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

SAMYRA MCCREA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ROCKRIDGE MARKET HALL, LLC dba
MARKET HALL FOODS, a California limited
liability company; SARA ELIZABETH
WILSON, ANTHONY GORDON WILSON,
and PETER SYDNEY WILSON dba MARKET
HALL FOODS, a general partnership;
MARKET HALL FOODS, a general
partnership; and DOES 6 through 100,
inclusive;

Defendants.

Case No.: 22CV005647

Assigned for All Purposes to:
Honorable Evelio Grillo
Department 21

CLASS ACTION

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

[Reservation ID: 007881192730]

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

Hearing Date: January 25, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department 21

Complaint Filed: January 20, 2022
FAC Filed: May 10, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 25, 2023 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Evelio Grillo in Department 21 of the Alameda County
3 Superior Court (Administration Building), located at 1221 Oak Street, Oakland, California 94612,
4 Plaintiff Samyra McCrea (“Plaintiff”) will and hereby does move for an order:

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

- Approving Phoenix Settlement Administrators (“Phoenix”) as the Administrator;
and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, the Class Representative Service Payment, the Administration Expenses Payment, and the allocation of the PAGA Penalties.

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

Dated: December 28, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	12
i.	The Parties Attended Mediation Which Ultimately Led to the Class Action and PAGA Settlement Agreement	12
ii.	The Settlement Was Reached as a Result of Arm's-length Negotiations	12
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	13
i.	Deductions from the Settlement	13
ii.	Calculation of the Participating Class Members' Individual Class Payments and the Aggrieved Employees' Individual PAGA Payments .	13
iii.	The Allocation of 50% to Wages and 50% to Interest and Penalties Is Justified Under the Claims of this Action	13
iv.	Notice to the Class	14
v.	Distribution of Funds	14
vi.	The <i>Cy Pres</i> Recipient is Appropriate	15
vii.	Release of Claims	16
d.	Counsel for Both Parties Are Experienced in Similar Litigation	17
IV.	ARGUMENT	17
a.	Class Action Settlements Are Subject to Court Review	17
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	18
i.	The Gross Settlement Amount of \$1,200,000 Is Fair and Reasonable	19

1	ii.	The PAGA Penalties of \$100,000 Is Reasonable	19
2	c.	Discount Analysis Justifies the Settlement	21
3	d.	Conditional Certification of the Class Is Appropriate	22
4	i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	23
5	ii.	The Class Members Share a Well-defined Community of Interest	23
6	1.	Common Issues Predominate.....	24
7	2.	Plaintiff's Claims Are Typical of the Class Claims.....	24
8	3.	Plaintiff Is Adequate to Represent the Class.....	24
9	4.	Class Action Is Superior for the Fair and Efficient Adjudication of	
10		this Controversy	25
11	e.	The Settlement Is Fair, Reasonable, and Adequate	25
12	f.	Notice to Class Members Complies with California Rules of Court,	
13		Rule 3.769(f)	25
14	V.	CONCLUSION.....	26

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	19
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	17
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	23
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	18
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp. 610	13
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1024	24
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	23, 24
<i>Carrington v. Starbucks Corp.</i>	
(2018) 30 Cal.App.5th 504	20
<i>City of Detroit v. Grinnell Corporation</i>	
(2d. Cir. 1974) 495 F.2d 448.....	22
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	24
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	19
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	17, 25
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	24

1	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
2	(2008) 169 Cal.App.4th 1524	23
3	<i>Green v. Obledo</i>	
4	(1981) 29 Cal.3d 126	17
5	<i>Harris v. Superior Court</i>	
6	(2007) 154 Cal.App.4th 164	19
7	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
8	(2001) 89 Cal.App.4th 908	23
9	<i>Hopson v. Hanesbrands Inc.</i>	
10	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	20
11	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
12	(1981) 452 U.S. 905	18
13	<i>Jones v. JGC Dallas LLC</i>	
14	(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
15	185042	24
16	<i>Kullar v. Foot Locker Retail, Inc.</i>	
17	(2008) 168 Cal.App.4th 116	18
18	<i>Linder v. Thrifty Oil Co.</i>	
19	(2000) 23 Cal.4th 429	23
20	<i>Linney v. Cellular Alaska Partnership</i>	
21	(9th Cir. 1998) 151 F.3d 1234	22
22	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
23	(2010) 186 Cal.App.4th 399	18
24	<i>Nordstrom Com. Cases</i>	
25	(2010) 186 Cal.App.4th 576	20
26	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
27	(2004) 34 Cal.4th 319	19, 22, 23
28	///	

