

DOUGLAS HAN (SBN 232858)  
SHUNT TATAVOS-GHARAJEH (SBN 272164)  
JOHN BICKFORD (SBN 280929)  
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF RIVERSIDE**

DOUGLAS NGUYEN, individually, and on  
behalf of other members of the general public  
similarly situated;

Plaintiff,

v.

BRENNER-FIEDLER & ASSOCIATES,  
INC., a California corporation; and DOES 1  
through 100, inclusive;

Defendants.

Case No.: CVRI2100690

Assigned for All Purposes to:  
Honorable Craig Riemer  
Department 1

**CLASS ACTION**

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR AN ORDER (1)  
PRELIMINARILY APPROVING  
THE CLASS ACTION  
SETTLEMENT; (2) APPROVING  
NOTICE OF CLASS ACTION  
SETTLEMENT; AND (3) SETTING  
HEARING FOR FINAL APPROVAL**

*[filed concurrently with Memorandum of  
Points and Authorities; Declarations of  
Douglas Han, Eric Springer, Peter Choi,  
and Beth Sharkey; [Proposed] Order;  
and Compliance Chart]*

**[Reservation ID: 062264523031]**

Hearing Date: July 13, 2022  
Hearing Time: 8:30 a.m.  
Hearing Place: Department 1

Complaint Filed: February 11, 2021  
FAC Filed: May 6, 2022  
Trial Date: None Set

1     **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2             PLEASE TAKE NOTICE that on July 13, 2022 at 8:30 a.m., or as soon thereafter  
3 as this matter may be heard, at Department 1, located at 4050 Main Street, Riverside,  
4 California 92501, Plaintiff Douglas Nguyen (“Plaintiff”), on behalf of himself and all  
5 persons similarly situated, will and hereby does move this Court pursuant to Code of Civil  
6 Procedure section 382 and California Rule of Court 3.769 for an order:

- 7             (1) Preliminarily approving the class action settlement reached between  
8 Plaintiff and Defendant Brenner-Fiedler & Associates, Inc. (“Defendant”),  
9 including granting preliminary approval of the following Class: “all  
10 individuals who have previously been or currently are employed by  
11 Defendant as hourly-paid or non-exempt employees in the State of  
12 California at any time from August 16, 2016, through April 13, 2022”  
13 (“Class,” “Class Members,” and “Class Period”);
- 14             (2) Approving the form of notice of class action settlement and procedure for  
15 notice to the Class; and
- 16             (3) Setting the Final Approval Hearing.

17             Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the  
18 proposed settlement’s allocation of funds to claims made under the Labor Code sections  
19 2698, *et seq.*, Private Attorneys General Act of 2004 (“PAGA”).

20             Pursuant to the proposed Joint Stipulation of Class Action Settlement (“Settlement  
21 Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of  
22 Douglas Han, Defendant does not oppose the preliminary approval of the class action  
23 settlement.

24             Under the terms of the Agreement, the Parties have agreed that all claims brought  
25 on behalf of the Class shall be fully and finally resolved for the total sum of \$150,000  
26 (“Maximum Settlement Amount”) to be paid on a non-reversionary basis. The amount  
27 remaining of the Maximum Settlement Amount after the following deductions have been  
28 made (“Net Settlement Amount”) shall be available for distribution to Class Members who

do not submit a timely and valid Requests for Exclusion:

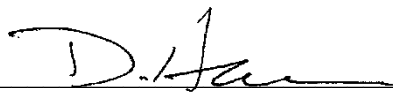
- up to \$52,500 to Class Counsel as the attorneys' fees;
- up to \$20,000 to Class Counsel as the attorneys' costs for reimbursement of attorneys' costs and expenses incurred;
- up to \$10,000 to Plaintiff as his Class Representative Enhancement Payment;
- the Settlement Administration Costs to the Settlement Administrator, Simpluris, Inc., currently estimated at \$3,795, but not to exceed \$5,000; and
- \$15,000 as the PAGA Payment, seventy-five percent (75%) of which (\$11,250) will be paid to the California Labor and Workforce Development Agency ("LWDA") and twenty-five percent (25%) of which (\$3,750) will be distributed to all individuals who have previously been or currently are employed by Defendant as hourly-paid or non-exempt employees in the State of California at any time from March 14, 2021 through April 13, 2022 ("Eligible Aggrieved Employees," "PAGA Period," "PAGA Payment," or "Individual PAGA Payments"), on a pro rata basis, as their Individual PAGA Payment in accordance with the Settlement Agreement.

