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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARTIN MORENO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: 20CV369926

Assigned for All Purposes to:
Honorable Patricia M. Lucas
Department 3

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
Settlement Administrator (Eric Springer); and
[Proposed] Order filed concurrently herewith]

Hearing Date: August 3, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department 3

Complaint Filed: August 26, 2020
FAC Filed: April 18, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 3, 2022 at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Patricia M. Lucas in Department 3 of the Santa Clara Superior
3 Court, located at 191 North First Street, San Jose, California 95113, Plaintiffs Martin Moreno and
4 Loida Rivera (“Plaintiffs,” “Plaintiff Moreno,” and “Plaintiff Rivera”) will and hereby do move
5 for an order:

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

- Approving the settlement of Plaintiffs' PAGA claims; 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 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the Administration Costs, and the allocation of the PAGA Payment.

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 (Eric Springer); [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: July 6, 2022

JUSTICE LAW CORPORATION

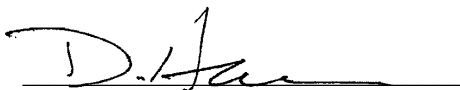
By: 
Douglas Han
Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$450,000 wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and all current and/or former hourly
4 paid, non-exempt persons employed by Defendant Waiter.com, Inc. (“Defendant”) in California
5 at any time since August 26, 2016 through and including March 26, 2022 (“Class” and “Class
6 Period”). At the time of this filing, the number of Class Members confirmed by Defendant is
7 estimated to be three hundred eighty-five (385). (Declaration of Douglas Han In Support of
8 Plaintiffs’ Motion For Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶¶ 7-8.)

9 It is requested the Court grant Preliminary Approval because when analyzing the strengths
10 and vulnerabilities of the claims alongside Defendant’s potential liability exposure, the proposed
11 Settlement is well within the range of reasonableness. Plaintiffs and Class Counsel are convinced
12 the proposed Settlement is in the best interests of the Class Members.

13 **II. BACKGROUND**

14 On August 26, 2020, Plaintiff Moreno filed a wage-and-hour class action lawsuit against
15 Defendant in the Superior Court of California, County of Santa Clara, alleging eight (8) causes
16 of action. (Han Dec., *supra*, at ¶ 9.)

17 After engaging in litigation, exchange of information, and negotiations, the Parties
18 attended mediation on February 24, 2022 with Mark S. Rudy, Esq., resulting in the settlement of
19 this matter, including additional threatened claims, subject to the Court’s approval. (Han Dec.,
20 *supra*, at ¶ 10.)

21 Afterwards, Plaintiff Rivera provided written notice to the California Labor and
22 Workforce Development Agency (“LWDA”) and Defendant on February 25, 2022. (Han Dec.,
23 *supra*, at ¶ 11.) Plaintiffs then filed a First Amended Complaint on April 18, 2022 solely for the
24 purposes of effectuating the settlement that added Plaintiff Rivera as an additional plaintiff,
25 adjusted the Class definition, added additional alleged facts and theories raised by Plaintiffs
26 during the mediation and negotiations, and added the following cause of action: violation of Labor
27 Code sections 2698, *et seq.* (PAGA). (*Id.* at ¶ 12.)

28 ///

III. INVESTIGATION/ LITIGATION HISTORY

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

After filing this case, the Parties engaged in discovery and investigations. (Han Dec., *supra*, at ¶ 14.) Plaintiff Moreno propounded one (1) set of form interrogatories, 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 then met and conferred, agreed to engage in an informal exchange of information and attended mediation. (*Ibid.*)

Prior to mediation, the Parties conducted significant investigation of the relevant facts and law. (Han Dec., *supra*, at ¶ 15.) Defendant provided documents relating to its wage-and-hour policies, practices, and procedures. (*Ibid.*) Plaintiffs reviewed time records, pay records, and information provided by Defendant relating to the size and scope of the Class. (*Ibid.*) Plaintiffs also interviewed Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

Based upon the information provided by Defendant and interviews Class Counsel had with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant: (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay employees for all hours worked; (c) failed to factor non-discretionary bonuses and incentives into employees' regular rates of pay for overtime compensation and sick leave pay; (d) failed to reimburse employees for necessary business expenses; (e) issued noncompliant wage statements; and (f) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 17-25.)

