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

ALEJANDRO MUNOZ, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: 21CV386080

Assigned for All Purposes to:
Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

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

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

Hearing Date: July 21, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department 1

Complaint Filed: August 20, 2021
FAC Filed: June 13, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 21, 2022, at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Sunil Kulkarni in Department 1 of the Santa Clara County
3 Superior Court, located at 191 North First Street, San Jose, California 95113, Plaintiff Alejandro
4 Munoz (“Plaintiff”) 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’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or “Settlement”),
8 attached as “**EXHIBIT 2**” to the Declaration of Douglas Han, including, and not
9 limited to, the means of allocation and distribution of funds, the allocations for
10 payments under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
12 Enhancement Payment, and the Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action and PAGA Settlement (“Class
17 Notice”) attached as “**EXHIBIT A**” to the Settlement Agreement;
- 18 • Approving the Election Not To Participate In (Opt Out From) Class Action
19 Settlement Form (“Exclusion Form”) attached as “**EXHIBIT B**” to the Settlement
20 Agreement;
- 21 • Directing the mailing of the proposed Class Notice and Exclusion Form
22 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
23 to the proposed Class;
- 24 • Approving the proposed deadlines for the notice and settlement administration
25 process;
- 26 • Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the
27 Settlement Administrator; and

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

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); 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: June 23, 2022

JUSTICE LAW CORPORATION

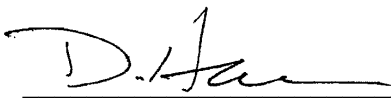
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,000,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of themselves and on behalf of all current
4 and former hourly paid or non-exempt persons employed by Defendant Sierra Circuits, Inc.
5 (“Defendant”) in California at any time beginning February 21, 2017, through and including April
6 29, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number
7 of Class Members confirmed by Defendant is eight hundred thirty (830). (Declaration of Douglas
8 Han (“Han Dec.”), ¶ 9.)

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
11 proposed settlement of \$2,000,000 is well within the range of reasonableness. Class Counsel and
12 Plaintiff is convinced that the proposed Settlement is in the best interests of the Class Members
13 based on the negotiations and a detailed knowledge of the issues present in this action.

14 **II. BACKGROUND**

15 Defendant is a California corporation founded in 1986 and headquartered in Sunnyvale,
16 CA. Sierra Circuits specializes in the manufacturing of turnkey printed circuit boards, or “PCB’s.”
17 Sierra Circuits serves numerous vendors, including reputable companies such as NASA, Apple
18 and Google. (Han Dec., *supra*, at ¶ 8.)

19 On August 20, 2021, Plaintiff filed a wage-and-hour class action lawsuit in the Superior
20 Court of California, County of Santa Clara. Plaintiff’s lawsuit alleged the following violations:
21 (a) Labor Code sections 510 and 1198 (unpaid overtime); (b) Labor Code sections 226.7 and
22 512(a) (unpaid meal period premiums); (c) Labor Code section 226.7 (unpaid rest period
23 premiums); (d) Labor Code sections 1194 and 1197 (unpaid minimum wages); (e) Labor Code
24 sections 201 and 202 (final wages not timely paid); (f) Labor Code section 226(a) (noncompliant
25 wage statements); (g) Labor Code sections 2800 and 2802 (unreimbursed business expenses); and
26 (h) Business & Professions Code sections 17200, *et seq.* (*Id.* at ¶ 10.)

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1 The Parties attended mediation on Plaintiff claims with mediator David A. Rotman, Esq.
2 on March 30, 2022. Under the auspices of the mediator, the Parties were eventually able to reach
3 an agreement on settlement of the action. (Han Dec., at ¶ 11.) Following mediation and pursuant
4 to the terms of the settlement, on March 31, 2022, Plaintiff provided written notice to the
5 California Labor and Workforce Development Agency (“LWDA”) of the specific provisions of
6 the Labor Code he contends Defendant violated and the theories supporting his contentions. (*Id.*
7 at ¶ 12.) After the sixty-five (65) day notice period expired, Plaintiff filed a First Amended
8 Complaint to include an additional cause of action for under Private Attorneys General Act of
9 2004 (“PAGA”) (Han Dec., at ¶ 13.)