This Notice of Motion and Motion is based on the fact that this is a fair and reasonable settlement that benefits the Class and was the product of informed, non-collusive negotiations by the Parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44. The proposed Settlement Agreement meets the legal standard for preliminary approval and is in the best interests of the Class. The proposed form of notice explains the Settlement Agreement terms in a clear and straightforward manner. The proposed procedures for notice provide the best practical notice to the Class. Class Members will have an opportunity to participate in and/or object to the Settlement Agreement and/or opt-out of the Settlement Agreement.

1 This Notice of Motion and Motion is based on this Notice, and the exhibits thereto  
2 (including the Notice of Class Action Settlement, Request for Exclusion, and Objection  
3 Form), the Memorandum of Points and Authorities, the Declaration of Douglas Han, the  
4 Declaration of Peter Choi, the Declaration of Beth Sharkey, the Declaration of Eric  
5 Springer, the pleadings, records and files in the case, and such other oral and documentary  
6 evidence which may be submitted at or before the hearing on this Motion.

7  
8 Dated: June 16, 2022

**JUSTICE LAW CORPORATION**

9  
10 By   
11 Douglas Han  
12 *Attorneys for Plaintiff*  
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**CLASS ACTION**

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
PLAINTIFF'S MOTION FOR AN ORDER  
(1) PRELIMINARILY APPROVING THE  
CLASS ACTION SETTLEMENT; (2)  
APPROVING NOTICE OF CLASS  
ACTION SETTLEMENT; AND (3)  
SETTING HEARING FOR FINAL  
APPROVAL**

*[filed concurrently with Plaintiff's Notice of  
Motion and Motion; Declarations of Douglas  
Han, Eric Springer, Peter Choi, and Beth  
Sharkey; [Proposed] Order; and Compliance  
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## TABLE OF CONTENTS

|             |                                                                                                                    |    |
|-------------|--------------------------------------------------------------------------------------------------------------------|----|
| <b>I.</b>   | INTRODUCTION .....                                                                                                 | 8  |
| <b>II.</b>  | STATUS OF THE LITIGATION.....                                                                                      | 8  |
| <b>A.</b>   | Procedural History .....                                                                                           | 8  |
| <b>B.</b>   | Investigation and Discovery .....                                                                                  | 9  |
| <b>C.</b>   | Settlement Efforts .....                                                                                           | 10 |
| <b>III.</b> | SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS.....                                                               | 10 |
| <b>A.</b>   | Number of Class Members .....                                                                                      | 11 |
| <b>B.</b>   | Attorney's Estimate of the Recovery by the Average Class Member if the<br>Settlement Agreement Were Approved ..... | 11 |
| <b>C.</b>   | Discovery Exchanged .....                                                                                          | 11 |
| <b>D.</b>   | Other Pending Litigation.....                                                                                      | 12 |
| <b>E.</b>   | Defendant's Counsel's Declaration .....                                                                            | 12 |
| <b>F.</b>   | Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds.                                            | 12 |
| <b>G.</b>   | Settlement Administrator .....                                                                                     | 12 |
| <b>H.</b>   | Release by Class Members is Limited .....                                                                          | 12 |
| <b>I.</b>   | The Proposed Notice Packet Provides Adequate Notice to the Class Members .                                         | 13 |
| <b>J.</b>   | Settlement Does Not Require Any Class Members to Submit Claim Forms .....                                          | 14 |
| <b>K.</b>   | Settlement Does Not Provide Any Reversion to Defendant.....                                                        | 14 |
| <b>L.</b>   | Employer's Share of Payroll Taxes and the Allocation of Settlement<br>Payments .....                               | 14 |
| <b>M.</b>   | Notice of Class Action Settlement, Objection Form, and Request for<br>Exclusion.....                               | 14 |
| <b>IV.</b>  | CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE .....                                                    | 15 |
| <b>A.</b>   | There Is A Numerous and Ascertainable Class .....                                                                  | 15 |
| <b>B.</b>   | There Is A Well-Defined Community of Interest.....                                                                 | 15 |
| <b>C.</b>   | The Plaintiff's Claims Are Typical.....                                                                            | 17 |
| <b>D.</b>   | Adequacy of Class Counsel and Class Representative .....                                                           | 17 |

