26 settlement unless evidence to the contrary is offered. In short, there is a presumption that the
27 negotiations were conducted in good faith. *Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D.
28 Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883

1 F.2d 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when
2 settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*, 2007
3 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

4 In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out
5 several factors that should be analyzed in determining if a class action settlement should be
6 approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity
7 and likely duration of further litigation; (3) the risk of maintaining class action status through trial;
8 (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the
9 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant;
10 and (8) the reaction of the class members to the proposed settlement.

11 The Settlement here satisfies each of these factors. Class Counsel conducted extensive
12 informal discovery before entering into meaningful settlement negotiations in this matter, including
13 a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay
14 records. (Han Decl., ¶¶ 13-14.) This discovery permitted Class Counsel to fairly evaluate the
15 strengths of the case and the risks associated with ongoing litigation, along with an additional
16 allegation for failure to properly record meal breaks and to pay for meal breaks taken late or that
17 were shortened. Class Counsel is very experienced in the handling of wage and hour class actions
18 and supports this Settlement. (Han Decl., ¶¶ 3-9.)

19 **A. The Strength of Plaintiff's Case.**

20 The claims in this action include failure to provide accurate wage statements, rounding of
21 hours worked, failure to pay minimum wages and overtime, failure to provide timely meal and/or
22 rest breaks or provide one hour of premium pay in lieu thereof, failure to reimburse business
23 expenses, failure to pay final wages when due, and related claims for violations of California's
24 Business & Professions Code and for penalties under PAGA. (Han Decl., ¶¶ 10-12.)

25 Class Counsel felt confident in Plaintiff's case and class certification given that Defendant's
26 policies were applicable to all class members and unlawful on their face. (Han Decl., ¶¶ 29-55.)

27 ///

1 **B. The Risks Associated with the Merits.**

2 As with all litigation, there are risks that a party will not prevail on the merits. In this case
3 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members minimum wages and
4 overtime wages for all hours worked as she and other Class Members had to work post-shift hours
5 while off the clock due to Defendant's rounding policy, along with Defendant's failure to properly
6 record meal breaks. (Han Decl., at ¶¶ 29-46.)

7 Defendant counters that the allegations regarding failure to pay wages for hours worked in
8 excess of eight hours in a day did not constitute a basis for violation of Labor Code § 510. (Han
9 Decl., at ¶ 32.) Defendant maintained that Class Members were instructed to clock in before
10 attending to any duties and to stop all work after clocking out. Defendant contends that it paid for all
11 reported hours worked, that Class Members were trained to record all hours worked, and that it paid
12 proper overtime and minimum wages to Class Members. (*Id.*) Defendant further argued that to the
13 extend time keeping records were rounded, the rounding was neutral. (*Id.*)

14 Defendant also argued that Plaintiff and other class members were provided with the
15 opportunity to take proper meal and rest periods. (*Id.* at ¶¶ 38, 40.) Defendant maintained that its
16 policies and practices allowed its employees reasonable opportunities to take duty-free rest breaks
17 under California law and that rest breaks need not be recorded, making these individualized inquiries
18 and not suitable for class treatment. (Han Decl., at ¶ 32.); *Brinker Restaurant Corp. v. Superior*
19 *Court* (2012) 53 Cal. 4th 1004, 1028-29.) If Defendant's contentions are proven true and prevail in
20 trial, the likely outcome of this claim would be no recovery for Class Members.

21 Plaintiff also alleged that Defendant failed to pay Plaintiff and other Class Members
22 minimum wages and overtime for all hours worked. (*Id.* at ¶ 31.) Plaintiff contended that she and
23 other Class Members had to work pre-shift and post-shift hours while off the clock that was not
24 properly compensated. (*Id.* at ¶ 31.) Furthermore, Defendant had a practice of rounding the time
25 worked in a way that was detriment to Class Members. (*Id.*) Moreover, Defendant tasks Plaintiff and
26 Class Members with overly burdensome workloads that imposed strict work schedules, which in turn
27 lead to regular uncompensated pre-shift and post-shift hours worked in order to keep up with the
28 demands of the job. (*Id.*)

