

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JOHN BICKFORD (SBN 280929)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

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

HANK GONZALES and MARK GARCIA,
individually, on behalf of other members of
the general public similarly situated, and on
behalf of aggrieved employees pursuant to
the Private Attorneys General Act of 2004
("PAGA");

Plaintiffs,

v.

MAINTEX, INC., a California corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 21STCV30676

Assigned for All Purposes to:
Honorable Lawrence P. Riff
Department 7

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); Declaration of Proposed Class
Representative (Hank Gonzales); Declaration of
Proposed Class Representative (Mark Garcia);
Declaration of Maria Z. Stearns; Declaration of
Melanie Sergejeff; Declaration of Julie Green;
and [Proposed] Order filed concurrently
herewith]

Hearing Date: December 12, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department 7

Complaint Filed: August 19, 2021
FAC Filed: May 23, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 12, 2022, at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Lawrence P. Riff in Department 7 of the Los Angeles
3 County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012
4 (Spring Street Courthouse), Plaintiffs Hank Gonzales (“Plaintiff Gonzales”) and Mark Garcia
5 (“Plaintiff Garcia”) (collectively, “Plaintiffs”) will and hereby move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Settlement Agreement and Stipulation to
8 Resolve Class Action and PAGA Claims (“Agreement,” “Settlement,” or
9 “Settlement Agreement”), attached as **Exhibit 2** to the Declaration of Douglas
10 Han, including, and not limited to, the means of allocation and distribution of
11 funds, and the allocations for penalties under the California Labor Code Private
12 Attorneys General Act of 2004 (“PAGA”), the Attorneys’ Fees and Costs, the
13 Enhancement Awards, and Settlement Administration Costs;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the class representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
18 attached as **Exhibit A** to the Settlement Agreement;
- 19 • Approving the Final Order and Judgment attached as **Exhibit B** to the Settlement
20 Agreement;
- 21 • Approving the Preliminary Approval Order attached as **Exhibit C** to the
22 Settlement Agreement;
- 23 • Directing the mailing of the proposed Class Notice with a postage-paid return
24 envelope to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and settlement administration
26 process;
- 27 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and
28

- 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 Attorneys' Fees and Costs, the Enhancement Awards, and the Settlement Administration Costs, and approval of the allocation for PAGA penalties.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); the Declaration of the Proposed Class Representative (Hank Gonzales); the Declaration of the Proposed Class Representative (Mark Garcia); the [Proposed] Order filed concurrently with this motion; the 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: September 16, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
John Bickford
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$770,000.00 proposed
3 wage-and-hour class action and PAGA settlement by Plaintiffs on behalf of themselves and on
4 behalf of all non-exempt employees of Defendant Maintex, Inc. (“Defendant”) employed in
5 California at any time during the Class Period (“Class” and “Class Members”). The Class Period
6 is the period beginning on February 19, 2017 through and including May 25, 2022 (“Class
7 Period”). At the time of this filing, the number of Class Members provided by Defendant is
8 estimated to be three hundred eighty-two (382).

9 It is requested this Court grant preliminary approval, as, when analyzing the strengths and
10 vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
11 proposed settlement of \$770,000.00 – with an average Participating Class Member Payment
12 currently estimated to be between \$951.13 and \$977.84 – is well within the range of
13 reasonableness. Class Counsel is convinced that the proposed Settlement is in the best interests
14 of the Class Members based on the negotiations and a detailed knowledge of the issues present in
15 this action.

16 **II. BACKGROUND**

17 On August 19, 2021, Plaintiff Gonzales, a former hourly-paid, non-exempt employee of
18 Defendant, filed a wage-and-hour class action lawsuit against Defendant in the Superior Court of
19 California, County of Los Angeles, entitled *Gonzales v. Maintex, Inc.*, Case Number
20 21STCV30676. (Declaration of Douglas Han (“Han Dec.”), ¶ 10.) Specifically, Plaintiff Gonzales
21 alleged eight (8) causes of action for violation of various sections of the California Labor Code
22 and California Business & Professions Code. (*Ibid.*)

23 On January 5, 2022, Plaintiff Garcia provided written notice to the California Labor and
24 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
25 Labor Code he contends were violated and the theories supporting his contentions. (Han Dec.,
26 *supra*, at ¶ 11.)