1	<i>In re Tableware Antitrust Litig.</i>	
2	(N.D.Cal. 2007) 484 F.Supp.2d 1059	22
3	<i>Thurman v. Bayshore Transit Mgmt.</i>	
4	(2012) 203 Cal.App.4th 1112	20
5	<i>Vasquez v. Superior Court</i>	
6	(1971) 4 Cal.3d 800	17
7	<i>Walsh v. IKON Solutions, Inc.</i>	
8	(2007) 148 Cal.App.4th 1440	19
9	<u>Rules</u>	
10	California Rules of Court, Rule 3.769	17
11	California Rules of Court, Rule 3.769(f)	25
12	California Rules of Court, Rule 3.769(g).....	17
13	Federal Rule 23	17
14	<u>Statutes</u>	
15	Business and Professions Code § 17200.....	19
16	Code of Civil Procedure § 382.....	22, 25
17	Code of Civil Procedure § 384.....	16
18	Code of Civil Procedure § 384(a)	15
19	Code of Civil Procedure § 384(b).....	15
20	Code of Civil Procedure § 877.6.....	18
21	Labor Code § 201.....	19, 20
22	Labor Code § 202.....	19, 20
23	Labor Code § 203.....	19, 20
24	Labor Code § 204.....	19
25	Labor Code § 210.....	19
26	Labor Code § 218.5.....	19
27	Labor Code § 221.....	19
28	Labor Code § 226(a)	19

1	Labor Code § 226.3.....	19
2	Labor Code § 226.7.....	19, 20
3	Labor Code § 246.....	19
4	Labor Code § 432.5.....	19
5	Labor Code § 510.....	19, 20
6	Labor Code § 512(a)	19, 20
7	Labor Code § 551.....	19
8	Labor Code § 552.....	19
9	Labor Code § 558.....	19
10	Labor Code § 1174(d)	19
11	Labor Code § 1194.....	19, 20
12	Labor Code § 1197.....	19, 20
13	Labor Code § 1197.1.....	19
14	Labor Code § 1198.....	19, 20
15	Labor Code § 2698	19
16	Labor Code § 2800.....	19, 20
17	Labor Code § 2802.....	19, 20

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,200,000 wage-and-hour
3 class action and representative PAGA settlement by Plaintiff on behalf of herself and all current
4 and former non-exempt employees who have been employed by Rockridge Market Hall, LLC
5 dba Market Hall Foods; Sara Elizabeth Wilson, Anthony Gordon Wilson, and Peter Sydney
6 Wilson dba Market Hall Foods; and Market Hall Foods (“Defendants”) in California at any time
7 during the period from January 20, 2018, through November 22, 2022 (“Class,” “Class Members”
8 and/or “Settlement Class Members,” and “Class Period”). (Declaration of Douglas Han In
9 Support of Plaintiff’s Motion For Preliminary Approval of Class Action Settlement (“Han Dec.”),
10 ¶ 9.) At the time of this filing, the number of Class Members is estimated to be nine hundred fifty-
11 seven (957). (*Id.* at ¶ 8.)

12 It is requested that the Court grant Preliminary Approval because when analyzing the
13 strengths and vulnerabilities of the claims alongside Defendants’ potential liability exposure, the
14 proposed Settlement is well within the range of reasonableness. Plaintiff and Class Counsel are
15 convinced that the proposed Settlement is in the best interests of the Class Members.