1 Defendant argues that the allegations regarding failure to pay Class Members wages for
2 hours worked in excess of eight hours in a day did not constitute a basis for violation of Labor Code
3 § 510. Defendant contends that Class Members were instructed to clock in before attending to any
4 duties and to stop all work after clocking out. (Han Decl., at ¶ 32.) Defendant contends that they paid
5 for all reported hours worked, that Class Members were trained to record all hours worked and that
6 they paid proper overtime and minimum wages to class members. (*Id.* at ¶ 32.) Defendant further
7 argued that to the extent time keeping records were rounded, the rounding was neutral. (*Id.*)
8 Defendant contends that given its written policies and practices, any unrecorded hours were likely
9 subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying
10 this claim, Class Counsel had to apply a significant discount to damages based on this theory. (*Id.* at
11 ¶ 32.)

12 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties.**

13 In order to establish liability for these penalties, Plaintiff would first have to establish
14 liability for the underlying claims.

15 Moreover, Defendant argues that meal and rest violations, even if established, could not be
16 the predicate for a Labor Code § 226 wage statement or § 203 waiting time claim. (Han Decl., ¶ 42.)
17 For example, the California Supreme Court has held that claims for meal and rest period penalties do
18 not constitute “action[s] brought for the nonpayment of wages” for the purpose of determining
19 statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In *Ling v. P.F.*
20 *Chang’s China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an action for
21 unlawful meal and rest periods under the Labor Code “cannot support a section 203 penalty because
22 section 203, subdivision (b) tethers the waiting time penalty to a separate action for wages.”).
23 Authority is divided on this point. Moreover, although authority is divided, many district court
24 rulings support the conclusion that any unpaid meal and rest period premium pay cannot give rise to
25 derivative wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d
26 1184, 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting a wage
27 statement need only document compensation *actually received* and the hours used to calculate that
28

1 compensation). Thus, it is unclear if the Court would have permitted untimely wage penalties or
2 wage statement violations for Defendant's alleged failure to provide meal and rest period penalties.

3 In addition, Plaintiff would have to establish that Defendant's conduct was willful to recover
4 waiting time penalties. (Labor Code § 203.) With these penalties there is always the risk that the trier
5 of fact would not have held that Defendant's actions were done "willfully." A good faith belief in a
6 legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215
7 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges that Defendant failed to
8 pay for all hours worked and premiums for non-compliant meal and rest breaks. (Han Decl., ¶¶ 31-
9 40.) Plaintiff contends Class Members are entitled to these wages and premiums, which she alleges
10 were not paid at the time of Class Members termination or resignation. If Plaintiff is successful on
11 her claims, the penalties pursuant to Labor Code § 203 shall attach. Defendant, however, contends
12 that it provided employees with a reasonable opportunity to take meal and rest periods, asked class
13 members to confirm the accuracy of their time records, and therefore had good-faith defenses under
14 *Brinker* and its progeny. As such, there was some risk associated with waiting time penalties that
15 Class Counsel had to consider. (Han Decl., ¶¶ 44-46.)

16 **D. The Risks Associated with the PAGA Penalties.**

17 Labor Code § 2699.3 gives aggrieved employees the right to recover civil penalties for
18 specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of
19 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
20 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
21 violation. Labor Code § 2699(e)(2). However, if a civil penalty is provided in a specified amount by
22 the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall
23 apply. (*Id.*) The PAGA also gives the Court discretion to award any lesser amount than the
24 maximum civil penalty. (*Id.* ["...a court may award a lesser amount than the maximum civil penalty
25 amount specified by this part if, based on the facts and circumstances of the particular case, to do
26 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory."]);
27 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing
28 PAGA award on this basis].)