|    |       |                                                                               |    |
|----|-------|-------------------------------------------------------------------------------|----|
| 1  | E.    | Predominance and Superiority .....                                            | 18 |
| 2  | V.    | THE TWO-STEP APPROVAL PROCESS .....                                           | 18 |
| 3  | VI.   | THE SETTLEMENT IS FAIR AND ADEQUATE .....                                     | 19 |
| 4  | A.    | The Strength of Plaintiff’s Case.....                                         | 20 |
| 5  | B.    | The Risks Associated with the Merits .....                                    | 20 |
| 6  | C.    | The Risks Associated with Paystub Violations and Waiting Time Penalties ..... | 21 |
| 7  | D.    | The Risks Associated with the PAGA Penalties.....                             | 22 |
| 8  | E.    | The Risk, Expense, Complexity and Likely Duration of Any Litigation .....     | 25 |
| 9  | F.    | The Risk of Maintaining Class Action Status Through Trial .....               | 25 |
| 10 | G.    | The Amount Offered in Settlement.....                                         | 25 |
| 11 | VII.  | THE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE .....                          | 28 |
| 12 | VIII. | THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS                          |    |
| 13 |       | REASONABLE AND SHOULD BE APPROVED .....                                       | 29 |
| 14 | A.    | Fee Splitting Agreement .....                                                 | 31 |
| 15 | IX.   | ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY                      |    |
| 16 |       | APPROVAL .....                                                                | 31 |

TABLE OF AUTHORITIES

Cases

*In re Activision Securities Litigation*

(1989) 723 F.Supp. at 1378 ..... 30

*In re Ampicillin Antitrust Litigation*

(D. D.C. 1981) 526 F.Supp. 494..... 30

*Brinker Restaurant Corporation v. Superior Court*

(2012) 53 Cal.4th 1004 ..... 22

*B.W.I. Custom Kitchens v. Owens-Illinois, Inc*

(1987) 191 Cal.App.3d 1341 ..... 16, 17

*Carrington v. Starbucks Corp*

(2018) 30 Cal.App.5th 504 ..... 24

*Class Plaintiffs v. City Of Seattle*

(1992) 955 F.2d 1268 ..... 19

*Classen v. Weller*

(1983) 145 Cal.App.3d 27 ..... 17

*Culley v. Lincare Inc*

(E.D. Cal. 2017) 236 F.Supp.3d 1184..... 22

*Daar v. Yellow Cab Company*

(1967) 67 Cal.2d 695 ..... 15

*Duran v. U.S. Bank Nat. Assn*

(2014) 59 Cal.4th 1 ..... 25

*Gonzalez v. Downtown LA Motors*

(2013) 215 Cal.App.4th 36..... 22

*Hammon v. Barry*

(D.D.C. 1990) 752 F.Supp. 1087 ..... 19

*Hopson v. Hanesbrands Inc*

(N.D. Cal. Apr. 3, 2009, No. 08-00844) 2009 U.S. Dist. LEXIS 33900 ..... 24

|    |                                                                |        |
|----|----------------------------------------------------------------|--------|
| 1  | <i>Kirby v. Immoos Fire Prot., Inc</i>                         |        |
| 2  | (2012) 53 Cal.4th 1244 .....                                   | 21     |
| 3  | <i>Kullar v. Foot Locker Retail, Inc</i>                       |        |
| 4  | (2008) 168 Cal.App.4th 116 .....                               | 19     |
| 5  | <i>Linder v. Thrifty Oil Co.</i>                               |        |
| 6  | (2000) 23 Cal.4th 429 .....                                    | 15, 19 |
| 7  | <i>Ling v. P.F. Chang's China Bistro</i>                       |        |
| 8  | (2016) 245 Cal.App.4th .....                                   | 21     |
| 9  | <i>Naranjo v. Spectrum Security Services, Inc.</i>             |        |
| 10 | (May 23, 2022, No. S258966) Cal.5th 2022 Cal. LEXIS 2878 ..... | 26     |
| 11 | <i>In re NASDAQ Market-Makers Antitrust Litigation</i>         |        |
| 12 | (SDNY 1997) 172 F.R.D. 119 .....                               | 16     |
| 13 | <i>Nordstrom Com. Cases</i>                                    |        |
| 14 | (2010) 186 Cal.App.4th 576 .....                               | 24     |
| 15 | <i>In re Pacific Enterprises Securities Litigation</i>         |        |
| 16 | (9th Cir. 1994) 47 F.3d 373 .....                              | 30     |
| 17 | <i>Parker v. City of Los Angeles</i>                           |        |
| 18 | (1974) 44 Cal.App.3d 556 .....                                 | 30     |
| 19 | <i>Priddy v. Edelman</i>                                       |        |
| 20 | (6th Cir. 1989) 883 F.2d 438 .....                             | 19     |
| 21 | <i>Prince v. CLS Transp., Inc</i>                              |        |
| 22 | (2004) 118 Cal.App.4th 1320 .....                              | 15     |
| 23 | <i>Reyes v. Board of Supervisors of San Diego County</i>       |        |
| 24 | (1987) 196 Cal.App.3d 1263 .....                               | 15     |
| 25 | <i>Richmond v. Dart Industries, Inc</i>                        |        |
| 26 | (1981) 29 Cal.3d 462 .....                                     | 15     |
| 27 | <i>Rodriguez v. West Publ. Corp</i>                            |        |
| 28 | (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767 .....  | 19     |