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1 Plaintiffs and Defendant (the “Parties”) attended mediation on Plaintiffs’ claims with
2 mediator Lisa Klerman on February 25, 2022. (Han Dec., *supra*, at ¶ 12.) With the help of the
3 mediator, the Parties reached an agreement on settlement of the action on March 1, 2022. (*Ibid.*)

4 In line with the Parties’ decision to enter a settlement, on May 23, 2022, Plaintiff Gonzales
5 filed a First Amended Complaint (“FAC”) in the Superior Court of California, County of Los
6 Angeles, in the case entitled *Gonzales v. Maintex, Inc.*, Case Number 21STCV30676, adding
7 Plaintiff Garcia as an additional named plaintiff and adding a cause of action for violation of
8 Labor Code section 2698, *et seq.* (PAGA). (Han Dec., *supra*, at ¶ 14.)

9 **III. INVESTIGATION/ LITIGATION HISTORY**

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

11 After Plaintiff Gonzales filed his wage-and-hour class action lawsuit, the Parties met and
12 conferred and agreed to an informal exchange of information and to attend mediation. (Han Dec.,
13 *supra*, at ¶ 16.)

14 Both before and after the lawsuit was filed, the Parties conducted significant investigation
15 and discovery of the relevant facts and law. (Han Dec., *supra*, at ¶ 17.) Specifically, Defendant
16 produced employee handbooks, evidencing its wage-and-hour policies, practices, and procedures,
17 a random sampling of time and pay records, and information and data relating to the size and
18 scope of the Class and permitting Plaintiffs to understand the number of workweeks and pay
19 periods in the Class Period and PAGA Period, respectively. (*Ibid.*) Class Counsel also interviewed
20 Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

21 Based upon the information provided by Defendant and interviews Class Counsel had
22 with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant: (a)
23 failed to provide employees with legally mandated rest and meal breaks; (b) failed to pay
24 employees for all hours worked; (c) failed to properly calculate and pay overtime and sick pay;
25 (d) failed to reimburse employees for necessary business expenses; (e) issued noncompliant wage
26 statements; and (f) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 19-26.)

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

i. The Parties Attended Mediation Which Ultimately Led to the Settlement Agreement and Stipulation to Resolve Class Action and PAGA Claims

During the Parties' mediation on February 25, 2022, the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the Parties' claims and defenses versus the benefits of settlement. (Han Dec., *supra*, at ¶ 28.) With the assistance of the mediator, the Parties were eventually able to reach an agreement on settlement, the terms of which were memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

ii. The Settlement Was Reached as a Result of Arm's-length Negotiations

The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec., *supra*, at ¶ 46.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation on February 25, 2022, both Parties' counsel conducted extensive arm's-length settlement negotiations. (*Ibid.*) As a result, an agreement was ultimately reached by all parties on March 1, 2022. (*Ibid.*)

Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of additional proceedings necessary to continue the litigation against Defendant. (Han Dec., *supra*, at ¶ 47.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement, and is in the Class Members' best interests. (*Ibid.*)

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

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

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$770,000.00 (“Gross
15 Settlement Amount”), which includes, subject to Court approval: (a) an award of attorneys’ fees
16 to Class Counsel in an amount not to exceed \$256,666.66 (one-third of the Gross Settlement
17 Amount); (b) reimbursement of actual costs incurred by Class Counsel in an amount currently
18 estimated at \$13,799.72, but not to exceed \$20,000.00;¹ (c) the Enhancement Awards to Plaintiffs
19 in the amount of \$7,500.00 each for their service as the class representatives; (d) Settlement
20 Administration Costs to CPT Group, the Settlement Administrator, in an amount currently
21 estimated at \$11,000.00, but not to exceed \$15,000.00; and (e) the PAGA Amount of
22 \$100,000.00, seventy-five percent (75%) of which (\$75,000.00) will be paid to the LWDA
23 (“LWDA Payment”) and twenty-five percent (25%) of which (\$25,000.00) (“PAGA Payment”)

