

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
PHILLIP SONG (SBN 326572)
LIZETTE RODRIGUEZ (SBN 335182)
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 SAN DIEGO**

MELISSA WEISMAN, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

GENERAL ATOMICS, a California
corporation; GENERAL ATOMICS
AERONAUTICAL SYSTEMS, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2021-00000331-CU-OE-CTL

Assigned for All Purposes to:
Honorable Katherine Bacal
Dept. C-69

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); and [Proposed] Order filed
concurrently herewith]

Hearing Date: February 17, 2023
Hearing Time: 1:30 p.m.
Hearing Place: Department C-69

Complaint Filed: January 5, 2021
FAC Filed: July 21, 2021
SAC Filed: January 19, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 17, 2023, at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Katherine Bacal in Department C-69 of the San Diego County
3 Superior Court, located at 330 West Broadway San Diego, California 92101, Plaintiffs Melissa
4 Weisman and Scott Athey (“Plaintiffs”) will and hereby move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Settlement of Class Action and PAGA
7 Representative Action (“Agreement,” “Settlement Agreement,” or “Settlement”),
8 attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited
9 to, the means of allocation and distribution of funds, the allocations for payments
10 under the Labor Code Private Attorneys General Act of 2004 (“PAGA”),
11 Attorneys’ Fees, Attorneys’ Costs, Class Representative Service Payment, and
12 Settlement Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiffs as the Class Representatives;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as **Exhibit A** to the Agreement;
- 18 • Directing the mailing of the proposed Class Notice (collectively known as the
19 “Class Notice”) to the proposed Class;
- 20 • Approving the proposed deadlines for the notice and settlement administration
21 process;
- 22 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and
- 23 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
24 Agreement, at which time the Court will also consider whether to grant Final
25 Approval of the requests for the Attorneys’ Fees, the Attorneys’ Costs, the Class
26 Representative Service Payment, the Settlement Administration Costs, and
27 approval of the allocation of the PAGA Payment.

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

5
6 Dated: January 25, 2023

JUSTICE LAW CORPORATION

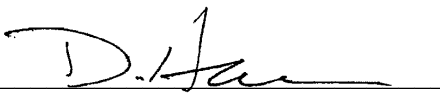
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8 By: 
9 Douglas Han
10 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$7,500,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and on behalf of all non-
4 exempt hourly-paid employees of General Atomics who performed work for any of the General
5 Atomics Releasees within the State of California at any time during the period from July 11, 2016,
6 through January 16, 2023 (“Class” and Class Period”). At the time of this filing, the number of
7 Class Members is estimated to be approximately ten thousand two hundred fourteen (10,214).
8 (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class
9 Action Settlement (“Han Dec.”), ¶ 9.)

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
11 vulnerabilities of the class claims alongside Defendants General Atomics and General Atomics
12 Aeronautical Systems’ (“Defendants”) potential liability exposure, this proposed Settlement of
13 \$7,500,000 is well within the range of reasonableness. Class Counsel and Plaintiffs are convinced
14 that the proposed Settlement is in the best interests of the Class Members based on the negotiations
15 and detailed knowledge of the issues present in this action.

16 **II. BACKGROUND**

17 On January 5, 2021, Plaintiff Melissa Weisman filed a putative class action complaint
18 against Defendants in the California Superior Court, County of San Diego, captioned *Melissa*
19 *Weisman, individually, and on behalf of others similarly situated v. General Atomics, et al.*, Case
20 No. 37-2021-00000331-CU-OE-CTL (the “Class Action”). (Han Dec., *supra*, at ¶ 11.) The
21 *Weisman* lawsuit alleged claims for: (1) unpaid overtime; (2) unpaid meal period premiums; (3)
22 unpaid rest period premiums; (4) unpaid minimum wages; (5) failure to timely pay all wages; (6)
23 failure to provide accurate wage statements; (7) failure to reimburse business expenses; and (8)
24 unfair business practices in violation of Business and Profession Code section 17200, *et seq.* (*Ibid.*)
25 Plaintiff Weisman brought the *Weisman* lawsuit on behalf of a proposed class of all current and
26 former California non-exempt hourly employees of Defendants. (*Ibid.*)