10 **III. INVESTIGATION/ LITIGATION HISTORY**

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

12 Formal discovery was stayed pending the initial case management conference. (Han Dec.,
13 *supra*, at ¶ 15.) The parties decided to explore early mediation and engage in an informal exchange
14 of data. (*Ibid.*) Prior to the mediation on March 30, 2021, and both before and after the lawsuit
15 was first filed, the Parties conducted a significant investigation of the facts and law. (Han Dec.,
16 *supra*, at ¶ 18.) Specifically, Defendant produced documentation relating to its policies, practices,
17 and procedures regarding reimbursement of business expenses, paying non-exempt employees
18 for all hours worked, meal and rest period policies, commission information, payroll and
19 operational policies, and time and pay records. (*Ibid.*) Plaintiff reviewed time records, pay records
20 for two hundred fifty-eight (258) Class Members, and information relating to the size and scope
21 of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the
22 Class Period. (*Ibid.*) Plaintiff also interviewed several Class Members who worked for Defendant
23 during the Class Period. (*Ibid.*)

24 Based upon the above-mentioned discovery, Plaintiff contend – and Defendant denies –
25 that Defendant: (a) failed to provide employees with legally mandated rest and meal breaks; (b)
26 failed to pay employees for all hours worked; (c) failed to include bonuses and incentives in
27 employees’ regular rates of pay for purposes of overtime compensation, premium wages, and sick
28 leave pay; (d) failed to reimburse employees for necessary business expenses; and (e) is liable for

1 issuing noncompliant wage statements and for waiting time penalties. (Han Dec., *supra*, at ¶¶ 18-
2 24.) Defendant denies Plaintiff's contentions in their entirety. (*Id.* at ¶ 25.)

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

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

6 During the Parties' mediation with David A. Rotman, Esq., on March 20, 2022, the Parties
7 discussed the risks of continued litigation, certification, and the merits of the claims and defenses
8 versus settlement benefits. (Han Dec., *supra*, at ¶ 26.) With the assistance of the mediator, the
9 Parties were able to reach an agreement on settlement, the terms of which were memorialized in
10 the Settlement Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

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

12 The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
13 *supra*, at ¶ 31.) Though cordial and professional, the settlement negotiations have always been
14 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted
15 extensive arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

16 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
17 and length of continued proceedings necessary to continue the litigation against Defendant. (Han
18 Dec., *supra*, at ¶ 32.) Plaintiff and Class Counsel have also considered the inherent uncertainty
19 and risk of further litigation, the potential outcome, and the difficulties and delays of such
20 litigation. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a
21 fair, adequate, and reasonable settlement, and is in the Class's best interests. (*Ibid.*)

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

23 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
24 of Plaintiff's claims and Defendant's defenses before reaching the Settlement and engaged in
25 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at
26 ¶ 33.) The Settlement was only possible following significant investigation and evaluation of
27 Defendant's relevant policies and procedures, as well as the data Defendant produced for the
28 putative class. (*Ibid.*) Furthermore, this case has also reached the stage where "the Parties

certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Dec., *supra*, at ¶ 33.; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement and Net Settlement Amount

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$2,000,000 (“Maximum Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to Class Counsel in an amount not to exceed \$700,000; (b) the Cost Award to Class Counsel in an amount not to exceed \$25,000 for reimbursement of litigation costs and expenses; (c) the Class Representative Enhancement Payment in the sum of \$10,000 to Plaintiff; (d) Administration Costs to Phoenix, the Settlement Administrator, in an amount not to exceed \$15,000; and (e) the PAGA Payment of \$100,000, seventy-five percent (75%) of which (\$75,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$25,000) (“PAGA Distribution”) will be part of the Net Settlement Amount to be distributed to Class Members, on a pro rata basis, in accordance with the Agreement. (Han Dec., *supra*, at ¶ 27.)