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25 ¹ The final amount of actual litigation costs will be provided to the Court in conjunction
26 with Plaintiffs’ motion for final approval. (Han Dec., *supra*, at ¶ 30.) At that time, Plaintiffs will
27 ask the Court to approve the amount of these costs. (*Ibid.*) If Plaintiffs’ actual litigation costs
28 exceed \$20,000.00, Plaintiffs will only seek reimbursement in the amount of \$20,000.00. (*Ibid.*)
If the amount awarded is less than the amount requested by Class Counsel for the Attorneys’ Fees
and Costs, the difference shall become part of the Net Settlement Amount and be available for
distribution to all Class Members who do not submit valid and timely requests to exclude
themselves from this Settlement (“Participating Class Members”). (*Ibid.*)

will be distributed to the Aggrieved Employees on a pro rata basis. (Han Dec., *supra*, at ¶ 29.)

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

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that between \$363,333.34 and \$373,533.62 (“Net Class Settlement Amount”) will be distributed to Class Members – with an average gross Participating Class Member Payment estimated to be between \$951.13 and \$977.84.² (Han Dec., *supra*, at ¶ 31.)

Each Participating Class Member’s Participating Class Member Payment will be apportioned as twenty percent (20%) wages, forty percent (40%) interest on unpaid wages, and forty percent (40%) statutory penalties. (Han Dec., *supra*, at ¶ 32.) Each Aggrieved Employee’s Individual PAGA Payment will be considered one hundred percent (100%) penalties and will be reported on IRS Forms 1099. (*Ibid.*) The Settlement Administrator will calculate, withhold from the Participating Class Member Payments and Individual PAGA Payments (collectively, “Individual Settlement Payments”), and remit to applicable governmental agencies sufficient amounts as may be owed by Participating Class Members and Aggrieved Employees for required withholdings and taxes, including all payroll taxes. (*Ibid.*) The Settlement Administrator will issue appropriate tax forms to each Participating Class Member and Aggrieved Employee consistent with the foregoing breakdown. (*Ibid.*) Plaintiffs, Participating Class Members, and Aggrieved Employees who receive an Individual Settlement Payment shall be solely responsible for any and all tax obligations associated with such receipt. (*Ibid.*) On June 30, 2023, Defendant shall remit to the Settlement Administrator the appropriate applicable employer’s taxes on the portion of the Participating Class Member Payments designated as wages that must be paid by Defendant (“Employer’s Taxes”). (*Ibid.*)

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² \$363,333.34 (Net Class Settlement Amount) / 382 (Class Members) = \$951.13;
\$373,533.62 (Net Class Settlement Amount) / 382 (Class Members) = \$977.84.

1 The Settlement Administrator will pay each Participating Class Member the Participating
2 Class Member's pro-rata share of the Net Class Settlement Amount. (Han Dec., *supra*, at ¶ 33.)
3 Each Participating Class Member's Participating Class Member Payment will be calculated
4 according to the formula listed in the Settlement Agreement. (*Ibid.*)

5 The Settlement Administrator will also pay each Aggrieved Employee the Aggrieved
6 Employee's pro-rata share of the PAGA Payment. (Han Dec., *supra*, at ¶ 34.) Each Aggrieved
7 Employee's Individual PAGA Payment will be calculated according to the formula listed in the
8 Settlement Agreement. (*Ibid.*)

9 **iii. Notice to the Class**

10 Within fourteen (14) calendar days after entry of the Preliminary Approval Order,
11 Defendant will provide the Class List to the Settlement Administrator. (Han Dec., *supra*, at ¶ 36.)
12 Within fourteen (14) calendar days after receipt of the Class List from Defendant, the Settlement
13 Administrator will send Class Notice to the Class Members, in both English and Spanish, via
14 first-class U.S. Mail. (*Id.* at ¶ 37.) Class Members and Aggrieved Employees are not required to
15 submit a claim form to receive their Individual Settlement Payments. (*Ibid.*)