27 On May 27, 2022, Plaintiff Scott Athey filed a representative action complaint against
28 Defendants in the California Superior Court, County of San Diego, captioned *Scott Athey,*

1 individually, and on behalf of aggrieved employees pursuant to the Private Attorneys General Act
2 (“PAGA”) v. *General Atomics, et al.*, Case No. 37-2022-00020346-CU-OE-CTL (the “PAGA
3 Action”). (Han Dec., *supra*, at ¶ 12.) The PAGA Action alleged on behalf of all current and former
4 aggrieved California-based hourly non-exempt employees of Defendants claims for civil penalties
5 under PAGA for: (1) failure to pay minimum and overtime wages; (2) failure to provide paid sick
6 leave; (3) failure to provide meal periods and rest breaks and pay any associated premiums; (4)
7 failure to timely pay wages during employment (5) failure to timely pay wages upon termination;
8 (6) failure to provide complete and accurate wage statements; (7) failure to keep complete and
9 accurate payroll records; and (8) failure to reimburse all necessary business expenses. (*Ibid.*)

10 On November 16, 2022, the Parties attended a mediation session with mediator Jeff Ross,
11 Esq. on the claims alleged in both the Class Action and PAGA Action. Under the auspices of the
12 mediator, the Parties were eventually able to reach an agreement on settlement of the action. (Han
13 Dec., *supra*, at ¶ 13.)

14 **III. INVESTIGATION/ LITIGATION HISTORY**

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

16 Plaintiffs propounded two (2) sets of form interrogatories, two (2) sets of special
17 interrogatories, two (2) sets of requests for admissions, and two (2) sets of requests for production.
18 (Han Dec., *supra*, at ¶ 15.) Defendants responded to Plaintiffs’ discovery requests. (*Ibid.*)
19 Thereafter, the Parties met and conferred extensively and engaged in motion practice to obtain
20 formal discovery. (*Ibid.*) After substantial and extensive formal and informal discovery the Parties
21 attended mediation. (*Ibid.*)

22 Prior to the mediation, the Parties conducted significant investigation and discovery of the
23 facts and law both before and after this case was filed. (Han Dec., *supra*, at ¶ 18.) Specifically,
24 Defendants produced voluminous documents relating to its policies, practices, and procedures
25 regarding reimbursement of business expenses, paying non-exempt employees for all hours
26 worked, meal and rest period policies, and payroll and operational policies (*i.e.*, employee
27 handbooks, training videos, training materials, class member personnel records). (*Ibid.*) As part of
28 Defendants’ production, Class Counsel also reviewed time records, pay records, and information

1 relating to the size and scope of the Class, as well as data permitting Class Counsel to understand
2 the number of workweeks in the Class Period. (Han Dec., *supra*, at ¶ 18.) Class Counsel also
3 interviewed several dozens of Class Members who worked for Defendants throughout the Class
4 Period. (*Ibid.*)

5 Based upon the information provided by Defendants and interviews Class Counsel had
6 with non-exempt employees, Plaintiffs contend – and Defendants deny – that Defendants: (a)
7 failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay
8 employees for all hours worked, including off-the-clock work and invalid alternative workweek
9 schedules; (c) failed to include non-discretionary bonuses and/or commissions in employees’
10 regular rates of pay for purposes of overtime compensation, premium wages and sick pay; (d)
11 failed to reimburse employees for necessary business expenses; (e) issued non-compliant wage
12 statements; (f) are liable for waiting time penalties; and (g) are liable for PAGA penalties. (Han
13 Dec., *supra*, at ¶¶ 18-22.)

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

15 **i. The Parties Attended Mediation Which Ultimately Led to the**
16 **Settlement of Class Action and PAGA Representative Action**

17 The Parties agreed to go to mediation with an experienced wage-and-hour mediator, Jeff
18 Ross, Esq., on November 16, 2022. (Han Dec., *supra*, at ¶ 24.) With the assistance of the mediator,
19 the Parties were able to reach an agreement on settlement, the terms of which were memorialized
20 in the Settlement of Class Action and PAGA Representative Action. (*Id.* at ¶ 27; Exhibit 2.)