16 **II. BACKGROUND**

17 On January 12, 2022, Plaintiff provided written notice to the California Labor and
18 Workforce Development Agency (“LWDA”) and Defendant Rockridge Market Hall LLC dba
19 Market Hall Foods. (Han Dec., *supra*, at ¶ 10; Exhibit 3.)

20 On January 20, 2022, Plaintiff filed a wage-and-hour class action lawsuit against
21 Defendant Rockridge Market Hall, LLC dba Market Hall Foods alleging nine (9) causes of action
22 (the “Action”). (Han Dec., *supra*, at ¶ 11.)

23 On March 1, 2022, Plaintiff submitted an amended written notice to the LWDA, adding
24 Sara Elizabeth Wilson, Anthony Gordon Wilson, and Peter Sydney Wilson dba Market Hall
25 Foods as an additional employer. (Han Dec., *supra*, at ¶ 12; Exhibit 4.)

26 On May 10, 2022, Plaintiff filed a First Amended Complaint (“FAC”), adding Sara
27 Elizabeth Wilson, Anthony Gordon Wilson, and Peter Sydney Wilson dba Market Hall Foods as
28 an additional named defendant. (Han Dec., *supra*, at ¶ 13.)

On August 12, 2022, the Parties attended mediation on Plaintiff’s claims with mediator Michael J. Loeb. (Han Dec., *supra*, at ¶ 14.) At the conclusion of the mediation, the mediator made a proposal for settlement of the Action, which the Parties accepted on August 15, 2022. (*Ibid.*)

In line with the settlement, on September 20, 2022, Plaintiff filed an amendment to the FAC, adding Market Hall Foods as an additional named Defendant. (Han Dec., *supra*, at ¶ 15.)

III. INVESTIGATION/LITIGATION HISTORY

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

After filing this case, the Parties engaged in discovery. (Han Dec., *supra*, at ¶ 17.) Plaintiff propounded one (1) set of form interrogatories – general, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*) The Parties met and conferred, agreed to engage in an informal exchange of information, and attended mediation. (*Ibid.*)

Prior to mediation, Defendants produced documents relating to their policies, practices, and procedures. (Han Dec., *supra*, at ¶ 18.) Plaintiff also reviewed time records, pay records, and information relating to the size and scope of both the Class and the group of Aggrieved Employees, as well as data permitting Plaintiff to understand the number of Workweeks in the Class Period and Pay Periods in the PAGA Period. (*Ibid.*) Plaintiff also interviewed Class Members and Aggrieved Employees who worked for Defendants. (*Ibid.*)

Based upon the information provided by Defendants and interviews with non-exempt employees, Plaintiff contends – and Defendants deny – that Defendants: (a) failed to provide employees with legally mandated meal and rest breaks and pay applicable premium wages; (b) failed to pay employees for all hours worked; (c) failed to properly calculate and pay overtime, premium wages, and sick pay; (d) failed to reimburse employees for necessary business expenses; (e) issued noncompliant wage statements; and (f) are liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 20-27.)

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

2 **i. The Parties Attended Mediation Which Ultimately Led to the Class**
3 **Action and PAGA Settlement Agreement**

4 The Parties agreed to attend mediation with experienced wage-and-hour mediator Michael
5 J. Loeb on August 12, 2022. (Han Dec., *supra*, at ¶ 28.) During the mediation, the Parties
6 discussed the risks of continued litigation, the likelihood of certification, and the merits of the
7 Parties’ claims and defenses versus the benefits of settlement. (*Ibid.*) Under the auspices of the
8 mediator, the Parties reached an agreement on settlement on August 15, 2022, the terms of which
9 were memorialized in the Class Action and PAGA Settlement Agreement (“Agreement” or
10 “Settlement”) that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2; Exhibit 5.)