ii. Calculation of the Class Members’ Individual Settlement Shares

If the Court approves all proposed deductions from the Maximum Settlement Amount, it is estimated that \$1,150,000 (“Net Settlement Amount”) will be distributed to Class Members – with an average gross Individual Settlement Share estimated at \$1,385.54.¹ (Han Dec., *supra*, at ¶ 32.) The Net Settlement Amount will be distributed to the Participating Class Members based on the formula set forth in the Settlement – based on workweeks. (*Settlement Agreement*, III.G.1) The PAGA Payment will also be distributed to Eligible Aggrieved Employees based on the number of pay periods. (*Settlement Agreement*, III.H.6)

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¹ \$887,500 (Net Settlement Amount) / 830 (Class Members) = \$2,128.30.

1 **iii. The allocating Twenty Percent of the Individual Settlement Share as**
2 **Taxable Wages is Justified Based on the Potential Exposure of Case.**

3 Individual Settlement Shares will be apportioned as follows: twenty percent (20%) in
4 compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of
5 claims for alleged non-wage amounts including penalties and interest. (*Settlement Agreement*,
6 III.G.2) This allocation of twenty percent (20%) taxable wages and eighty percent (80%) non-
7 taxable penalties and interest was based on the potential exposure of Plaintiff's claims. (Han Dec.,
8 *supra*, at ¶ 50.) The maximum potential exposure is \$11,604,987.99. (*Ibid.*) The pure wage
9 claims: off-the-clock (\$2,560,968.63) and regular rate claim (\$27,027.00) equals \$2,587,995.63.
10 (*Ibid.*) The potential wage claims are approximately twenty-two percent (22.2%) of the maximum
11 exposure. This number rounded down to allocate twenty percent of the Individual Settlement
12 Shares as taxable wages.

13 **iv. Notice to the Class**

14 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
15 Defendants will use commercially reasonable efforts to provide the Class Data to the Settlement
16 Administrator. (*Settlement Agreement*, III.J.2.a.) Within fourteen (14) calendar days of the
17 Settlement Administrator's receipt of the Class Data, the Settlement Administrator will mail the
18 Notice Packets to all identified Class Members via First Class Mail. (*Settlement Agreement*,
19 III.J.2.b.) Class Members are not required to submit a claim form to receive their Individual
20 Settlement Shares. (Han Dec., *supra*, at ¶ 30.)

21 **v. Distribution of Funds**

22 Within twenty-one (21) calendar days of the Final Approval Date, Defendants shall
23 deposit the Gross Settlement Amount of \$2,000,000 by wiring the funds to the Settlement
24 Administrator. (*Settlement Agreement*, III.J.9.a.) Within fourteen (14) calendar days after the
25 deadline to fund the Settlement, the Settlement Administrator shall calculate and disburse all
26 payments due under the Settlement Agreement, including all Individual Settlement Shares,
27 Attorney Fee Award, Cost Award, Class and PAGA Representative Enhancement Payments,
28

1 portion of the PAGA Payment to the LWDA, and Administration Costs. (*Settlement Agreement*,
2 III.J.9.b.)

3 Participating Class Members must cash or deposit their Individual Settlement Share
4 checks within one hundred eighty (180) calendar days from the date of their issuance (*Settlement*
5 *Agreement*, III.J.10.) If any checks are not cashed or deposited within ninety (90) calendar days
6 after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks
7 remain uncashed or not deposited by the expiration of the 90-day period after mailing the
8 reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after
9 the checks are mailed, cancel the checks and pay the amount of the Individual Settlement Shares
10 to the California State Controller Unpaid Wages Fund.