16 **iv. Distribution of Funds**

17 On June 30, 2023, Defendant shall remit to the Settlement Administrator: (i) the Gross
18 Settlement Amount of \$770,000.00 and (ii) the Employer's Taxes (collectively, the "Settlement
19 Fund"). (Han Dec., *supra*, at ¶ 38.) No later than ten (10) calendar days after receipt of the
20 Settlement Fund from Defendant, the Settlement Administrator will distribute Individual
21 Settlement Payments to Participating Class Members and Aggrieved Employees. (*Id.* at ¶ 39.)
22 The distribution of the LWDA Payment, Attorneys' Fees and Costs, the Enhancement Awards,
23 and the Settlement Administration Costs shall occur no later than twelve (12) calendar days after
24 the Settlement Administrator receives the Settlement Fund from Defendant. (*Ibid.*)

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1 Participating Class Members and Aggrieved Employees must cash or deposit their
2 Individual Settlement Payment checks within one hundred eighty (180) calendar days after
3 mailing. (Han Dec., *supra*, at ¶ 40.) If any checks are not redeemed or deposited within ninety
4 (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard.
5 (*Ibid.*) If any checks remain uncashed or not deposited one hundred eighty (180) calendar days
6 after mailing, those checks will become void and no longer available. (*Ibid.*) Within two hundred
7 (200) calendar days after the checks are initially mailed, the funds from any uncashed and voided
8 checks will be disbursed, pursuant to California Code of Civil Procedure §384, to the Legal Aid
9 Foundation of Los Angeles (“LAFLA”), a 501(c)(3) nonprofit recognized by the IRS. (*Ibid.*)

10 **v. The *Cy Pres* Recipient Is Appropriate**

11 The Parties have agreed to designate the nonprofit law firm LAFLA as the *cy pres*
12 recipient. LAFLA satisfies the policy of the State of California “to ensure that the unpaid cash
13 residue and unclaimed or abandoned funds in class action litigation are distributed, to the fullest
14 extent possible, in a manner designed either to further the purposes of the underlying class action
15 or causes of action, or to promote justice for all Californians.” (Han Dec., *supra*, at ¶ 41; Code
16 Civ. Proc., § 384(a).) The Code of Civil Procedure further states:

17 [T]he court shall amend the judgment to direct the defendant to pay the sum of the
18 unpaid residue or unclaimed or abandoned class member funds, plus any interest
19 that has accrued thereon, to nonprofit organizations or foundations to support
20 projects that will benefit the class or similarly situated persons, or that promote the
21 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 ¶ 41; Code Civ. Proc., § 384 (b).)

22 LAFLA directly satisfies the legislature’s purpose and goal under Code of Civil Procedure section
23 384. (Han Dec., at ¶ 41.) The core of LAFLA’s work is providing equal access to justice for
24 people living in poverty across Greater Los Angeles. (*Ibid.*) In the area of employment law,
25 LAFLA helps low-income workers with: (i) recovering unpaid wages including overtime pay; (ii)
26 getting unemployment benefits; (iii) legal advice regarding discrimination; (iv) legal advice
27 regarding workplace harassment; and (v) legal advice regarding medical leave and other
28 workplace rights. (*Ibid.*) LAFLA’s website also contains videos that inform workers of their

rights. (Han Dec., at ¶ 41.) There can be no doubt that LAFLA is the type of non-profit organization the legislature had in mind when drafting and amending Code of Civil Procedure section 384. (*Ibid.*) The Parties are not affiliated with and do not have any financial interest in LAFLA. (*Ibid.*) Specifically, Plaintiffs and Class Counsel have no affiliation with or have any interest pertaining to LAFLA. (*Ibid.*)

vi. Release of Claims

Upon Defendant's payment of the entire Gross Settlement Amount and the Employer's Taxes to the Settlement Administrator, Plaintiffs and all Participating Class Members, and on behalf of their respective successors, assigns, executors, administrators, heirs and legal representatives, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties from the Released Claims that arose during the Class Period. (Han Dec., *supra*, at ¶ 42; Exhibit 2, *supra*, at ¶¶ 30-31, 42, 67.)