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

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

The Parties attended mediation with experienced wage-and-hour mediator Mark S. Rudy, Esq., that took place on February 24, 2022. (Han Dec., *supra*, at ¶ 26.) During the mediation, 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. (*Ibid.*) With the assistance of the mediator, the Parties reached a settlement, the terms of which were memorialized in the Settlement Agreement the Parties now seek Preliminary Approval of. (*Id.* at ¶ 26; Exhibit 2.)

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

2 At the mediation, the Parties’ counsel engaged in extensive arm’s-length settlement
3 negotiations until an agreement was reached. (Han Dec., *supra*, at ¶ 38.) Though cordial and
4 professional, the settlement negotiations have always been adversarial and non-collusive. (*Ibid.*)

5 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense
6 and length of additional proceedings necessary to continue the litigation. (Han Dec., *supra*, at
7 ¶ 39.) Plaintiffs and Class Counsel have considered the uncertainty and risk of further litigation,
8 the potential outcome, and the difficulties and delays. (*Ibid.*) Based on the foregoing, Plaintiffs
9 and Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and
10 reasonable and is in the Class Members’ best interests. (*Ibid.*)

11 **iii. The Settlement Is the Result of Thorough Investigation**

12 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
13 of Plaintiffs’ claims and Defendant’s defenses and engaged in sufficient investigation, research,
14 and informal discovery. (Han Dec., *supra*, at ¶ 40.) The proposed Settlement was only possible
15 following significant investigation and evaluation of Defendant’s relevant policies and
16 procedures and the data provided. (*Ibid.*) This information permitted Class Counsel to engage in
17 a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has also reached
18 the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their
19 cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd*
20 *v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

22 **i. Deductions from the Settlement**

23 The Parties agreed (subject to the Court’s approval) this action be settled and
24 compromised for the non-reversionary total sum of \$450,000 (“Gross Settlement Amount”)
25 which includes the: (a) Attorney Fee Award of up to \$157,500; (b) Cost Award of up to \$25,000;
26 (c) Class Representative Enhancement Payment of \$10,000 to Plaintiff Moreno and \$5,000 to
27 Plaintiff Rivera; (d) Administration Costs currently estimated at \$7,500 but not to exceed \$9,000;
28 and (e) PAGA Payment of \$20,000. (Han Dec., *supra*, at ¶ 27.)

1 **ii. Calculation of the Class Members' Individual Settlement Shares**

2 If the Court approves all the proposed deductions from the Gross Settlement Amount, it
3 is estimated \$223,500 will be distributed to the Participating Class Members, resulting in an
4 *average* Individual Settlement Share of \$580.52. (Han Dec., *supra*, at ¶ 28.)

5 The Settlement Administrator will calculate and disburse an Individual Settlement Share
6 from the Net Settlement Amount to each Participating Class Member using the formula set forth
7 in the Agreement. (Han Dec., *supra*, at ¶ 29.) The Settlement Administrator shall also calculate
8 and pay each Eligible PAGA Employee from the Qualified Settlement Fund according to his or
9 her proportional share of twenty-five percent (25%) of the PAGA Payment (\$5,000) using the
10 formula set forth in the Agreement. (*Id.* at ¶ 30.)

11 **iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is**
12 **Justified Under the Claims of this Action**

13 Each Individual Settlement Share will be apportioned as follows: twenty percent (20%)
14 in compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of
15 claims for alleged non-wage amounts including penalties and interest. (Han Dec., *supra*, at ¶ 29.)