1 Plaintiff discounted potential penalties under this claim given this authority, and for other
2 reasons. The PAGA claims are premised on the same underlying wage statement and waiting time
3 claims, and thus subject to the same disputes and defenses. There is also a dispute as to whether
4 violations in later pay periods trigger the \$200 penalty under PAGA as a “subsequent violation.”
5 (*Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1203 (2008).) As such, there is a fair amount
6 of risk associated with PAGA claims. (Han Decl., ¶¶ 47-50.) The Parties also considered that the
7 purpose of PAGA is to “achieve maximum compliance with state labor laws,” and through the
8 proposed settlement, Defendant has agreed to ensure policies comply with California law. *Iskanian*
9 *v. CLS Transp. Los Angeles, LLC* (2014) 59 Cal. 4th 348, 379. This makes the settlements
10 contemplated PAGA payment of \$25,000.00 appropriate.

11 Based on this analysis, Class Counsel believes that this settlement is fair and reasonable and
12 in the best interest of the Class. (Han Decl., *passim*.)

13 **E. The Risks Associated with the Failure to Reimburse Necessary Business**
14 **Expenses Claim.**

15 Plaintiff alleges that Defendant required the Class Members to pay for necessary work-
16 related expenses they incurred, including, but not limited to, the cost of cellular telephone service
17 used throughout the course of Plaintiff’s job related duties and personal protective equipment. (Han
18 Decl., ¶ 51.) For example, if a machine broke down employees were required to take pictures of the
19 machine and send them to management. (*Id.*) Moreover, Plaintiff and Class Members were required
20 to purchase their own equipment such as safety gloves, steel toe shoes, and drinking water (as
21 drinking water was not provided within Defendant’s facilities), all without reimbursements. (*Id.*)

22 Defendant argues that exposure to Defendant is limited. (Han Decl., ¶ 52.) Furthermore,
23 Defendant argued that it’s employee handbook specifically discouraged the use of cellular phones
24 and that they provided personal protective equipment for its employees. (*Id.*) Defendant argued that
25 Plaintiff would be unable to certify the reimbursement claim on the class wide level (*Id.*)

26 **F. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

27 Given the risks outlined above, the issues in this case were complex and the risk for Plaintiff
28 and the Class Members associated with this litigation was high. (Han Decl., ¶¶ 56-59.) A class trial

1 would have required the retention of expensive expert witnesses, the accrual of extensive litigation
2 costs, and the Parties would have had to spend a substantial amount of time.

3 Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome
4 at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay
5 for the class members who have already waited years for resolution in this matter.

6 **G. The Risk of Maintaining Class Action Status Through Trial.**

7 In class actions, decertification is always a possibility. There is always a risk that a trial of
8 this magnitude can become unmanageable. (Han Decl., ¶¶ 56-59.) Given cases like *Duran v. U.S.*
9 *Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in
10 class actions, decertification is a real risk that Class Counsel must take into account.

11 **H. The Amount Offered in Settlement.**

12 There can be no doubt that this Settlement is the result of vigorous, adversarial, non-
13 collusive, and arms-length negotiations between the Parties with the assistance of an experienced
14 mediator. In order to determine the approximate potential damages which would be owed to Class
15 Members, Class Counsel analyzed the time records for Plaintiff and Defendant provided Class
16 Counsel with records for a sampling of the Class Members. (Han Decl., ¶ 14.) By analyzing this
17 information, Class Counsel was able to estimate the maximum value of the case if Plaintiff were to
18 prevail at trial.

19 There are approximately 1,106 total Class Members (to be updated as discussed above).
20 Class Counsel estimated the maximum exposure on the unpaid wage claim at \$3,329,392.00. (*Id.* at ¶
21 33.) The maximum exposure for the meal period claim at \$1,809,536.00 and rest claim at
22 \$3,415,500.00.³ (*Id.* at ¶¶ 39-40.) The maximum exposure for the wage statement claim is
23 \$782,050.00. (Han Decl. at ¶ 43.) The maximum exposure for the waiting time penalties claim is
24 \$1,927,613.00. (*Id.* at ¶ 46.) On PAGA, Plaintiff estimated maximum exposure at \$805,500.00. (*Id.*
25 at ¶ 50.)

26 ///

27 _____
28 ³ This rest break number assumed a 50% violation rate which grossly overstates the potential exposure as there was
no discoverable data points to show an actual violation rate without taking the depositions of numerous Class
Members.