Upon Defendant's payment of the entire Gross Settlement Amount and the Employer's Taxes to the Settlement Administrator, Plaintiffs, as representatives of the State of California and all Aggrieved Employees, and on behalf of their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns will, forever completely release and discharge Defendant and the Released Parties from the PAGA Claims that arose during the PAGA Period. (Han Dec., *supra*, at ¶ 43; Exhibit 2, *supra*, at ¶¶ 24, 30, 43.) The release of the PAGA Claims that arose during the PAGA Period is effective, regardless of whether the Aggrieved Employee submits a valid opt-out request. (Han Dec., at ¶ 43.)

Upon Defendant's payment of the entire Gross Settlement Amount and the Employer's Taxes to the Settlement Administrator, the Plaintiffs shall fully release and discharge Defendant and the other Released Parties from the Released Claims and any other claims that Plaintiffs now have or claim to have, or have ever had or claimed to have, against the Released Parties. (Han Dec., *supra*, at ¶ 44; Exhibit 2, *supra*, at ¶¶ 30-31, 44.)

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1 The Released Parties means and includes Maintex, Inc. and its respective past, present,
2 and future predecessors, successors, assigns, affiliates, shareholders, members, owners, officers,
3 directors, investors, employees, managers, managing agents, partners, affiliated companies or
4 entities, staffing companies, parents, subsidiaries, holding companies, agents, attorneys, insurers,
5 and representatives (“Released Parties”). (Han Dec., *supra*, at ¶ 45; Exhibit 2, *supra*, at ¶ 30.)

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

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

16 Counsel for both Parties are particularly experienced in wage-and-hour employment law
17 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
18 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
19 qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial,
20 and the viability of the defenses. (*Ibid.*) Class Counsel’s experience also guided their
21 determination to endorse the proposed Settlement.³ (*Ibid.*)

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26 ³ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the
27 number of objectors – is not determinable until the Class Notice has been provided to the Class
28 Members, 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.⁴
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 the
16 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
22 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
23 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
24 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
25 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129;
26 see also *Munoz*, at p. 409.)

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

11 **i. The Settlement Amount of \$770,000 Is Fair and Reasonable**

12 The proposed Settlement was only possible following significant investigation and
13 evaluation of Defendant’s relevant policies and procedures and the data Defendant produced for
14 the putative class, as referenced in Section III above, which permitted Class Counsel to engage in
15 a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 48.)

16 This investigation and evaluation informed Plaintiffs’ central theories of liability. (Han
17 Dec., *supra*, at ¶ 49.) Plaintiffs’ claims are predicated on Defendant’s alleged: (a) failure to pay
18 overtime wages; (b) failure to provide compliant rest and meal breaks and pay applicable
19 premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
20 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor
21 Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code section
22 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiffs’ theories of liability. (*Id.* at ¶ 50.)

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1 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Dec., *supra*, at ¶ 51.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour
6 claims.⁵ (*Ibid.*) These factors led Plaintiffs to discount calculations of potential damages.

7 **ii. The PAGA Amount of \$100,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
10 226.7, 246, 432.5, 510, 512(a), 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
11 (Han Dec., *supra*, at ¶ 62.) Defendant asserts that, regardless of the results of the underlying
12 causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*)
13 Defendant also maintains that, in addition to its strong arguments against the underlying claims,
14 it had a strong argument that it would be unjust to award maximum PAGA penalties given the
15 law's current unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th
16 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking
17 and limited to the initial violation, the PAGA penalties would be limited to **\$21,900.00** (219
18 employees x \$100 initial violations) on the low end and **\$175,200.00** (219 employees x \$100 x 8
19 theories of recovery) on the high end. (Han Dec., at ¶ 65.)

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25 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006)
141 Cal.App.4th 1422 [affirming denial of certification].)

1 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Decl., *supra*, at ¶ 67.) Many of the causes of action brought were duplicative of the statutory
3 claims such as violations of Labor Code sections 201, 202, 203, 204, 218.5, 226.3, 226.7, 510,
4 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$100,000.00 to PAGA
5 civil penalties was reasonable based on a rate of **\$20.01** per pay period [$\$100,000.00 \div 4,997$ pay
6 periods in PAGA date range = **\$20.01**], given the fact that Defendant is also paying an additional
7 \$670,000.00 in the Settlement.⁶ (*Ibid.*) When PAGA penalties are negotiated in good faith and
8 “there is no indication that [the] amount was the result of self-interest at the expense of other
9 Class Members,” such amounts are generally considered reasonable.⁷ (*Ibid.*)

10 Considering Defendant’s defenses, its supporting evidence, and its position that the case
11 is not suitable for class treatment, the settlement of \$770,000.00 is reasonable, adequate, and fair.