16 The settlement payout to Class Members will be apportioned twenty percent (20%) in
17 compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of
18 claims for alleged non-wage amounts including penalties and interest. (Han Dec., *supra*, at ¶ 67.)
19 This allocation of wages, penalties, and interest was based on the realistic exposure Plaintiffs
20 could expect to receive for meal and rest break premiums, unpaid wages due to off-the-clock
21 work, and underpaid overtime wages and sick leave if this case went to trial. (*Ibid.*) Plaintiffs
22 first added the realistic exposure for rest break premiums and meal break premiums (\$26,494.32
23 + \$39,813.08 = \$66,307.40). (*Ibid.*) Plaintiffs then added the \$66,307.40 to the low end realistic
24 exposure for unpaid wages due to off-the-clock work and the underpaid overtime wages and sick
25 leave pay (\$66,307.40 + \$42,931.38 + \$65,174.05 = \$174,412.83). (*Ibid.*) The realistic exposure
26 of \$174,412.83 Plaintiffs can expect to receive if they were to prevail at trial for meal and rest
27 break premiums, low end unpaid wages due to off-the-clock work, and underpaid overtime wages
28 and sick leave pay represents about twenty-two percent (21.85%) of the low end realistic exposure

of the maximum total exposure and PAGA penalties ($\$174,412.83 \div (\$546,048.29 + \$252,000) = 0.2185 \times 100 = 21.85\%$). (Han Dec., *supra*, at ¶ 67.) Because this represents almost twenty percent (20%) of wages, the Parties determined allocating twenty percent (20%) as wages and eighty percent (80%) as non-wages (penalties and interest) pursuant to the Agreement was appropriate. (*Ibid.*)

iv. Notice to the Class

Within thirty (30) days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 31.) The Settlement Administrator will then mail the Notice Packet to the Class Members via first-class regular U.S. Mail within fourteen (14) days after the receipt of the Class Data from Defendant. (*Ibid.*)

v. Distribution of Funds

Within fourteen (14) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount into the Qualified Settlement Fund. (Han Dec., *supra*, at ¶ 32.) Within fourteen (14) calendar days after the deadline to fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due. (*Ibid.*)

Participating Class Members and Eligible PAGA Employees must cash or deposit their settlement payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 33.) Participating Class Members' uncashed settlement checks will be canceled, and the Settlement Administrator will pay the amount of the uncashed Individual Settlement Share to the California State Controller: Unpaid Wage Fund, and Eligible PAGA Employees' uncashed checks will be canceled, and the Settlement Administrator will pay the amount of the uncashed individual shares of the PAGA Payment to the LWDA. (*Ibid.*)

vi. Release of Claims

Upon Defendant's fulfillment of its payment obligations pursuant to section III (J)(9)(a) of the Agreement, Plaintiffs and the other Participating Class Members will fully and finally release and discharge the Released Parties from the Released Claims. (Han Dec., *supra*, at ¶ 34; Exhibit 2, *supra*, at §§ I.HH., III.K.)

///

1 Upon Defendant's fulfillment of its payment obligations pursuant to section III (J)(9)(a)
2 of the Agreement, Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof,
3 including, but not limited to, any and all Eligible PAGA Employees, are barred from pursuing
4 any action for civil penalties defined within the PAGA Released Claims against the Released
5 Parties. (Han Dec., *supra*, at ¶ 35; Exhibit 2, *supra*, at §§ I.BB., III.L.)

6 Upon Defendant's fulfillment of its payment obligations pursuant to section III (J)(9)(a)
7 of the Agreement, in exchange for the Class Representative Enhancement Payments to Plaintiffs,
8 in recognition of their work and efforts in prosecuting the claims and obtaining the Settlement,
9 and undertaking the risk for the payment of costs if this matter had not successfully resolved,
10 Plaintiffs provide a general release of claims for themselves and their spouses, heirs, successors
11 and assigns. (Han Dec., *supra*, at ¶ 36; Exhibit 2, *supra*, at § III.M.)