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

12 At the mediation, the Parties’ counsel engaged in extensive arm’s-length settlement
13 negotiations, which ultimately resulted in an agreement to settle the Action. (Han Dec., *supra*, at
14 ¶ 42.) Though cordial and professional, the settlement negotiations have always been adversarial
15 and non-collusive. (*Ibid.*)

16 Plaintiff and Class Counsel believe in the merits of the case but recognize the expense and
17 length of additional proceedings necessary to continue the litigation. (Han Dec., *supra*, at ¶ 43.)
18 Plaintiff and Class Counsel have considered the uncertainty and risk of further litigation, the
19 potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
20 foregoing, Plaintiff and Class Counsel believe the settlement set forth in the Agreement is fair,
21 adequate, and reasonable and is in the Class Members’ best interests. (*Ibid.*)

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

23 The Parties investigated and evaluated the factual strengths and weaknesses of Plaintiff’s
24 claims and Defendants’ defenses before reaching the proposed Settlement and engaged in
25 sufficient investigation, research, and discovery. (Han Dec., *supra*, at ¶ 44.) The information
26 produced by Defendants permitted Class Counsel to engage in a comprehensive analysis of
27 liability and potential damages. (*Ibid.*) This case has reached the stage where “the Parties certainly
28 have a clear view of the strengths and weaknesses of their cases” sufficient to support the

Settlement. (Han Dec., *supra*, at ¶ 44; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed that the Action be settled and compromised for the non-reversionary total sum of \$1,200,000 (“Gross Settlement Amount”) which includes the: (a) Class Counsel Fees Payment of \$400,000; (b) Class Counsel Litigation Expenses Payment of up to \$20,000; (c) Class Representative Service Payment of \$10,000; (d) Administration Expenses Payment currently estimated at \$20,000 but not to exceed \$25,000; and (e) PAGA Penalties of \$100,000. (Han Dec., *supra*, at ¶ 29.)

ii. Calculation of the Participating Class Members’ Individual Class Payments and the Aggrieved Employees’ Individual PAGA Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$645,000 (“Net Settlement Amount”) will be distributed to Participating Class Members, resulting in an *average* gross Individual Class Payment of \$673.98. (Han Dec., *supra*, at ¶ 30.)

The Administrator will calculate and disburse the Individual Class Payments using the formula set forth in the Agreement. (Han Dec., *supra*, at ¶ 31.) The Administrator will also calculate and disburse Individual PAGA Payments using the formula set forth in the Agreement. (*Id.* at ¶ 32.)

iii. The Allocation of 50% to Wages and 50% to Interest and Penalties Is Justified Under the Claims of this Action

Fifty percent (50%) of each Participating Class Member’s Individual Class Payment will be allocated to settlement of wage claims (the “Wage Portion”). (Han Dec., *supra*, at ¶ 31.) The remaining fifty percent (50%) of each Participating Class Member’s Individual Class Payment will be allocated to settlement of claims for interest, penalties, and other non-wage amounts sought in the Action (the “Non-Wage Portion”). (*Ibid.*)

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1 This allocation of wages, interest, penalties, and other non-wage amounts was based on
2 the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and
3 unpaid wages due to off-the-clock work if this case went to trial. (Han Dec., *supra*, at ¶ 71.) While
4 unpaid wages due to off-the-clock work qualify as wages, premium wages for noncompliant meal
5 and rest breaks could be characterized as wages or penalties. (*Ibid.*) As a result, the Parties added
6 the realistic exposure for rest and meal break premiums ($\$184,017.52 + \$156,287.94 =$
7 $\$340,305.46$) and divided the sum in half to represent one-half (1/2) for wages and one-half (1/2)
8 for penalties ($\$170,152.73$). (*Ibid.*) The Parties then added the $\$170,152.73$ representing wages
9 to the high-end realistic exposure for unpaid wages due to off-the-clock work ($\$170,152.73 +$
10 $\$695,696.95 = \$865,849.68$). (*Ibid.*) The realistic exposure that Plaintiff can expect to receive for
11 the wage portion of meal and rest break premiums and the high-end realistic exposure for unpaid
12 wages due to off-the-clock work represents about forty-eight percent (47.62%) of the high-end
13 realistic maximum total exposure ($\$865,849.68 \div \$1,818,262.71 = 0.4762 \times 100 = 47.62\%$).
14 (*Ibid.*) Because this represents almost fifty percent (50%) wages, the Parties determined that
15 allocating fifty percent (50%) for the Wage Portion and fifty percent (50%) for the Non-Wage
16 Portion pursuant to the Agreement was appropriate. (*Ibid.*)