11 **vi. Release of Claims**

12 Upon final approval by the Court, Plaintiff and the Participating Class Members will fully
13 and finally release and discharge the Released Parties from the Released Claims. (*Settlement*
14 *Agreement*, III.K.) Moreover, upon final approval by the Court, Plaintiff, the LWDA, and any
15 other representative, proxy, or agent thereof, including, but not limited to, the Eligible Aggrieved
16 Employees, will fully and finally release and discharge the Released Parties from the PAGA
17 Released Claims. (*Settlement Agreement*, III.L.)

18 Upon Final Approval, and in exchange for the Class Representative Enhancement
19 Payment in amount not to exceed \$10,000 to Plaintiff, in recognition of his work and efforts in
20 obtaining the benefits for the Class, and undertaking the risk for the payment of costs in the event
21 this matter had not successfully resolved, and in exchange for the enhanced release below,
22 Plaintiff provides a general release of claims for himself and his spouses, heirs, successors and
23 assigns. (*Settlement Agreement*, III.M.)

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

the operative complaint. Moreover, the released claims are ““based on *the identical factual predicate* as that underlying the claims in the settled class action.”” (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) In other words, the released claims do not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Counsel for both Parties are particularly experienced in wage-and-hour employment law and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel has significant experience in litigating unpaid wages and noncompliant meal and rest break class actions. (*Ibid.*) Class Counsel has 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. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

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.

² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action and PAGA 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, therefore, Plaintiff cite Federal Rule 23 and federal case law in addition to California law.

1 ...
2 (c) Any party to a settlement agreement may serve and file a written notice of
3 motion for preliminary approval of the settlement. The settlement
4 agreement and proposed notice to class members must be filed with the
5 motion, and the proposed order must be lodged with the motion.

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

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

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

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

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1 **ii. The PAGA Payment of \$100,000 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, 210, 218.5, 226, 226.3,
4 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2699, 2800, and 2802. (Han Dec., *supra*, at ¶ 44.)
5 Defendant asserts that, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained
7 that, in addition to its strong arguments against the underlying claims, it had a strong argument
8 that it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*;
9 *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30%
10 under this authority].) Defendant argued that stacking and limited to the initial violation, the
11 PAGA penalties would be limited to **\$54,900** (549 employees x \$100 initial violations) on the
12 low end and **\$329,400** (549 employees x \$100 x 6 theories of recovery) on the high end with
13 stacking. (Han Dec., *supra*, at ¶¶ 45-47.)

14 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
15 (Han Dec., *supra*, at ¶ 49.) Many of the causes of action brought were duplicative of the statutory
16 claims, such as violations of Labor Code sections 201, 202, 203, 226.3, 226.7, 510, 512(a), 1194,
17 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are
18 not justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum
19 penalties under the law. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable
20 based on a rate of **\$5.34** per pay period [$\$100,000 \div 18,712$ pay periods in PAGA date range =
21 **\$5.34**], given the fact that Defendant is also paying an additional \$1,900,00 in the class
22 settlement.⁵ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication
23 that [the] amount was the result of self-interest at the expense of other Class Members,” such
24 amounts are generally considered reasonable.⁶ (*Ibid.*)

25 ⁵ (See *Carrington, supra*, 30 Cal.App.5th at p. 529 [affirming a rate of \$5.00 per violation
26 and a total PAGA penalty of \$150,000.00 while the plaintiff requested a rate of \$25.00 to
27 \$75.00 per violation and a total PAGA penalty of \$70,000,000.00].)

28 ⁶ (*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,

Considering Defendant's defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$2,000,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be entirely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$10,751,331.78** on the low end and **\$11,604,987.99** on the high end.