12 Regarding class action releases, “[A] court may release not only those claims alleged in
13 the complaint and before the court, but also claims which ‘could have been alleged by reason of
14 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
15 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the class
16 releases in this case are acceptable because they are tied to the allegations in the Complaint or
17 allegations that could have been asserted based on the facts in the Complaint. The released claims
18 do not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

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

20 Counsel for both Parties are particularly experienced in wage-and-hour employment law
21 and class actions. (Han Dec., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted
22 numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel
23 are experienced and qualified to evaluate the class claims, the advantages and disadvantages of
24 settlement versus trial, and the viability of the defenses. (*Ibid.*) Class Counsel's experience
25 guided their determination to endorse the proposed Settlement.¹ (*Ibid.*)

26 _____
27 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
28 number of objectors – is not determinable until the Class Notice has been provided to the Class
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.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

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

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

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

24 ///

25 _____
26 ² The California Supreme Court has also authorized California’s trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
28 *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 Gross Settlement Amount of \$450,000 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 provided for
14 the putative class, as referenced in Section III(b)(iii) above, permitting Class Counsel to engage
15 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 40.)

16 Investigation and evaluation informed Plaintiffs' central theories of liability predicated on
17 Defendant's alleged: (1) failure to pay minimum and overtime wages; (2) failure to provide meal
18 and rest breaks and pay applicable premiums; (3) failure to provide complete and accurate wage
19 statements; (4) failure to reimburse business expenses; (5) failure to timely pay wages during
20 employment and upon separations; (6) failure to maintain compliant wage statements; (7) failure
21 to accurately calculate and pay sick leave; (8) violation of Labor Code sections 2698, *et seq.*
22 (PAGA); and (9) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec.,
23 *supra*, at ¶ 41.) Defendant continues to deny Plaintiffs' theories of liability. (*Id.* at ¶ 42.)

24 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
25 to certification are always present. (Han Dec., *supra*, at ¶ 43.) As the California Supreme Court
26 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
27 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores*,
28

1 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (Han
2 Dec., *supra*, at ¶ 43.) These factors led Plaintiffs to discount the calculations of potential damages.

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

4 The provisions of the Labor Code potentially triggering PAGA penalties in this case
5 include, but are not limited to, Labor Code sections 200, 201, 202, 203, 204, 206, 206.5, 210, 212,
6 218, 218.5, 221, 226, 226.3, 226.7, 246-248.3, 300, 510, 512, 558, 558.1, 1174, 1174.5, 1194,
7 1197, 1197.1, 1198, 2698 *et seq.*, 2699 *et seq.*, 2800, and 2802. (Han Dec., *supra*, at ¶ 52.)
8 Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties
9 are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintains that, in addition
10 to its strong arguments against the underlying claims, it has a strong argument that it would be
11 unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v.*
12 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
13 authority].) Defendant argued that without stacking and limited to the initial violation, the PAGA
14 penalties would be limited to **\$9,000** (90 employees x \$100 initial violations) on the low end and
15 **\$63,000** (90 employees x \$100 x 7 theories of recovery) on the high end. (*Id.* at ¶¶ 53-56.)

16 Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
17 at ¶ 57.) Many of the causes of action brought were duplicative of the statutory claims, such as
18 Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, 1197, 1198, 2800, and 2802. (*Ibid.*)
19 The maximum penalties for each pay period are not justified, and it was arguable the Court would
20 award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$20,000 as the PAGA
21 Payment was reasonable based on a rate of **\$8.06** per pay period [$\$20,000 \div 2,482$ pay periods in
22 PAGA date range (opinioned by Plaintiffs' expert) = **8.06**], given the fact that Defendant is paying
23

24
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].)