1 Once Class Counsel was able to determine the maximum potential damages, it was able to
2 determine a fair and reasonable settlement for the Class. (Han Decl. at ¶¶ 29-55.) Class Counsel
3 analyzed the likelihood of success on the merits. (*Id.*) It believes that the Class had a reasonable
4 likelihood of success on the core claims. (*Id.*) However, Defendant disputes this contention, denies
5 all wrongdoing in this matter, and is confident they have strong legal and factual defenses to
6 Plaintiff's claims. Moreover, Class Counsel determined that the likelihood of success on the claims
7 for rest break violations, unpaid wages and for waiting time penalties were not as strong, because of
8 various defenses, including issues not suitable for class treatment, no detriment to the class members
9 over time, and *de minimis* defenses. Defendant may have had the opportunity to establish that they
10 had a good faith belief that they were complying with the law. (*Id.*) After taking into account the
11 likelihood of success on each claim and the challenges faced with certifying these claims, along with
12 Defendant's economic issues, Class Counsel determined that the settlement amount of \$850,000.00
13 was fair and reasonable. (*Id.* at ¶ 55.)

14 Under the Settlement, each of the approximately 1,106 class members will receive on
15 average \$453.59 after expenses. (*Id.*) Class Counsel feels that this Settlement is fair, reasonable, and
16 advantageous to the class. (*Id.* at ¶ 26.)

17 To summarize, the Settlement here is fair because it provides a substantial payment to each
18 Class Member for releasing his or her claims; extinguishes the risk of litigation; and provides a fair
19 and adequate distribution of the settlement proceeds whereby the funds are allocated to Class
20 Members proportionally based on their Payout Ratio.

21 As detailed at length in the accompanying Declaration of Douglas Han, the settlement is the
22 result of extensive settlement negotiations between the Parties, conducted at arm's length, and
23 informed by substantial factual and legal investigations. (Han Decl., *passim.*) Throughout this case,
24 Class Members have been represented by experienced counsel with many years of experience in
25 employment class action litigation. (Han Decl., ¶¶ 3-9.)

26 Class Counsel has devoted a considerable amount of time to the prosecution of this case,
27 including but not limited to, interviewing Plaintiff at length on repeated occasions; drafting
28 pleadings; conducting informal discovery, meeting and conferring with defense counsel about same;

1 reviewing and analyzing time records and various handbooks and policies, Plaintiff's personnel file,
2 an agreed upon sampling of data from Defendant's counsel for Class Members, and other
3 documentation; researching California law, preparing for and attending mediation; extensively
4 meeting and conferring with Plaintiff's analytical expert; and negotiating and finalizing the
5 Stipulation and related documents. (Han Decl., ¶¶ 13-15.)

6 Among those matters considered during the course of settlement negotiations were the
7 strength of Plaintiff's case versus the amounts offered in settlement; the risks, expenses, and length
8 of further litigation, including class certification and the appeals process; the present state of the law
9 as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value of a
10 settlement versus the long wait necessitated by any potential judgment in class members' favor; the
11 burdens of proof necessary to establish liability against Defendant; and Defendant's defenses to the
12 action. (Han Decl., *passim*.)

13 These factors each indicated that the interests of class members are best served by a
14 settlement of this action in the manner and upon the terms set forth in the Stipulation. The
15 Stipulation confers a substantial benefit on the class of up to \$850,000.00, based on the (i) total
16 Workweeks worked by each Class Member as a non-exempt employee in California during the Class
17 Period and the aggregate total number of Workweeks worked by all Class Members as non-exempt
18 employees in California during the Class Period (*Id.* at ¶ 23.), and the (ii) total number of Pay
19 Periods worked by each PAGA Member as a non-exempt employee in California during the PAGA
20 Period and the aggregate total number of Pay Periods worked by all PAGA Members as non-exempt
21 employees in California during the PAGA Period. (*Id.* at ¶ 24.) In addition, Class Counsel secured
22 prospective relief for the class in that Defendant will ensure their policies comply with California
23 law.

24 Class Counsel believes that the settlement is fair and reasonable and serves the best interests
25 of the Class Members. (Han Decl. at ¶ 26.) Although the recommendations of counsel proposing the
26 class settlement are not conclusive, the Court can properly take the recommendations into account,
27 particularly if counsel has been involved in litigation for some period of time, appear to be
28

1 competent, and have experience with this type of litigation, and significant discovery has been
2 completed. *See Newberg*, §11.47.