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic ⁷ Exposure
Rest Break Premiums	\$1,694,222.64	70%	60%	\$203,306.71
Meal Break Premiums	\$2,600,401.32	60%	50%	\$520,080.26
Overtime/Minimum Wage: Off-the-Clock Work	\$1,707,312.42 to \$2,560,968.63	60%	60%	\$273,169.98 to \$309,558.41
Regular Rate Claim	\$27,027.00	10%	50%	\$12,162.15
Unreimbursed Business Expenses	\$651,204.00	30%	70%	\$136,752.84
Wage Statement Penalty	\$1,839,150.00	50%	50%	\$459,787.50
Waiting Time Penalty	\$2,232,014.40	50%	50%	\$558,003.60
MAXIMUM TOTAL EXPOSURE	\$10,751,331.78 to \$11,604,987.99			\$2,163,263.04 to \$2,199,651.47

Based on this analysis, the realistic recovery for this case is **\$2,163,263.04** on the low end and **\$2,199,651.47** on the high end. (Han Dec., *supra*, at ¶ 58.) The Maximum Settlement Amount of \$2,000,000 is about seventeen percent (17.2%) of the maximum potential exposure and is approximately ninety percent (90.9%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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

⁷ A detailed discount analysis is in Han Decl. ¶¶ 38-57.

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

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

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

19 The proposed Class is ascertainable and numerous as to make it impracticable to join all
20 Class Members, and there are common questions of law and fact that predominate over any
21 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 59.) Plaintiff contends
22 that as a former hourly-paid, non-exempt employee of Defendant, her claims are typical of the
23 claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class.
24 (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate actions by individual Class Members
25 would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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28 ///

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 four hundred seventeen (830) Class Members, which was confirmed
10 by Defendant. (Han Dec., *supra*, at ¶ 60.) Thus, the Class is sufficiently numerous. (*Ibid.*;
11 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a
12 proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

24 **1. Common Issues Predominate**

25 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
26 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
27 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
28 other words, courts determine whether the elements necessary to establish liability are susceptible

1 to common proof, even if the class members must individually prove their damages. (*Brinker*
2 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
3 regularly granted class certification when the plaintiff can present evidence of common policies.
4 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
5 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
6 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
7 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

8 Plaintiff asserts common issues of fact and law predominate as to each of the claims
9 alleged. (Han Dec., *supra*, at ¶ 61.) Specifically, Plaintiff contend all Class Members were subject
10 to the same or similar employment practices, policies, and procedures described in detail above.
11 (*Ibid.*)

12 **2. Plaintiff's Claims Are Typical of the Class Claims**

13 Typical claims rely on legal theories and facts that are substantially like those of other
14 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee
15 of Defendant and alleges she and the Class Members were employed by the same company and
16 injured by Defendant's common policies and practices related to the claims described above.
17 (Han Dec., *supra*, at ¶ 62.) Plaintiff seeks relief for these claims and derivative claims on behalf
18 of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices
19 and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

20 **3. Plaintiff Are Adequate to Represent the Class**

21 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 63.)
22 He has conducted himself diligently and responsibly in representing the Class in this litigation,
23 understands his fiduciary obligations, and has actively participated in the prosecution of this case.
24 (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class
25 Counsel with a complete understanding of his work environment and requirements. (*Ibid.*)
26 Further, Plaintiff has no interest that is adverse to the interests of the other Class Members. (*Ibid.*)
27
28

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

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

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

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

18 **f. Notice to Class Members Complies with California Rules of Court, Rule**
19 **3.769(f)**

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

21 If the court has certified the action as a class action, notice of the final approval
22 hearing must be given to class members in the manner specified by the court. The
23 notice must contain an explanation of the proposed settlement and procedures for
24 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.

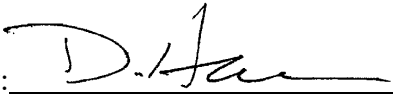
25 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
26 advises the Class Members of their right to participate in the Settlement; how and when to object
27 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
28 hearing.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

1 **V. CONCLUSION**

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

6
7 Dated: June 23, 2022

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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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 June 24, 2022, I served the foregoing document described as

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

for the following case: **Munoz v. Sierra Circuits, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 876421-22**
Court Case No.: 21CV386080
Santa Clara 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 June 24, 2022, at Pasadena, California.

