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

RICARDO AGUILAR, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PRECISION HERMETIC TECHNOLOGY,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CIVSB2128517
[Consolidated With Case No.
CIVSB2203535]

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

CLASS ACTION

**PLAINTIFFS' 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: December 2, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department S-26

Complaint Filed: October 7, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 2, 2022 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable David Cohn in Department S-26 of the San Bernardino
3 County Superior Court (San Bernardino Justice Center), located at 247 West Third Street, San
4 Bernardino, California 92415, Plaintiffs Ricardo Aguilar and Adrian De La Torre (“Plaintiffs,”
5 “Plaintiff Aguilar,” and “Plaintiff De La Torre”) will and hereby do 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 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** 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 proposed Election Not To Participate in the Settlement or Opt-out
19 Form (“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 settlement administration process;
- 24 • Approving Phoenix Class Action Administration Solutions as the Settlement
25 Administrator; and

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

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

10
11 Dated: October 7, 2022

JUSTICE LAW CORPORATION

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14 By: 
15 Douglas Han
16 Attorneys for Plaintiffs
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$304,884 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all individuals currently
4 or formerly employed by Defendant Precision Hermetic Technology, Inc. (“Defendant”), either
5 directly or through any subsidiary, staffing agency, or professional employer organization, as a
6 non-exempt hourly-paid employee within the State of California during the time period from April
7 9, 2017, through July 17, 2022 (“Class,” “Class Members,” and “Class Period”). (Declaration of
8 Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement
9 (“Han Decl.”), ¶ 9.)

10 **II. BACKGROUND**

11 On October 7, 2021, Plaintiff Aguilar filed a wage-and-hour class action lawsuit in the
12 Superior Court of California, County of San Bernardino. (Han Decl., *supra*, at ¶ 10.)

13 On December 10, 2021, Plaintiff De La Torre provided written notice to the California
14 Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶
15 11.) Afterwards, on February 16, 2022, Plaintiff De La Torre filed a representative PAGA action
16 against Defendant in the Superior Court of California, County of San Bernardino. (*Ibid.*)

17 The Parties remotely attended mediation with the mediator Marc J. Feder, Esq., on May 9,
18 2022, resulting in a settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 12.)

19 The Parties then agreed to consolidate Plaintiff Aguilar’s lawsuit and Plaintiff De La
20 Torre’s lawsuit via the Settlement Agreement. (Han Decl., *supra*, at ¶ 13.)

21 **III. INVESTIGATION/ LITIGATION HISTORY**

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

23 After Plaintiffs initiated this case, the Parties engaged in discovery. (Han Decl., *supra*, at
24 ¶ 15.) Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special
25 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production
26 of documents. (*Ibid.*) The Parties then met and conferred and agreed to engage in an informal
27 exchange of information and mediation. (*Ibid.*)

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1 The Parties conducted a significant investigation and discovery of the facts and law both
2 before and after this matter was filed. (Han Decl., *supra*, at ¶ 16.) Defendant produced hundreds
3 of documents relating to its policies, practices, and procedures. Plaintiffs also reviewed time
4 records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Plaintiffs
5 also interviewed Class Members who worked for Defendant. (*Ibid.*)

6 Based upon the information provided by Defendant and interviews Class Counsel
7 conducted, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees
8 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
9 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
10 statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

12 **i. The Parties Attended Mediation Which Led to the Settlement**

13 The Parties remotely attended mediation with the mediator, Marc J. Feder, Esq., on May
14 9, 2022. (Han Decl., *supra*, at ¶ 25.) During mediation, the Parties discussed the risks of continued
15 litigation as well as the risks of certification and risks on the merits of the claims versus the benefits
16 of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties reached a settlement via a
17 mediator’s proposal, the terms of which were memorialized in the Settlement Agreement, the
18 Parties now seek Preliminary Approval of. (*Id.* at ¶ 25; Exhibit 2.)