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

13 Excluding the civil penalties, which could be discretionary, for the reasons stated, the total
14 estimated potential exposure, assuming certification and prevailing at trial, would be about
15 **\$4,832,588.98** on the low end and **\$5,269,687.83** on the high end. (Han Dec., *supra*, at ¶ 68.)

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24 ⁶ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25
26 to \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁷ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”).

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,577,001.00	65%	50%	\$275,975.18
Meal Break Premiums	\$393,404.57	50%	40%	\$118,021.37
Overtime/Minimum Wage: Rounding	\$96,451.73	30%	50%	\$33,758.11
Overtime/Minimum Wage: Off-the-Clock Work	\$874,197.68 to \$1,311,296.51	65%	50%	\$152,984.59 to \$229,476.89
Overtime/Minimum Wage: Regular Rate	\$14,253.02	30%	50%	\$4,988.56
Unreimbursed Business Expenses	\$231,331.00	50%	70%	\$34,699.65
Wage Statement Penalty	\$492,750.00	50%	50%	\$123,187.50
Waiting Time Penalty	\$1,153,200.00	50%	50%	\$288,300.00
MAXIMUM TOTAL EXPOSURE	\$4,832,588.98 to \$5,269,687.83⁸			\$1,031,914.96 to \$1,108,407.26⁹

Based on this analysis, the realistic recovery for this case is **\$1,031,914.96** on the low end and **\$1,108,407.26** on the high end. (Han Dec., *supra*, at ¶ 77.) The Gross Settlement Amount of \$770,000.00 is approximately fifteen percent (14.61%) of the maximum potential exposure and about sixty-nine percent (69.47%) of the maximum realistic exposure at trial. (*Ibid.*)

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

⁸ (Han Dec., *supra*, at ¶¶ 54-61.)

⁹ (*Id.* at ¶¶ 69-76.)

significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 78.) Plaintiffs contend that as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately three hundred eighty-two (382) Class Members. (Han Dec., *supra*, at ¶ 79.) Thus, the Class is sufficiently numerous. (*Ibid.*; see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

12 **1. Common Issues Predominate**

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

24 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
25 alleged. (Han Dec., *supra*, at ¶ 80.) Plaintiffs contend that all Class Members were subject to the
26 same or similar employment practices, policies, and procedures, described in detail above. (*Ibid.*)

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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.) Plaintiffs are former employees of Defendant and allege they and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 81.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

Plaintiffs have proven to be adequate class representatives. (Han Dec., *supra*, at ¶ 82.) Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Further, Plaintiffs have no interest that is averse to the interests of the other Class Members. (*Ibid.*)

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

/ / /

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

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

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

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

11 If the court has certified the action as a class action, notice of the final approval
12 hearing must be given to class members in the manner specified by the court. The
13 notice must contain an explanation of the proposed settlement and procedures for
14 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.

15 The proposed Class Notice meets all these requirements. The proposed Class Notice
16 advises the Class Members of their right to participate in the Settlement; how and when to object
17 to or request exclusion from the Settlement; and the date, time, and location of the final approval
18 hearing. (See Han Dec., *supra*; Exhibits A and B to Exhibit 2.)

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1 **V. CONCLUSION**

2 Plaintiffs submit 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 Class Notice should be approved.
6

7 Dated: September 16, 2022

JUSTICE LAW CORPORATION

8
9 By: 
10 Douglas Han
11 Shunt Tatavos-Gharajeh
12 John Bickford
13 *Attorneys for Plaintiffs*
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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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On September 16, 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: **Gonzales v. Maintex, Inc.**
LWDA/Court Case No.: **LWDA-CM-861249-22**
Court Case No.: 21STCV30676
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 September 16, 2022, at Pasadena, California.


Mariah Anderson