|    |                                                           |                |
|----|-----------------------------------------------------------|----------------|
| 1  | <i>Rosack v. Volvo of America Corp</i>                    |                |
| 2  | (1982) 131 Cal.App.3d 741 .....                           | 16             |
| 3  | <i>Soto v. Motel 6 Operating, L.P</i>                     |                |
| 4  | (2016) 4 Cal.App.5th 385 .....                            | 22             |
| 5  | <i>Thurman v. Bayshore Transit Management, Inc</i>        |                |
| 6  | (2012) 203 Cal.App.4th 1112 .....                         | 23             |
| 7  | <i>Van Vranken v. Atlantic Richfield Co.</i>              |                |
| 8  | (N.D. Cal. 1995) 901 F.Supp.294.....                      | 28             |
| 9  | <i>Vasquez v. Superior Court</i>                          |                |
| 10 | (1971) 4 Cal.3d 800 .....                                 | 15, 16         |
| 11 | <i>Vincent v. Hughes Air West, Inc.</i>                   |                |
| 12 | (9th Cir. 1977) 557 F.2d 759 .....                        | 29             |
| 13 | <i>In re Wash. Pub. Power Supply Sys. Sec. Litigation</i> |                |
| 14 | (9th Cir. 1994) 19 F.3d 129 .....                         | 29             |
| 15 | <i>Wershba v. Apple Computer, Inc.</i>                    |                |
| 16 | (2001) 91 Cal.App.4th 224 .....                           | 17             |
| 17 | <b>Statutes</b>                                           |                |
| 18 | Labor Code § 201.....                                     | 23             |
| 19 | Labor Code § 202.....                                     | 23             |
| 20 | Labor Code § 203.....                                     | 21, 22, 23, 26 |
| 21 | Labor Code § 203(b).....                                  | 22             |
| 22 | Labor Code § 204.....                                     | 23             |
| 23 | Labor Code § 210.....                                     | 23             |
| 24 | Labor Code § 218.5.....                                   | 23             |
| 25 | Labor Code § 221.....                                     | 23             |
| 26 | Labor Code § 226.....                                     | 21, 26         |
| 27 | Labor Code § 226.3.....                                   | 23             |
| 28 | Labor Code § 226.7.....                                   | 23             |

|    |                                                             |    |
|----|-------------------------------------------------------------|----|
| 1  | Labor Code § 226(a) .....                                   | 23 |
| 2  | Labor Code § 510.....                                       | 23 |
| 3  | Labor Code § 512(a) .....                                   | 23 |
| 4  | Labor Code § 558.....                                       | 23 |
| 5  | Labor Code § 1174(d).....                                   | 23 |
| 6  | Labor Code § 1194.....                                      | 23 |
| 7  | Labor Code § 1197.....                                      | 23 |
| 8  | Labor Code § 1197.1.....                                    | 23 |
| 9  | Labor Code § 1198.....                                      | 23 |
| 10 | Labor Code § 1199.....                                      | 23 |
| 11 | Labor Code § 2699.3.....                                    | 22 |
| 12 | Labor Code § 2699 (e)(2) .....                              | 22 |
| 13 | Labor Code § 2800.....                                      | 23 |
| 14 | Labor Code § 2802.....                                      | 23 |
| 15 | <b>Other Authorities</b>                                    |    |
| 16 | <i>Newberg on Class Actions</i> (4th ed. 2002) § 11.26..... | 18 |
| 17 | <i>Newberg on Class Actions</i> §11.47 .....                | 28 |
| 18 | <i>Newberg on Class Actions</i> §11.51 .....                | 19 |
| 19 | <i>Newberg on Class Actions</i> § 12.1 .....                | 28 |
| 20 | <i>Newberg on Class Actions</i> §§ 14-10:14-11 .....        | 30 |
| 21 | <i>Newberg on Class Actions</i> at § 14.03 .....            | 30 |
| 22 |                                                             |    |
| 23 |                                                             |    |
| 24 |                                                             |    |
| 25 |                                                             |    |
| 26 |                                                             |    |
| 27 |                                                             |    |
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Douglas Nguyen (“Plaintiff” or “Class Representative”) filed a wage-and-hour  
4 class action lawsuit and representative action against Defendant Brenner-Fiedler & Associates,  
5 Inc. (“Defendant”) (collectively, referred to herein as the “Parties”) in the Superior Court of  
6 California, County of Riverside, Case Number CVRI2100690 (the “Action”).