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

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

24 Plaintiffs and Class Counsel recognize the expense and length of continued proceedings
25 necessary to continue the litigation against Defendant. (Han Decl., *supra*, at ¶ 37.) Plaintiffs and
26 Class Counsel also considered the uncertainty and risk of further litigation, potential outcome,
27 existing arbitration agreements with class and representative action waivers, and difficulties and
28 delays inherent in such litigation. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel

1 believe the settlement set forth in the Agreement is a fair, adequate, and reasonable settlement, and
2 is in the best interests of the Class Members. (Han Decl., *supra*, at ¶ 37.)

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

4 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
5 the Parties' claims and defenses before reaching the Settlement and engaged in sufficient
6 investigation, research, and discovery. (Han Decl., *supra*, at ¶ 38.) The Settlement was only
7 possible following significant investigation and evaluation of Defendant's relevant policies and
8 procedures, as well as the data produced for the Class. (*Ibid.*) Furthermore, this case has reached
9 the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their
10 cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd*
11 *v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

13 **i. Deductions from the Settlement**

14 The Parties agreed (contingent upon the Court's approval) this action be settled and
15 compromised for the non-reversionary total sum of \$304,884 ("Gross Settlement Amount") which
16 includes: (1) Attorney Fee Award of \$101,628 (1/3 of the Gross Settlement Amount); (2) Cost
17 Award not to exceed \$15,000; (3) Class Representative Enhancement Payments to each Plaintiff
18 not to exceed \$10,000 (totaling \$20,000); (4) Administration Costs not to exceed \$10,000; (5)
19 PAGA Payment of \$20,000; and (6) credit to Defendant of \$5,600 paid in releases to twenty-three
20 (23) Class Members. (Han Decl., *supra*, at ¶ 26.)

21 **ii. Calculating Individual Settlement Shares**

22 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
23 \$137,656 ("Net Settlement Amount") will be distributed to Participating Class Members – with an
24 average gross Individual Settlement Share estimated at \$760.53. (Han Decl., *supra*, at ¶ 27.)

25 Each Participating Class Member will receive a proportionate share of the Net Settlement
26 Amount using the formula set forth in the Settlement. (Han Decl., *supra*, at ¶ 28.) Individual
27 Settlement Share will be apportioned twenty percent (20%) wages and eighty percent (80%)
28 interest, penalties, and reimbursement. (*Ibid.*) The Settlement Administrator shall pay each

1 Eligible Aggrieved Employee according to their proportional share of the PAGA Payment using
2 the formula set forth in the Settlement. (Han Decl., *supra*, at ¶ 28.)

3 **iii. Notice to the Class**

4 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
5 Defendant shall deliver to the Settlement Administrator the Class List. (Han Decl., *supra*, at ¶
6 30.) The Settlement Administrator shall translate the Notice Packet to Spanish and shall mail both
7 English and Spanish translations of the Notice Packet to the Class Members via first-class regular
8 U.S. Mail using the most current mailing address information available within fourteen (14)
9 calendar days after the receipt of the Class List from Defendant. (*Ibid.*)

10 **iv. Distribution of Funds**

11 The Settlement will be funded pursuant to the timeline and manner set forth in the
12 Settlement. (Han Decl., *supra*, at ¶ 31.) Uncashed settlement checks will be mailed to the
13 California State Controller's Office in the name of the Participating Class Member and Eligible
14 Aggrieved Employee. (*Ibid.*)

15 **v. Release of Claims**

16 Upon the Effective Final Settlement Date and Defendant's fulfillment of its payment
17 obligations under section III (J)(9)(a) of the Agreement, Participating Class Members waive,
18 release, promise never to assert in any forum, remise, and forever discharge the Released Parties
19 from the Released Claims for the time frame from April 9, 2017, through July 17, 2022. (Han
20 Decl., *supra*, at ¶ 32.)

21 As of the Effective Final Settlement Date, the Settlement forever bars Plaintiffs, the
22 LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any
23 and all Eligible Aggrieved Employees during the PAGA Timeframe, from pursuing any action for
24 civil penalties under the PAGA or any of the PAGA Release Claims against, the Released Parties
25 based on or arising out of alleged violations of Labor Code sections alleged in Plaintiff De La
26 Torre's letter to the LWDA and this case. (Han Decl., *supra*, at ¶ 33.)