3 **I. Uncashed Checks, Unpaid Reside or Other Unclaimed Funds**

4 The Parties have agreed that funds from any checks returned as undeliverable, or any checks
5 not negotiated within 180 days, shall be distributed by the Settlement Administrator to the State
6 Controller's Unclaimed Property Fund. (Han Decl., ¶¶ 72-73; Exh. 1, ¶ 51.) No later than ten (10)
7 calendar days after the expiration of the 180 day period, the Settlement Administrator shall deposit
8 the total amounts contained in the settlement checks, and all interest that has accrued, to the State
9 Controller's Unclaimed Property Fund. (*Id.*) The Settlement Administrator shall provide a
10 declaration of deposit with the State Controller's Unclaimed Property Fund, which will be served on
11 Class Counsel and Defendant's Counsel within ten (10) calendar days of payment of the residual to
12 such beneficiary. (*Id.*)

13 Any costs associated with administering the remaining funds under this section (e.g., bank
14 stop-payment charges, settlement administration costs associated with any reserve amount) or
15 payments to the State Controller's Unclaimed Property Fund will be deducted before the deposit into
16 the State Controller's Unclaimed Property Fund. (*Id.*)

17 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE**

18 It is appropriate to provide a relatively modest additional incentive payment to the class
19 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901
20 F.Supp. 294.

21 Plaintiff spent a considerable amount of time better apprising herself of her rights, deciding
22 whether remedial action should be taken, how it should be taken, how the lawsuit would impact
23 them, and finally contacting Class Counsel who spent many hours with Plaintiff discussing the case
24 and the law. (Han Decl., ¶¶ 67-71.) In the end, Plaintiff decided to vindicate not only her own rights
25 but also those of her co-workers by pursuing a class action lawsuit. (*Id.*)

26 The courage it took to do this should not be underestimated. By suing Defendant, Plaintiff
27 contends she increased her respective risk of retaliation by prospective employers. (*Id.* ¶ 68.)
28 Plaintiff's lawsuit has now cost Defendant considerable resources, and Plaintiff contends such

1 conduct will not be lost on a prospective employer who have to choose between an applicant who
2 has never sued a prior employer and one who has. (Han Decl., ¶ 68.) Plaintiff contend this risk is
3 particularly real in the information age, where employers can, more easily than ever, perform
4 background checks of prospective employees, sometimes with the stroke of a key. (*Id.*)

5 But Plaintiff did not allow her fear of the potential repercussions of being a class
6 representative deter her from acting for the benefit of Class Members. (*Id.* ¶¶ 69-70.) To the
7 contrary, Plaintiff has been intimately involved in this case since she signed on as a class
8 representative. (*Id.*) She has devoted a substantial amount of time to helping Class Counsel
9 effectively develop and prosecute this action at every stage of the litigation since she became a
10 named plaintiff. (*Id.*) Both before and after the filing of this lawsuit, Plaintiff Janine Nelson
11 conferred with Class Counsel on numerous occasions to discuss every aspect of her case. (*Id.*)
12 Plaintiff has provided Class Counsel with information about Defendant and about the industry
13 generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the
14 litigation, participated in the mediation process, monitored the progress of the litigation with Class
15 Counsel, and reviewed and signed the settlement agreement. (*Id.*)

16 Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge
17 of Defendant's practices. (*Id.* ¶ 70.) She has diligently, adequately, and fairly represented Class
18 Members, and has not placed her interests above any member of the putative class. (Han Decl., ¶
19 70.) This sort of payment to a class representative has been a common feature of settlements
20 negotiated by Class Counsel and have been routinely approved by trial courts. (*Id.*)

21 Class Counsel believes that a service enhancement award in the amount of \$10,000.00 to the
22 Class Representatives is fair and reasonable. (*Id.* ¶ 71.)