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

22 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Dec.,
23 *supra*, at ¶ 28.) Though cordial and professional, the settlement negotiations have always been
24 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
25 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

26 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense
27 and length of continued proceedings necessary to continue the litigation against Defendants. (Han
28 Dec., *supra*, at ¶ 29.) Plaintiffs and Class Counsel have also considered the inherent uncertainty

1 and risk of further litigation, the potential outcome, and the difficulties and delays of such
2 litigation. (Han Dec., *supra*, at ¶ 29.) Based on the foregoing, Plaintiffs and Class Counsel believe
3 the Settlement is a fair, adequate, and reasonable settlement, and is in the Class’s best interests.
4 (*Ibid.*)

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

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

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

15 **i. Maximum Settlement Amount**

16 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
17 action is settled and compromised for the non-reversionary total sum of \$7,500,000 (“Maximum
18 Settlement Amount”), which includes, subject to Court approval: (a) the Attorneys’ Fees to Class
19 Counsel of one-third of the Maximum Settlement Amount; (b) the Attorneys’ Costs to Class
20 Counsel of \$25,000 for litigation costs and expenses; (c) the Class Representative Service Payment
21 of \$10,000 to each Plaintiff; (d) Settlement Administration Costs to CPT Group, the Settlement
22 Administrator, of \$50,500; and (e) the PAGA Payment of \$350,000 to the LWDA and the PAGA
23 Members. (Han Dec., *supra*, at ¶ 25.)

24 **ii. Calculation of the Class Members’ Individual Settlement Payments**

25 After all Court-approved deductions from the Maximum Settlement Amount, it is
26 estimated that \$4,554,500 (“Settlement Pool”) will be distributed to Class Members – with an
27 average gross Individual Settlement Payment estimated at \$437.34.¹ (Han Dec., *supra*, at ¶ 27.)

28 ¹ \$4,554,500 (Settlement Pool) / 10,214 (Class Members) = \$437.34.

1 The Settlement Administrator will pay an Individual Settlement Payment from the
2 Settlement Pool to each Settlement Class Member in accordance with the formula listed in the
3 Agreement. (Settlement Agreement §7.6) Individual Settlement Payments will be apportioned as
4 follows: seventy percent (70%) for wages and thirty percent (30%) for interest and penalties.
5 (Settlement Agreement § 7.6.4.) Defendants' share of the payroll taxes will be paid separately
6 from the Maximum Settlement Amount.

7 Furthermore, the Settlement Administrator will pay a portion of the PAGA Payment of
8 \$87,500 to each PAGA Member in accordance with the formula listed in the Agreement.
9 (Settlement Agreement § 7.7)

10 **iii. Notice to the Class**

11 No later than twenty (20) calendar days after the Court issues the Preliminary Approval
12 Order, Defendants shall provide to the Settlement Administrator in electronic form, a list of each
13 Class Member, including each person's name, last known address, social security number, and
14 number of Eligible Workweeks and Eligible Pay Periods, that will become the Database.
15 (Settlement Agreement § 8.2.1.) Within thirty-five (35) calendar days of the Preliminary Approval
16 Date, the Settlement Administrator will send via United States first class mail the Notice of Class
17 Action Settlement to the Class Members. (Settlement Agreement § 8.2.2.) Class Members are not
18 required to submit a claim form to receive their Individual Settlement Payments.

19 **iv. Distribution of Funds**

20 The Settlement will be funded pursuant to the timeline and manner set forth in the
21 Agreement. (Settlement Agreement § 8.4.) Uncashed settlement checks will be mailed to the
22 California State Controller's Unclaimed Property Division in accordance with California
23 Unclaimed Property Law so that the Settlement Class Member will have his or her Individual
24 Settlement Payment available to him or her per the applicable claim procedure to request that
25 money from the State of California. (Settlement Agreement § 8.4.3.)