17 **iv. Notice to the Class**

18 Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of
19 the Settlement, Defendants will provide the Administrator with the Class Data. (Han Dec., *supra*,
20 at ¶ 33.) Using best efforts to perform as soon as possible, within fourteen (14) calendar days after
21 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
22 Data, via First Class U.S. Mail, the Notice Packet. (*Ibid.*)

23 **v. Distribution of Funds**

24 Within thirty (30) calendar days after the Effective Date, Defendants will wire fifty
25 percent (50%) of the amount necessary to fund the Settlement to the Administrator. (Han Dec.,
26 *supra*, at ¶ 34.) The second fifty percent (50%) will be due to the Administrator ninety (90) days
27 after the first installment. (*Ibid.*) Within fifteen (15) calendar days after Defendants fund the first
28 fifty percent (50%) of the Gross Settlement Amount, the Administrator will distribute the first

fifty percent (50%) of payments to Plaintiff for her Class Representative Service Payment, Class Counsel for their awarded Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, the LWDA, the Aggrieved Employees, and the Participating Class Members. (Han Dec., *supra*, at ¶ 34.) After Defendants fund the second fifty percent (50%) of the Gross Settlement Amount, the Administrator will similarly distribute the second half of the payments. (*Ibid.*)

Participating Class Members and Aggrieved Employees must cash or deposit each of their Individual Class Payment and/or Individual PAGA Payment checks within one hundred eighty (180) calendar days after the date of mailing. (Han Dec., *supra*, at ¶ 35.) After the initial distribution, all checks representing settlement funds not claimed within one hundred eighty (180) days after the date of mailing shall be canceled. (*Ibid.*) Settlement funds from any such voided checks shall flow back to the Net Settlement Amount for distribution to the Participating Class Members on a pro-rata basis. (*Ibid.*) Subsequently, after the second and final distribution, all checks representing settlement funds not claimed within one hundred eighty (180) days after the date of mailing shall be canceled. (*Ibid.*) Settlement funds from any such voided checks shall be paid on a *cy pres* basis to Legal Aid at Work (“LAAW”). (*Ibid.*)

vi. The *Cy Pres* Recipient is Appropriate

LAAW satisfies the policy of the State of California “to ensure that the unpaid cash residue and unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent possible, in a manner designed either to further the purposes of the underlying class action or causes of action, or to promote justice for all Californians.” (Han Dec., *supra*, at ¶ 36; Code Civ. Proc., § 384(a).) The Code of Civil Procedure further states:

[T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.

(Han Dec., at ¶ 36; Code Civ. Proc., § 384(b).)

1 LAAW directly satisfies the legislature’s purpose and goal under Code of Civil Procedure
2 section 384. (Han Dec., *supra*, at ¶ 37.) There can be no doubt that LAAW is the type of non-profit
3 organization the legislature had in mind when drafting and amending Code of Civil Procedure
4 section 384. (*Ibid.*) The Parties are not affiliated with and do not have any financial interest in
5 LAAW. (*Ibid.*)

6 **vii. Release of Claims**

7 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
8 all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, all
9 Participating Class Members will release and discharge the Released Parties from the Released
10 Class Claims. (Han Dec., *supra*, at ¶ 38; Exhibit 2, *supra*, at ¶¶ 1.40, 1.42, 5.2.)

11 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
12 all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, all
13 Aggrieved Employees will release and discharge, on behalf of themselves and their respective
14 former and present representatives, agents, attorneys, heirs, administrators, successors, and
15 assigns, the Released Parties from the Released PAGA Claims. (Han Dec., *supra*, at ¶ 39; Exhibit
16 2, *supra*, at ¶¶ 1.41, 1.42, 5.3.)