7 After engaging in substantial investigation and extensive negotiations with the  
8 assistance of an experienced mediator, Jeffrey Krivis, the Parties agreed to settle all claims  
9 alleged on a class wide non-reversionary basis for \$150,000.

10 The proposed settlement reflected in the Joint Stipulation of Class Action Settlement  
11 (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the best  
12 interests of the Class. Consequently, Plaintiff, with the consent of Defendant, moves this Court  
13 for an order: (1) granting preliminary approval of the proposed class action settlement, as  
14 embodied in the Agreement; (2) approving the Notice of Notice of Class Action Settlement,  
15 Objection Form, and Request for Exclusion (collectively, the “Notice Packet”) to be sent to  
16 Class Members, and the notification schedule as set forth in the Agreement and the Proposed  
17 Order; and (3) setting a hearing for final approval of the class action settlement.

18 **II. STATUS OF THE LITIGATION**

19 **A. Procedural History**

20 On February 11, 2021, Plaintiff filed a wage-and-hour class action lawsuit alleging  
21 eight (8) causes of action (“Action”). (Declaration of Douglas Han In Support of Plaintiff’s  
22 Motion For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶ 12.)

23 After engaging in discovery, investigation, and negotiations, the Parties attended  
24 mediation with mediator Jeffrey Krivis, resulting in a settlement. (Han Decl., *supra*, at ¶ 13.)

25 Pursuant to the anticipated settlement, Plaintiff provided written notice to the California  
26 Labor and Workforce Development Agency (“LWDA”) and Defendant on March 14, 2022.  
27 (Han Decl., *supra*, at ¶ 14.) Additionally, Plaintiff filed a First Amended Complaint on May 6,  
28 2022 adding the following cause of action: violation of Labor Code sections 2698, *et seq.*

(Private Attorneys General Act of 2004 (“PAGA”)). (Han Decl., *supra*, at ¶ 14.)

## **B. Investigation and Discovery**

Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 15.) This required thorough discussions and interviews, as well as preliminary research into the various legal issues involved. (*Ibid.*) After conducting an initial investigation, Class Counsel determined Plaintiff’s claims were suited for class and representative action adjudication. (*Ibid.*)

Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action. (Han Decl., *supra*, at ¶ 16.) This included:

- conducting formal and informal discovery and meeting and conferring with Defendant’s counsel several times throughout this litigation, which produced the following:
  - Defendant’s most recent applicable employee handbook;
  - Putative class members’ personnel records;
  - A sampling of several putative class members’ time and payroll records within several Microsoft Excel Workweeks; and
  - PDF documents comprising of a sampling of putative class members’ time and payroll records. The PDF documents were redacted payroll details;
- reviewing and analyzing the sampling of time and payroll records, Defendant’s employment handbook, personnel records, relevant policies, and other documentation;
- researching the applicable law and potential defenses;
- locating and interviewing several putative class members;
- constructing damage models based on interpretations of California law; and
- reviewing information provided by Defendant at the mediation. (*Ibid.*)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant’ records. (Han Decl., *supra*, at ¶ 17.) Class Counsel’s investigation revealed that there are approximately one hundred seventeen (117) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel’s investigation revealed there are around thirty-three (33) Eligible Aggrieved Employees. (*Ibid.*)

1           **C. Settlement Efforts**

2           Defendant vigorously contested liability, amount of claimed damages, and propriety of  
3 class certification. (Han Decl., *supra*, at ¶ 18.) Given the high level of risk present, the Parties  
4 elected to mediate Plaintiff’s claims and explore the possibility of settlement. (*Ibid.*)

5           On January 13, 2022, the Parties participated in full day mediation with Jeffrey Krivis.  
6 (Han Decl., *supra*, at ¶ 19.) During mediation, the Parties discussed all aspects of the case.  
7 (*Ibid.*) From Class Counsel’s review of the facts, strengths and weaknesses of the case, the  
8 risks and delays posed by further litigation, and Class Counsel’s prior litigation experience,  
9 Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*)  
10 Based on the settlement negotiations, the Agreement was the product of a non-collusive  
11 settlement process. (*Ibid.*) This process forced the Parties to make significant compromises in  
12 the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