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1 As of the Effective Final Settlement Date, and in exchange for the Class Representative
2 Enhancement Payments to the Plaintiffs, in recognition of their work and efforts in obtaining the
3 benefits for the Class and undertaking the risk for the payment of costs if this matter had not
4 successfully resolved, Plaintiffs for themselves, their spouses, heirs and assigns, in exchange for
5 the consideration provided for by the Agreement, provide a Comprehensive Release of claims.
6 (Han Decl., *supra*, at ¶ 34.)

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

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

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

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27 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
28 the Notice Packet 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.

1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

10 ...

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

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

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

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

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28 ² 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, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

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

11 **i. The Settlement Amount of \$304,884 Is Fair and Reasonable**

12 The Settlement was possible following significant investigation and evaluation of
13 Defendant's relevant policies and procedures, as well as the data produced for the Class, as
14 referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis
15 of liability and potential damages. (Han Decl., *supra*, at ¶ 38.)

16 Plaintiffs' claims are predicated on Defendant's purported: (1) failure to pay overtime
17 wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and pay
18 applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage
19 statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation
20 of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 39.) Defendant
21 denies Plaintiff's theories of liability. (*Id.* at ¶ 40.)

22 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
23 to certification are always present. (Han Decl., *supra*, at ¶ 41.) As the California Supreme Court
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
25 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
26 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
27 (Han Decl., *supra*, at ¶ 41.) This led Plaintiffs to discount the calculations for potential damages.

28 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
of class claiming misclassification and ordering summary adjudication in favor of employees],

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

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5,
4 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*,
5 at ¶ 49.) Defendant asserted the PAGA penalties are not mandatory but permissive and
6 discretionary. (*Ibid.*) Defendant also maintained, in addition to its strong arguments against the
7 underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties
8 given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203
9 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued without
10 stacking and limited to the initial violation, the PAGA penalties would be limited to **\$10,400** (104
11 employees x \$100 initial violations) on the low end and **\$83,200** (104 employees x \$100 x 8
12 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 50-53.)

13 Plaintiffs also recognized the risk any PAGA award could be significantly reduced. (Han
14 Decl., *supra*, at ¶ 54.) Many of the causes of action brought were duplicative of the statutory
15 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
16 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties was
17 reasonable based on a rate of **\$8.58** per pay period [$\$20,000 \div 2,332$ pay periods in PAGA date
18 range = **\$8.58**], given Defendant is also paying an additional \$284,884 in the class settlement.⁴
19 (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the]
20 amount was the result of self-interest at the expense of other Class Members,” such amounts are
21 generally considered reasonable.⁵ (Han Decl., *supra*, at ¶ 54.)

22 _____
23 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
24 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
25 decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
26 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
27 Cal.App.4th 1422 [affirming denial of certification].)

28 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
\$75 per violation and a total PAGA penalty of \$70,000,000].)

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,

1 Considering Defendant's defenses, its supporting evidence, and its position the case is not
2 suitable for class treatment, the Settlement of \$304,884 is reasonable, adequate, and fair.

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

4 Excluding the civil penalties, which could be completely discretionary, the total estimated
5 potential exposure, assuming certification and prevailing at trial, would be about **\$1,668,428.62**
6 on the low end and **\$1,822,217.08** on the high end. (Han Decl., *supra*, at ¶ 55.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$414,843.81	70%	60%	\$49,781.26
Meal Break Premiums	\$163,924.47	60%	60%	\$26,227.92
Overtime/Minimum Wage: Off-the-Clock Work	\$307,399.54 to \$461,188	60%	50%	\$61,479.91 to \$92,237.60
Unreimbursed Business Expenses	\$105,308	30%	70%	\$22,114.68
Wage Statement Penalty	\$223,600	50%	50%	\$55,900
Waiting Time Penalty	\$453,352.80	50%	50%	\$113,338.20
MAXIMUM TOTAL EXPOSURE	\$1,668,428.62 to \$1,822,217.08⁶			\$328,841.97 to \$359,599.66⁷