26 **v. Release of Claims**

27 Upon the Effective Date, the Settlement Class Members, shall be deemed to have fully,
28 finally, and forever released the General Atomics Releasees from the Released Class Claims for

1 the Class Period (Settlement Agreement §7.10.2.) Released Class Claims are defined as

2 all claims, rights, demands, liabilities, and causes of action asserted in the Operative
3 Complaint, all claims that could have been reasonably asserted based on and/or
4 related to the facts alleged in the Operative Complaint, the PAGA Action, and
5 ascertained in the course of the Action and the PAGA Action, including causes of
6 action for (a) unpaid overtime premiums under Labor Code §§ 510 and 1198; (b)
7 unpaid meal period premiums under Labor Code §§ 226.7 and 512(a) and the
8 applicable California Industrial Welfare Commission Wage Order; (c) unpaid rest
9 period premiums under Labor Code § 226.7; (d) unpaid minimum wages under
10 Labor Code §§ 1194 and 1197; (e) failure to timely pay final wages under Labor
11 Code §§ 201, 202, and 203; (f) failure to maintain and provide accurate itemized
12 wage statements under Labor Code § 226, 226.2, and 226.3; (g) failure to reimburse
13 business expenses under Labor Code §§ 2800 and 2802; (h) failure to provide paid
14 sick leave under Labor Code § 246; (i) all claims for the alleged violation of
15 California Business & Professions Code §§ 17200, *et seq.*, based upon the alleged
16 failure to pay overtime premiums, provide compliant meal and rest breaks, failure
17 to provide accurate and itemized wage statements, failure to pay all wages, failure
18 to timely pay wages, and/or failure to reimburse business expenses; and (j) all
19 claims for interest, penalties, attorneys' fees, costs and any other monetary relief
20 based upon the claims described above and including, but not limited to, pursuant
21 to Labor Code §§210, 218.5, 218.6, Code of Civil Procedure §1021.5, and/or Civil
22 Code §§ 3287(b) and 3289, costs, attorneys' fees, injunctive relief, declaratory
23 relief, or accounting that are based on or related to the alleged Labor Code and
24 Business & Professions Code violations referenced in sub-sections (a) through (i)
25 above, that accrued or accrue through the Class Period. ("Released Class Claims")
26 (Settlement Agreement §2.34.)
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18 Upon the Effective Date, Class Representatives, as representatives of the State of
19 California and on behalf of the LWDA and the PAGA Members, fully and finally release the
20 General Atomics Releasees from the Released PAGA Claims for the PAGA Period. (Settlement
21 Agreement § 7.10.3.) Released PAGA Claims are defined as

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all claims for civil penalties under PAGA asserted in the Operative Complaint, asserted in any PAGA letters sent by Plaintiff Athey to the LWDA, and all claims that could have been reasonably alleged in the Operative Complaint and the PAGA Action arising from and/or related to the same alleged facts alleged in the Operative Complaint and/or the PAGA Action and ascertained in the course of the Action and PAGA Action, during the PAGA Period including for (a) failure to pay minimum and overtime wages under Labor Code §§ 510, 1194, 1197, and 1198; (b) failure to provide paid sick leave under Labor Code § 246; (c) failure to provide meal periods and rest breaks and pay any associated premiums due under Labor Code §§ 226.7 and 512; (d) failure to timely pay wages during employment under Labor Code §§ 204 and 210; (e) failure to timely pay wages upon termination under Labor Code §§ 201-203; (f) failure to provide complete and accurate wage statements under Labor Code §§ 226, 226.3, and 1174; (g) failure to keep complete and accurate payroll records under Labor Code § 1174; and (h) failure to reimburse all necessary business expenses under Labor Code §§ 2800 and 2802. (Settlement Agreement § 7.10.1.)

Upon the Effective Date, the Plaintiffs in an amount not to exceed \$10,000, in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs if this matter had not successfully resolved, Plaintiffs provides a general release of claims for themselves and their spouse, heirs, successors and assigns. Class Representatives' Release also includes a waiver of Civil Code section 1542. (Settlement Agreement § 2.35.)