13           **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

14           The Parties have executed an Agreement attached as **Exhibit 1** to Douglas Han’s  
15 declaration. Defendant agreed to pay \$150,000 (“Maximum Settlement Amount”) on a non-  
16 reversionary basis to settle and release all claims asserted by Plaintiff in the operative  
17 complaints on behalf of the proposed Class. (Han Decl., *supra*, at ¶ 21.) The Settlement  
18 Agreement defines the Class as “all individuals who have previously been or currently are  
19 employed by Defendant as hourly-paid or non-exempt employees in the State of California at  
20 any time from August 16, 2016, through April 13, 2022” (“Class,” “Class Members,” and  
21 “Class Period”). (*Ibid.*) The amount remaining in the Maximum Settlement Amount after the  
22 following deductions have been made (“Net Settlement Amount”) shall be available for  
23 distribution to Class Members who do not opt out:

- 24           • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class  
25 Counsel as the attorneys’ fees (\$52,500);
- 26           • up to \$20,000 to Class Counsel as the attorneys’ costs for the reimbursement of  
27 actual costs and expenses incurred;
- 28           • up to \$10,000 to the Class Representative as the Enhancement Payment;

1           • Settlement Administration Costs to the Settlement Administrator, Simpluris,  
2 Inc. (“Simpluris”) currently estimated at \$3,795, but not to exceed \$5,000; and

3           • up to \$15,000 as the PAGA Payment, seventy-five percent (75%) of which  
4 (\$11,250) will be paid to the LWDA and twenty-five percent (25%) of which (\$3,750) will be  
5 distributed to Eligible Aggrieved Employees (“PAGA Period,” “PAGA Payment,” and  
6 “Individual PAGA Payment”), on a pro rata basis, as their Individual PAGA Payment even if  
7 they submit valid and timely Requests for Exclusion. (Han Decl., *supra*, at ¶ 21.)

8           Following the above-mentioned deductions, the Net Settlement Amount of about  
9 \$47,500 will be distributed to Class Members. (Han Decl., *supra*, at ¶ 22.)

10           The Agreement amount was a compromise figure, factoring in the inherent risks related  
11 to certification, liability, and damages. (Han Decl., *supra*, at ¶ 25.) But considering all the  
12 circumstances of the action and the defenses raised by Defendant against certification, liability  
13 and damages, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

14           **A. Number of Class Members**

15           There are one hundred seventeen (117) persons in the Class, and thirty-three (33)  
16 Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 17, 90.a.)

17           **B. Attorney’s Estimate of the Recovery by the Average Class Member if the**  
18           **Settlement Agreement Were Approved**

19           Plaintiff estimates the gross *average* Individual Settlement Payment will be about  
20 \$405.98. (Han Decl., *supra*, at ¶ 22.) Individual Settlement Payments will be calculated and  
21 apportioned from the Net Settlement Amount based on the number of hours a Class Member  
22 worked during the Class Period as a Class Member. (*Id.* at ¶ 23.) Individual PAGA Payments  
23 will be calculated and apportioned from the twenty-five percent (25%) of the PAGA Payment  
24 (\$3,750) based on the number of hours an Eligible Aggrieved Employee worked during the  
25 PAGA Period as an Eligible Aggrieved Employee. (*Ibid.*)

26           **C. Discovery Exchanged**

27           Section II.B. The description of Class Counsel’s investigation above provides a detailed  
28 description regarding the discovery that was exchanged.

1           **D. Other Pending Litigation**

2           After making reasonable inquiries, Class Counsel is not aware of any class,  
3 representative, or other collective action in any other court in this or any other jurisdiction that  
4 asserts claims like those asserted in this case on behalf of a class or group of persons some or  
5 all of whom would also be Class Members defined in this Action. (Han Decl., *supra*, at ¶ 20.)

6           **E. Defendant's Counsel's Declaration**

7           Defendant's counsel's declaration is being submitted concurrently with this Motion.

8           **F. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

9           Class Members and Eligible Aggrieved Employees will receive checks for their  
10 Individual Settlement Payments and Individual PAGA Payments respectively. (Han Decl.,  
11 *supra*, at ¶ 88.) Checks will remain negotiable for one hundred twenty (120) calendar days.  
12 (*Ibid.*) Any check not cashed within one hundred twenty (120) calendar days will be void and  
13 distributed to the State Controller's Unclaimed Property Fund. (*Ibid.*)

14           **G. Settlement Administrator**

15           The Settlement Agreement provides up to \$5,000 will be paid to the Settlement  
16 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 86.) The bid is  
17 comprised of capped fee, per unit, and per line-item rates. (*Ibid.*) The fee was calculated  
18 through a projected estimate from the following categories: (a) Case Setup; (b) Notification; (c)  
19 Call Center; (d) Settlement Administration; (e) Distribution; and (f) Case Wrap Up. (*Ibid.*)