17 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
18 all employer payroll taxes owed on the Wage Portions of the Individual Class Payments, Plaintiff
19 and her respective former and present spouses, representatives, agents, attorneys, heirs,
20 administrators, successors, and assigns generally release and discharge the Released Parties from
21 all claims, transactions, or occurrences that occurred during the Class Period, including, but not
22 limited to, all claims that were or reasonably could have been alleged based on the facts contained
23 in the operative complaint, including all PAGA claims that were or reasonably could have been
24 alleged bade on the facts contained in the operative complaint and/or Plaintiff’s PAGA Notice
25 (“Plaintiff’s Release”). (Han Dec., *supra*, at ¶ 40; Exhibit 2, *supra*, at ¶¶ 1.42, 5.1.)

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

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

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

16 **IV. ARGUMENT**

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

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

22 ///

23 _____
24 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
25 number of objectors – is not determinable until the Class Notice has been provided to the Class
26 Members, and they have had an opportunity to respond. This information will be provided to the
27 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

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

4 (b) Any party to a settlement agreement may serve and file a written notice of
5 motion for preliminary approval of the settlement. The settlement
6 agreement and proposed notice to class members must be filed with the
7 motion, and the proposed order must be lodged with the motion.

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

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

13 An understanding of the amount in controversy is an important factor in whether the
14 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
15 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
16 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
17 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
18 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129;
19 see also *Munoz*, at p. 409.)

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

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1 **i. The Gross Settlement Amount of \$1,200,000 Is Fair and Reasonable**

2 The proposed Settlement was only possible following significant investigation and
3 evaluation of Defendants’ relevant policies and procedures and the data Defendants produced for
4 the putative class, which permitted Class Counsel to engage in a comprehensive analysis of
5 liability and potential damages. (Han Dec., *supra*, at ¶ 44.)

6 This investigation and evaluation informed Plaintiff’s central theories of liability.
7 Plaintiff’s claims are predicated on Defendants’ alleged: (a) failure to properly calculate and pay
8 overtime wages; (b) failure to provide meal and rest breaks and pay applicable premiums; (c)
9 failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage
10 statements; (f) failure to reimburse business expenses; (g) violation of Labor Code section 2698,
11 *et seq.* (PAGA); and (h) violation of Business & Professions Code section 17200, *et seq.* (Han
12 Dec., *supra*, at ¶ 45.) Defendants deny Plaintiff’s theories of liability. (*Id.* at ¶ 46.)

13 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
14 to certification are always present. (Han Dec., *supra*, at ¶ 47.) As the California Supreme Court
15 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
16 a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores,*
17 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
18 These factors led Plaintiff to discount the calculations of potential damages.

19 **ii. The PAGA Penalties of \$100,000 Is Reasonable**

20 The provisions of the Labor Code potentially triggering PAGA penalties in this case
21 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
22 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800,
23 and 2802. (Han Dec., *supra*, at ¶ 56.) Defendants asserted that, regardless of the results of the

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25 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006)
141 Cal.App.4th 1422 [affirming denial of certification].)

underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (Han Dec., *supra*, at ¶ 56.) Defendants maintained that, in addition to their strong arguments against the underlying claims, they had a strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendants argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$54,000** (540 employees x \$100 initial violations) on the low end and **\$432,000** (540 employees x \$100 x 8 theories of recovery) on the high end. (*Id.* at ¶ 59.)

Plaintiff also recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the statutory claims, such as Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was arguable the Court would award the maximum penalties. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable based on a rate of **\$7.91** per pay period [$\$100,000 \div 12,638$ pay periods in PAGA date range = **\$7.91**], given the fact that Defendants are paying an additional \$1,100,000.00 in the class settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable.⁵ (*Ibid.*)

Considering Defendants' defenses, their supporting evidence, and their position that the case is not suitable for class treatment, the settlement of \$1,200,000 is reasonable, adequate, and fair.

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

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, "[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims".)