With regards to class action releases, “[A] court may release not only those claims alleged in the complaint and before the court, but also claims which ‘could have been alleged by reason of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases in this case are acceptable because they are limited to the scope of the allegations in the Operative Complaint and the PAGA Action. In other words, the released claims do not go beyond the scope of the Operative Complaint and the PAGA Action.

d. Counsel for Both Parties Are Experienced in Similar Litigation

Counsel for both Parties are experienced in wage-and-hour employment law and class actions. (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and qualified to evaluate the class claims, the settlement versus trial on a fully informed basis, and the viability of the defenses. (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.) These experiences instructed Class Counsel

on the risks and uncertainties of further litigation and guided their determination to endorse the proposed Settlement.² (Han Dec., *supra*, at ¶¶ 2-8; Exhibit 1.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

- (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
...
- (c) Any party to a settlement agreement may serve and file a written notice of 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.

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168

² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action and PGA Settlement has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

³ 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 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
2 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
3 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see
4 also *Munoz*, at p. 409.)

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

15 **i. The Settlement Amount of \$7,500,000 Is Fair and Reasonable**

16 The Settlement was possible following significant investigation and evaluation of
17 Defendants’ relevant policies and procedures, as well as the data Defendants produced for the
18 putative class, as referenced in Section III above, which permitted Class Counsel to engage in a
19 comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 30.)

20 Plaintiffs’ claims are predicated on Defendants’ purported: (a) failure to pay all wages
21 owed; (b) failure to provide meal and rest breaks and pay applicable premiums; (c) failure to pay
22 minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements;
23 (f) failure to reimburse business expenses; (g) violation of Labor Code section 2698, *et seq.*
24 (PAGA); and (h) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec.,
25 *supra*, at ¶ 31.) Defendants denies Plaintiffs’ theories of liability. (*Id.* at ¶ 32.)

26 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
27 to certification are always present. (Han Dec., *supra*, at ¶ 33.) As the California Supreme Court
28 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is

always a matter of the trial court's sound discretion. (Han Dec., *supra*, at ¶ 33.) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴ (*Ibid.*) These factors led Plaintiffs to discount calculations of potential damages.

ii. Discount Analysis Justifies the Settlement

The total realistic potential exposure, assuming certification and prevailing at trial, would be approximately \$12,725,991.84. (Han Dec., *supra*, at ¶ 50.)⁵ The potential exposure analysis of each claim and the risk factors applied is detailed in Han Dec. ¶¶ 35-46. The Maximum Settlement Amount of \$7,500,000 is about fifty-nine percent (58.9%) of the maximum potential exposure. (Han Dec., *supra*, at ¶ 52.)

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 provided a significant recovery for the Class Members.

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⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for 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].)

⁵ Defendants dispute Plaintiffs' calculation of potential exposure as it assumes noncompliance, which Defendants expressly deny.

1 **iii. The PAGA Payment of \$350,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 221, 226(a), 226.3, 226.7,
4 510, 512(a), 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Han Decl.,
5 *supra*, at ¶ 47.) Defendants asserted that, regardless of the results of the underlying causes of
6 action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants
7 maintained, in addition to its strong arguments against the underlying claims, it had a strong
8 argument that it would be unjust to award maximum PAGA penalties given the law’s unsettled
9 state. (*Ibid.*)

10 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
11 (Han Decl., *supra*, at ¶ 51.) Many of the causes of action brought were duplicative of the statutory
12 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
13 1197, 1198, 2800, and 2802. (*Ibid.*) The maximum penalties for each pay period are not justified.
14 It was indeed arguable whether the Court would award the maximum penalties under the law.
15 Thus, allocating \$350,000 to PAGA civil penalties was given the fact that Defendants are also
16 paying an additional \$7,150,000 in the class settlement. (Han Decl., *supra*, at ¶ 49.) When PAGA
17 penalties are negotiated in good faith and “there is no indication that [the] amount was the result
18 of self-interest at the expense of other Class Members,” such amounts are generally considered
19 reasonable.⁶ (*Ibid.*)

20 **c. Conditional Certification of the Class Is Appropriate**

21 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of
22 a common or general interest, of many persons, or when the parties are numerous, and it is
23 impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court*,
24 *supra*, 34 Cal.4th at p. 326.) California courts certify class actions where the Plaintiffs identify
25
26

27 ⁶ (*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”.)