23 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
24 **CLASS MEMBERS.**

25 Constitutional due process requires that class members be provided with notice sufficient to
26 give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust*
27 *Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient information
28 to make an informed decision as to whether to accept or object to the settlement. (*Id.* at 314.) The

1 notice must apprise the class members of the pendency of the action; reasonably convey information
2 regarding the settlement and the class members' rights, entitlements, and obligations; and afford
3 class members the opportunity to present their objections. (*Mullane v. Central Hanover Bank &*
4 *Trust Co.* (1950) 339 U.S. 306.)

5 The Notice meets constitutional standards because it provides all the information a
6 reasonable person would need to make a fully informed decision about the settlement. It will notify
7 all class members of the terms of the settlement, of its effect on their rights, of their options as class
8 members (i.e., participate, object, opt out, do nothing), and of the consequences of exercising those
9 options. (Han Decl., ¶¶ 27-28, 60-62.) Moreover, the Notice will specifically direct any class
10 members who have questions or concerns to contact the settlement administrator, CPT Group, or
11 Class Counsel. (*Id.*)

12 The standard for determining the adequacy of notice is whether the notice has "a reasonable
13 chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975)
14 50 Cal.App.3d 960, 974. The Judicial Council of California's Deskbook on the Management of
15 Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is
16 preferred when possible and dissemination of combined certification/settlement notice is a common
17 and accepted practice. *In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.

18 Here, the Notice Packet will be sent via first-class mail to each Class Member. (Han Decl.
19 ¶¶ 27, 60, Exh. 1 ¶¶ 43-45.) If any Notice Packets are returned undeliverable, the Settlement
20 Administrator will forward them to any address appearing on the returned envelope or, if there is no
21 forwarding address, perform a skip trace before mailing them to any addresses thereby identified.
22 (*Id.*) Thus, most, if not all, class members will likely receive the Notice Packet.

23 Pursuant to controlling authority, the proposed Class Notice and method of distribution fully
24 comport with due process requirements. Therefore, the Court should approve the Class Notice and
25 direct that it be distributed as proposed herein.

26 **IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT**

27 Non-settling parties and third parties periodically may attempt to object to proposed class
28 action settlements, but the right of non-settling parties to object at the final settlement approval

1 hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class
2 members have standing to object to a proposed settlement. “Beginning from the unassailable premise
3 that settlements are to be encouraged, it follows that to routinely allow non-class members to inject
4 their concerns via objection at the settlement stage would tend to frustrate this goal.” *Gould v.*
5 *Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.

6 Since an application is being filed to obtain a good faith determination, no persons other
7 than class members have standing to object to the proposed settlement. *In re School Asbestos*
8 *Litigation* (3rd Cir. 1990) 921 F.2d 1330.

9 **X. THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS**
10 **REASONABLE AND SHOULD BE APPROVED.**

11 Under the Stipulation, subject to approval by this Court, Class Counsel will seek an award
12 of fees equal to thirty-three percent of the of the Maximum Settlement Amount, amounting to
13 \$283,333.33, and actual litigation costs of up to \$20,000.00⁴. The requested fees are fair
14 compensation for a law firm involved in undertaking complex, risky, expensive, and time consuming
15 litigation solely on a contingent basis. (Han Decl. ¶¶ 22, 64-65.) Defendant will not oppose Class
16 Counsel’s fee and cost request.

17 California courts routinely look to the federal courts on class action approvals. The Ninth
18 Circuit has recognized that an appropriate method for awarding attorneys’ fees in class actions is to
19 award a percentage of the “common fund” created as a result of the settlement. *Vincent v. Hughes*
20 *Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common fund/percentage
21 approach is to “spread litigation costs proportionally among all the beneficiaries so that the active
22 beneficiary does not bear the entire burden alone.” (*Id.*) Accordingly, courts have discretion to
23 choose either the percentage-of-the-fund method or the lodestar method. *In re Wash. Pub. Power*
24 *Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

25 Several courts have, however, expressed frustration with the “lodestar” approach for
26 deciding fee awards, which usually involves wading through voluminous time records. Thus, the
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28 ⁴ Class Counsel’s current litigation costs are currently \$14,145.74. This amount does not include any costs associated with the Motion for Preliminary Approval.