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$7,300,049.34** on the low end and **\$8,459,937.84** on the high end. (Han Dec., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,533,479.34	70%	60%	\$184,017.52
Meal Break Premiums	\$625,151.75	50%	50%	\$156,287.94
Overtime/Minimum Wage: Off-the-Clock Work	\$2,318,596.25 to \$3,478,484.75	50%	60%	\$463,719.25 to \$695,696.95
Overtime/Minimum Wage: Regular Rate	\$34,973.00	30%	50%	\$12,240.55
Unreimbursed Business Expenses	\$442,233.00	50%	70%	\$66,334.95
Wage Statement Penalty	\$1,215,000.00	40%	50%	\$364,500.00
Waiting Time Penalty	\$1,130,616.00	40%	50%	\$339,184.80
MAXIMUM TOTAL EXPOSURE	\$7,300,049.34 to \$8,459,937.84⁶			\$1,586,285.01 to \$1,818,262.71⁷

Based on this analysis, the realistic recovery for this case is **\$1,586,285.01** on the low end and **\$1,818,262.71** on the high end. (Han Dec., *supra*, at ¶ 70.) The Gross Settlement Amount of \$1,200,000.00 is approximately fourteen percent (14.18%) of the maximum potential exposure and sixty-six percent (66.00%) of the maximum realistic exposure at trial. (*Ibid.*)

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⁶ (Han Dec., *supra*, at ¶¶ 49-55.)

⁷ (*Id.* at ¶¶ 63-69.)

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

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

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

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact amongst the Class. (Han Dec., *supra*,
21 at ¶ 72.) Plaintiff contends, as a former hourly-paid, non-exempt employee of Defendants, that
22 her claims are typical of the claims of the Class, and Class Counsel will fairly and adequately
23 protect the interests of the Class. (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate
24 actions by individual Class Members would create the risk of inconsistent or varying
25 adjudications. (*Ibid.*)

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

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

9 This case involves approximately nine hundred fifty-seven (957) Class Members,
10 meaning the Class is sufficiently numerous. (Han Dec., *supra*, at ¶ 73; see *Ghazaryan v. Diva*
11 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as
12 many as 190 current and former employees” is sufficiently numerous].) Class Members will be
13 identified by Defendants to the Administrator through a review of Defendants’ employment
14 records. (Han Dec., at ¶ 73.)

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

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

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1. Common Issues Predominate

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

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

2. Plaintiff’s Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of Defendants and alleges that she and the Class Members were employed by the same company and injured by Defendants’ common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 75.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate representative. (Han Dec., *supra*, at ¶ 76.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Furthermore, Plaintiff has no interests averse to those of the Class. (*Ibid.*)

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

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

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

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

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

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

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

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

28 ///

1 **V. CONCLUSION**

2 Plaintiff submits that the proposed Settlement is in the best interests of the Class, as it is
3 fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the
4 proposed Settlement should be preliminarily approved by the Court, the Class should be
5 conditionally certified for purposes of settlement only, and the Notice Packet should be approved.
6

7 Dated: December 28, 2022

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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Superior Court of Alameda County Public Portal

Make a Reservation

MCCREA vs ROCKRIDGE MARKET HALL, LLC DBA MARKET HALL FOODS, A CALIFORNIA LIMITED LIABILITY COMPANY; AND DOES 1 THROUGH 100, ...

Case Number: 22CV005647 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2022-01-19 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name:

MCCREA vs ROCKRIDGE MARKET HALL, LLC DBA
MARKET HALL FOODS, A CALIFORNIA LIMITED
LIABILITY COMPANY; AND DOES 1 THROUGH 100, ...

Case Number:

22CV005647

Type:

Motion re: (Preliminary Approval of Class Action
Settlement)

Status:

RESERVED

Filing Party:

Samyra McCrea (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 21

Date/Time:

01/25/2023 10:00 AM

Number of Motions:

1

Reservation ID:

007881192730

Confirmation Code:

CR-CMAADVW6BZYRAF4JU

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:

\$1.00

Type:

Visa

Account Number:

XXXX1109

Authorization:

01547G

Payment Date:

1969-12-31

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

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

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

for the following case: **McCrea v. Rockridge Market Hall, LLC d/b/a Market Hall Foods**
LWDA/Court Case No.: **LWDA Case No.: CM-862370-22**
Court Case No.: 22CV005647
Alameda 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 December 28, 2022, at Pasadena, California.



Anna Okada