20           Class Counsel obtained bids from Simpluris, CPT Group, Inc. ("CPT Group"), and  
21 Phoenix Class Action Administration Solutions ("Phoenix") for the administration of this  
22 Action. (Han Decl., *supra*, at ¶ 87.) Simpluris had the lowest bid at \$3,795 when compared to  
23 the bids from CPT Group and Phoenix that were \$9,000 and \$6,000 respectively. (*Ibid.*)

24           Simpluris also has extensive experience in administering employment class action  
25 settlements. (Declaration of Eric Springer ("Springer Decl."), ¶¶ 5, 7; Exhibits A-B.)

26           **H. Release by Class Members is Limited**

27           Pursuant to the terms set forth in the Settlement Agreement, Class Members' Released  
28 Claims include the following:

[A]ll causes of action and factual or legal theories that were alleged in the operative complaints or that could have been alleged against Defendant based on the allegations in the operative complaints. This includes all of the following claims for relief: (a) failure to pay all regular wages, minimum wages, sick leave and overtime wages due; (b) failure to provide proper meal and rest periods and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate or properly formatted wage statements and payroll records; (d) failure to reimburse necessary business expenditures; (e) failure to pay waiting time penalties; (f) failure to timely pay wages during employment, (g) unlawful deductions of wages, (h) engaging in unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaints; (i) all claims under the Labor Code Private Attorneys General Act of 2004, which shall only bind Plaintiff and the State of California, that were described in Plaintiff's notice letter sent to the LWDA March 14, 2022 and only to the extent that these claims were alleged in the operative complaints; (j) any other claims or penalties under the Labor Code or other wage-and-hour laws pleaded in the Action; and (k) all damages, penalties, interest, and other amounts recoverable under said claims, causes of action or legal theories of relief. The period of the Released Claims shall extend to the limits of the Class Period (collectively, the "Released Claims").

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 26.)

Pursuant to the terms set forth in the Settlement Agreement, Released Parties include Defendant together with its officers, directors, employees, and agents ("Released Parties").

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 27.)

**I. The Proposed Notice Packet Provides Adequate Notice to the Class Members**

Within twenty-one (21) calendar days of entry of the Court's Order Granting Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 73.) Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (*Id.* at ¶ 74.) Within ten (10) days after the Settlement Administrator receives the Class List, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Ibid.*)

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1 The Notice Packet fully appries Class Members of the nature of the lawsuit, the claims  
2 involved, the material terms of the Agreement, Class Members' options thereunder, and how  
3 Class Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 75.)  
4 The Notice Packet also provides for a specific procedure to seek exclusion from the Class and  
5 for lodging objections to the Agreement. (*Ibid.*)

6 **J. Settlement Does Not Require Any Class Members to Submit Claim Forms**

7 A Class Member who properly submits a valid and timely request to be excluded from  
8 the Action will not receive an Individual Settlement Payment, will not be bound by the class  
9 action releases of the Settlement, and will not have standing to object to the Settlement. (Han  
10 Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 50.) Conversely, Class Members are not required to  
11 submit claim forms to receive their share of the Individual Settlement Payments. (*Id.* at ¶ 13.)

12 **K. Settlement Does Not Provide Any Reversion to Defendant**

13 Pursuant to the Agreement, none of the Maximum Settlement Amount will revert to  
14 Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 14.)

15 **L. Employer's Share of Payroll Taxes and the Allocation of Settlement Payments**

16 All Individual Settlement Payments will be allocated as follows: (a) twenty percent  
17 (20%) as wages; (b) forty percent (40%) as interest; and (c) forty percent (40%) as penalties.  
18 (Han Decl., *supra*, at ¶ 24.) All Individual PAGA Payments will be allocated as one hundred  
19 percent (100%) penalties. (*Ibid.*) Defendant shall pay the employer's share of payroll taxes  
20 due on the portion of Individual Settlement Payments allocated to wages separately and in  
21 addition to the Maximum Settlement Amount. (*Ibid.*)

22 **M. Notice of Class Action Settlement, Objection Form, and Request for Exclusion**

23 The Notice of Class Action Settlement, Objection Form, and Request for Exclusion are  
24 attached as **Exhibits A-C** respectively in the Agreement and the Proposed Order, filed  
25 concurrently herewith, and were drafted to be reasonably understood by the Class Members.