1 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the
2 interests of class counsel and absent class members; (2) it encourages efficient resolution of the
3 litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the
4 demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-79. The
5 Ninth Circuit has used the percentage of the common fund approach to determine the award of
6 attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-79
7 (approving attorneys' fee of 33 1/3% of settlement fund).

8 Class Counsel's application for attorneys' fees in light of the facts and circumstances
9 surrounding this case is well within the range of reasonableness. Historically, courts have awarded
10 percentage fees in the range of 20% to 50% of the common fund, depending on the circumstances of
11 the case. *Newberg*, at §14.03; *see also In re Activision Securities Litigation*, 723 F. Supp. at 1378.
12 *Newberg* further notes: "[A]chievement of a substantial recovery with modest hours expended
13 should not be penalized but should be rewarded for considerations of time saved by superior services
14 performed." (*Id.* at §§ 14-10:14-11.)

15 The attorneys' fees request provided for in the Stipulation is commensurate with judicial
16 precedent. Both state and federal courts regularly approve fee awards equal to or greater than the
17 percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities Litigation* (9th Cir.
18 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common fund); *In re Activision*
19 *Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375 (awarding plaintiffs' counsel 32.8%
20 of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C.
21 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); *Parker v. City of Los*
22 *Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of
23 recovery achieved).

24 In wage and hour class actions in particular, California trial courts have customarily
25 approved attorney's fees consistent with or greater than the percentage of the common fund
26 requested in this case. *See Evans v. Coca-Cola*, Los Angeles County Super.Ct. Case No. BC 220525
27 (Hon. Richard C. Hubbell) (Dec. 2001) (approving an award of attorneys' fees of at least 33-1/3% of
28 the settlement); *see also Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct. Case

1 No.BC 262247 (May 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles
2 County Super.Ct. Case No.BC 278170 (April 2004) (Hon. David M. Minning); *Josiah Eaton v.*
3 *Adolph Coors Company* (2003) Orange County Super.Ct. Case No. 01CC00140 (Hon. Stephen J.
4 Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct.Case No.BC
5 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*, Orange
6 County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).

7 Here, Class Counsel has borne the entire risk and cost of litigation and will not receive any
8 compensation until recovery is obtained. (*See* Han Decl., ¶¶ 64-66.) The Court should also consider
9 the benefit obtained by Class Counsel on behalf of Class Members. Thus, the requested award for
10 Class Counsel is reasonable.

11 **XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
12 **APPROVAL**

13 The parties respectfully request this Court, as part of the preliminary approval process, to
14 grant the following relief and make the following orders:

- 15 1. Review and approve the Stipulation;
- 16 2. Review and approve the Notice, attached to the Stipulation as Exhibit A;
- 17 3. Consider and determine that the proposed class action settlement as set forth in the
18 Stipulation preliminarily appears fair, reasonable, and adequate;
- 19 4. Enter an order conditionally certifying the action as a class action for settlement
20 purposes only and preliminarily approving the proposed class action settlement and the Stipulation;
- 21 5. Approve and appoint Douglas Han of JUSTICE LAW CORPORATION, to serve as
22 Class Counsel for settlement purposes;
- 23 6. Approve and appoint CPT Group, as the claims administrator to handle the notice
24 and claims procedures as set forth in the Stipulation;
- 25 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 26 8. Order Defendant to disclose to CPT Group, Inc. the names, last-known addresses,
27 telephone numbers, dates of employment, and social security numbers of class members as set forth
28 in the Stipulation;

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9. Order that CPT Group, Inc. mail the Notice Packet to Class Members; and
10. Set a date for the Final Approval Hearing.

Dated: February 28, 2022

Respectfully submitted,
JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiff Janine Nelson, and all
others similarly situated

**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 mabzun@justicelawcorp.com

On February 28, 2022, I served the foregoing document described as

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S
MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND
(3) SETTING HEARING FOR FINAL APPROVAL**

for the following case: **Nelson v. Captek Softgel International, Inc.**
LWDA/Court Case No.: **LWDA-CM-857073-21**
20STCV21184
Los Angeles County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 28, 2022, at Pasadena, California.



Melante Abzun