16
17 Based on this analysis, the realistic recovery for this case is **\$328,841.97** on the low end
18 and **\$359,599.66** on the high end. (Han Decl., *supra*, at ¶ 62.) The Gross Settlement Amount of
19 \$304,884 is about sixteen percent (16.73%) of the maximum potential exposure and approximately
20 eighty-five percent (84.78%) of the maximum realistic exposure at trial. (*Ibid.*)

21 The only question at preliminary approval is whether the settlement is within the range of
22 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
23 "The fact that a proposed settlement may only amount to a fraction of the potential recovery does
24 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be

25
26 "[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
27 damages to the PAGA claims".)

28 ⁶ (Han Decl., *supra*, at ¶¶ 42-48.)

⁷ (*Id.* at ¶¶ 56-61.)

1 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also
2 *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
3 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
4 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
5 speculative measure of what might have been achieved by the negotiators”).) Nevertheless, this
6 settlement is in line with the realistic exposure had Plaintiffs prevailed at trial and provides a
7 significant recovery for the Class Members.

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

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

15 The proposed Class is ascertainable and numerous as to make it impracticable to join all
16 Class Members, and there are common questions of law and fact that predominate over any
17 questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 63.) Plaintiffs contend
18 as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the claims
19 of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)
20 Also, Plaintiffs assert the prosecution of separate actions by individual Class Members would
21 create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

23 “Ascertainability is required in order to give notice to putative class members as to whom
24 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
25 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
26 by describing a set of common characteristics sufficient to allow a member of that group to identify
27 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
28

1 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
2 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

3 This case involves about one hundred eighty-one (181) Class Members. (Han Decl., *supra*,
4 at ¶ 64.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008)
5 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and
6 former employees” is sufficiently numerous].)

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

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

17 **1. Common Issues Predominate**

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

1 Plaintiffs assert common issues of fact and law predominate as to each of the claims
2 alleged. (Han Decl., *supra*, at ¶ 65.) Plaintiffs contend all Class Members were subject to the same
3 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

4 **2. Plaintiffs' Claims Are Typical of the Class Claims**

5 Typical claims rely on legal theories and facts that are substantially like those of other class
6 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former employees of
7 Defendant and allege they and the Class Members were employed by the same company and
8 injured by Defendant's common policies and practices related to the claims described above. (Han
9 Decl., *supra*, at ¶ 66.) Plaintiffs seek relief for these claims and derivative claims on behalf of all
10 Class Members. (*Ibid.*) Consequently, Plaintiffs' claims arise from the same employment practices
11 and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

12 **3. Plaintiffs Are Adequate to Represent the Class**

13 Plaintiffs have proven to be adequate Class Representatives. (Han Decl., *supra*, at ¶ 67.)
14 Plaintiffs conducted themselves diligently and responsibly in representing the Class in this
15 litigation, understand their fiduciary obligations, and actively participated in the prosecution of
16 this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide
17 them with a complete understanding of the work environment and requirements. (*Ibid.*) Finally,
18 Plaintiffs have no interest averse to the interests of the other Class Members. (*Ibid.*)

19 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 20 **of this Controversy**

21 A class action is superior to other available means for the fair and efficient adjudication of
22 this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class
23 treatment will permit many similarly situated persons to prosecute their common claims for
24 settlement purposes simultaneously in a single forum without the duplication of effort and expense
25 that numerous individual actions would necessitate. Because several Class Members are also
26 current employees, Plaintiffs believe fear of retaliation further supports the superiority of class-
27 wide relief as this fear often discourages current employees from seeking legal redress.

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PROOF OF SERVICE
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On October 7, 2022, I served the foregoing document described as

PLAINTIFFS' 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: **Aguilar, et al. v. Precision Hermetic Technology, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-857061-21**
Court Case No.: CIVSB2128517
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 October 7, 2022, at Pasadena, California.



Mariah Anderson