an additional \$430,000 in the class settlement.⁴ (Han Decl., *supra*, at ¶ 57.) When PAGA payments 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 Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$450,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the potential civil penalties, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be **\$2,267,361.48** on the low end and **\$2,353,280.98** on the high end. (Han Dec., *supra*, at ¶ 58.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$220,786.04	70%	60%	\$26,494.32
Meal Break Premiums	\$199,065.41	60%	50%	\$39,813.08
Overtime/Minimum Wage: Off-the-Clock Work	\$171,725.50 to \$257,645	50%	50%	\$42,931.38 to \$64,441.25
Overtime/Minimum Wage: Regular Rate	\$181,039.03	40%	40%	\$65,174.05
Unreimbursed Business Expenses	\$178,092	20%	70%	\$42,472.08
Wage Statement Penalty	\$606,300	50%	50%	\$151,575
Waiting Time Penalty	\$710,353.50	50%	50%	\$177,588.38
MAXIMUM TOTAL EXPOSURE	\$2,267,361.48 to \$2,353,280.98⁶			\$546,048.29 to \$567,558.16⁷

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”.)

⁶ (Han Dec., *supra*, at ¶¶ 44-51.)

⁷ (*Id.* at ¶¶ 59-65.)

1 Based on this analysis, the realistic recovery for this case is **\$546,048.29** on the low end
2 and **\$567,558.16** on the high end. (Han Dec., *supra*, at ¶ 66.) The Gross Settlement Amount of
3 \$450,000 is about nineteen percent (19.12%) of the maximum potential exposure and about
4 seventy-nine (79.29%) of the maximum realistic exposure at trial. (*Ibid.*)

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

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

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

23 The Class is ascertainable and numerous as to make it impracticable to join all Class
24 Members, and there are common questions of law and fact amongst the Class. (Han Dec., *supra*,
25 at ¶ 68.) Plaintiffs contend that as former hourly-paid, non-exempt employees of Defendant, their
26 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
27 the interests of the Class. (*Ibid.*) Also, Plaintiffs assert that the prosecution of separate actions by
28 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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 three hundred eighty-five (385) Class Members, meaning the Class is
10 sufficiently numerous. (Han Dec., *supra*, at ¶ 69.) Class Members will be identified by Defendant
11 to the Settlement Administrator through a review of Defendant’s employment records. (*Ibid.*)

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

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

22 **1. Common Issues Predominate**

23 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
24 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
25 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).)
26 Courts determine whether the elements necessary to establish liability are susceptible to common
27 proof, even if the class members must individually prove their damages. (*Brinker Restaurant*
28 *Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly

1 granted class certification when the plaintiff can present evidence of common policies. (See, e.g.,
2 *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012
3 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi*
4 *South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS
5 [court certified class of dancers on state law claims].)

6 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
7 alleged. (Han Dec., *supra*, at ¶ 70.) Plaintiffs contend all Class Members were subject to the same
8 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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

10 Typical claims rely on legal theories and facts that are substantially like those of other
11 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former
12 employees of Defendant and allege they and the Class Members were employed by the same
13 company and injured by Defendant's common policies and practices related to the claims
14 described above. (Han Dec., *supra*, at ¶ 71.) Plaintiffs seek relief for these claims and derivative
15 claims on behalf of all Class Members. (*Ibid.*) Plaintiffs' claims arise from the same employment
16 practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

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

18 Plaintiffs have proven to be adequate representatives. (Han Dec., *supra*, at ¶ 72.) Plaintiffs
19 have conducted themselves diligently and responsibly in representing the Class in this litigation,
20 understand their fiduciary obligations, and have actively participated in the prosecution of this
21 case. (*Ibid.*) Furthermore, Plaintiffs have no aversive interest to that of the Class. (*Ibid.*)

22 **4. Class Action Is Superior for the Fair and Efficient** 23 **Adjudication of this Controversy**

24 A class action is superior to other available means for the fair and efficient adjudication
25 of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that
26 class treatment will permit many similarly situated persons to prosecute their common claims for
27 settlement purposes simultaneously in a single forum without the duplication of effort and
28 expense. Because several Class Members are current employees, Plaintiffs believe fear of

retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

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

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

The Notice Packet meets all these requirements. The proposed Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

V. CONCLUSION

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

Dated: July 6, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiffs

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