1 “both [1] an ascertainable class and [2] a well-defined community of interest among class
2 members.” (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.)

3 The proposed Class is ascertainable and numerous as to make it impracticable to join all
4 Class Members, and there are common questions of law and fact that predominate over any
5 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 53.) Plaintiffs contend
6 that as a former hourly-paid, non-exempt employees of General Atomics, their claims are typical
7 of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the
8 Class. (*Ibid.*) Also, Plaintiffs assert that the prosecution of separate actions by individual Class
9 Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

11 “Ascertainability is required in order to give notice to putative class members as to whom
12 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
13 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
14 by describing a set of common characteristics sufficient to allow a member of that group to identify
15 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
16 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
17 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

18 This case involves approximately ten thousand two hundred fourteen (10,214) Class
19 Members. (Han Dec., *supra*, at ¶ 54.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan*
20 *v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of
21 “as many as 190 current and former employees” is sufficiently numerous].)

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

23 The community of interest requirement “embodies three factors: (1) predominant common
24 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
25 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*
26 *Superior Court*, *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
27 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
28 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis

1 in original).) Rather, courts focus on the Defendants’ internal policies and “pattern and practice . .
2 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
3 certification appropriate.” (*Capitol People First v. Department of Developmental Services* (2007)
4 155 Cal.App.4th 676, 692 (emphasis in original).) The application of each of these factors is
5 discussed below.

6 **1. Common Issues Predominate**

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

18 Plaintiffs assert common issues of fact and law predominate as to each of the claims
19 alleged. (Han Dec., *supra*, at ¶ 55.) Plaintiffs contend all Class Members were subject to the same
20 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

21 **2. Plaintiffs’ Claims Are Typical of the Class Claims**

22 Typical claims rely on legal theories and facts that are substantially like those of other class
23 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former employees of
24 Defendants and allege they and the Class Members were employed by the same company and
25 injured by Defendants’ common policies and practices related to the claims described above. (Han
26 Dec., *supra*, at ¶ 56.) Plaintiffs seek relief for these claims and derivative claims on behalf of all
27 Class Members. (*Ibid.*) Thus, Plaintiffs’ claims arise from the same employment practices and are
28 based on the same legal theories as those applicable to the Class. (*Ibid.*)

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

2 Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 57.)
3 Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this
4 litigation, understand their fiduciary obligations, and have actively participated in the prosecution
5 of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to
6 provide Class Counsel with a complete understanding of their work environment and requirements.
7 (*Ibid.*) Plaintiffs have no interest that is adverse to the interests of the other Class Members. (*Ibid.*)

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

10 A class action is superior to other available means for the fair and efficient adjudication of
11 this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class
12 treatment will permit many similarly situated persons to prosecute their common claims for
13 settlement purposes simultaneously in a single forum without the duplication of effort and expense
14 that numerous individual actions would necessitate.

15 **d. The Settlement Is Fair, Reasonable, and Adequate**

16 In deciding whether to approve a proposed class action settlement under Code of Civil
17 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
18 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
19 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
20 after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel
21 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
22 percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

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

25 If the court has certified the action as a class action, notice of the final approval
26 hearing must be given to class members in the manner specified by the court. The
27 notice must contain an explanation of the proposed settlement and procedures for
28 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.

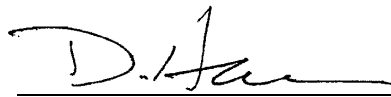
1 The proposed Class Notice meets all these requirements. The proposed Class Notice
2 advises the Class Members of their right to participate in the Settlement; how and when to object
3 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
4 hearing. (See Han Dec., *supra*; Exhibit 1 to Exhibit 2.)

5 **V. CONCLUSION**

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

10
11 Dated: January 25, 2023

JUSTICE LAW CORPORATION

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14 Douglas Han
15 *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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On January 27, 2023, 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: **Weisman v. General Atomics et al.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-869101-22**
Court Case No.: 37-2021-00000331-CU-OE-CTL
San Diego 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 January 27, 2023, at Pasadena, California.



Mariah Anderson