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1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

2 Express judicial policy favors maintaining wage-and-hour actions as class actions.  
3 *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries,*  
4 *Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be  
5 resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29  
6 Cal. 3d at 473-75. The decision to certify a class is a procedural one, and should be based on  
7 the allegations in the operative complaint, and not in the perceived factual or legal merit of the  
8 class claims. *Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

9 To certify a settlement class, the Court must find the two (2) primary requirements for  
10 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a  
11 well-defined community of interest in the questions of law and fact involving the parties to be  
12 represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab*  
13 *Company* (1967) 67 Cal. 2d 695, 704. The criteria are met here for the reasons set forth below.

14 **A. There Is A Numerous and Ascertainable Class**

15 Ascertainability is determined by examining class definition, class size, and means to  
16 identify class members. *See Vasquez, supra*, 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors*  
17 *of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are “ascertainable”  
18 where they may be readily identified without unreasonable expense or time.

19 Plaintiff contends, and Defendant does not dispute, the requirement of numerosity is  
20 met. The documents and information exchanged reflect a Class of approximately one hundred  
21 seventeen (117) Class Members. (Han Decl., *supra*, at ¶ 90.a.) The Class Members have been  
22 identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 90.b.)

23 **B. There Is A Well-Defined Community of Interest**

24 A community of interest is established by the predominance of common issues of law  
25 and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

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1 [D]oes not depend upon an identical recovery, and the fact that  
2 each member of the class must prove his separate claim to a  
3 portion of any recovery by the class is only one factor to be  
4 considered ... The mere fact that separate transactions are involved  
5 does not of itself preclude a finding of the requisite community of  
6 interest so long as every member of the alleged class would not be  
7 required to litigate numerous and substantial questions to  
8 determine his individual right to recover subsequent to the  
9 rendering of any class judgment which determined in plaintiffs'  
10 favor whatever questions were common to the class.

11 *Vasquez*, 4 Cal. 3d. at p. 809.

12 Plaintiff contends, and Defendant does not dispute, common issues of fact and law  
13 predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof.  
14 Because Plaintiff has alleged a single scheme, “the relevant proof [does] not vary among class  
15 members” and “clearly presents a common question fundamental to all class members.” *See In*  
16 *Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In*  
17 *Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).  
18 California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and  
19 class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*,  
20 191 Cal. App. 3d at 1350. This inference ““eliminates the need for each class member to prove  
21 individually the consequences of the defendants’ actions to him or her.”” *Id.* at 1351 (quoting  
22 *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

23 This Action involves, *inter alia*, a determination about Defendant’s alleged: (1) failure  
24 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse  
25 business expenses; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5)  
26 the resulting failure to pay final wages when required; (6) the failure to provide accurate wage  
27 statements; and (7) largely derivative claims under the Business & Professions Code and  
28 PAGA. (Han Decl., *supra*, at ¶ 90.e.) Plaintiff contends these practices affected Class  
Members in the same way. (*Ibid.*) The outcome of this litigation depends upon questions  
common to Class Members. While Defendant maintained otherwise, these issues will not be  
decided on the basis of facts peculiar to each Class Member but on the basis of facts common  
to the Class. Finally, these issues of liability can be determined on a class-wide basis.

1           **C.       The Plaintiff’s Claims Are Typical**

2           A class representative’s claims are typical when they arise from the same event,  
3 practice, or course of conduct that gives rise to the claims of other putative class members, and  
4 if their claims rest on the same legal theories. The class representative’s claims must be  
5 “typical” but not necessarily identical to the claims of other class members. It is sufficient that  
6 the representative is similarly situated so that he or she will have the motive to litigate on  
7 behalf of all class members. *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom*  
8 *Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the  
9 law in California that the class representative must have identical interests with the class  
10 members.”). Thus, it is not necessary that the class representative should have personally  
11 incurred all of the damages suffered by each of the other class members. *Wershba v. Apple*  
12 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

13           Plaintiff contends, and Defendant does not dispute, Plaintiff’s claims are typical of  
14 Class Members’ claims because they arose from the same factual basis and are based on the  
15 same legal theories. (Han Decl., *supra*, at ¶ 90.c.) Plaintiff was employed by Defendant during  
16 the Class Period and subject to the allegedly unlawful meal and rest break policies and pay  
17 practices at issue in this litigation, which makes Plaintiff a Class Member. (*Ibid.*) The central  
18 issues of this litigation (whether Defendant failed to pay all wages, failed to provide meal and  
19 breaks, failed to pay premium wages, etc.), which would arise if this were an individual action  
20 brought by Plaintiff, apply to the other Class Members. (*Ibid.*) In other words, the answer to  
21 these questions would determine Defendant’s liability to the Class. (*Ibid.*)

22           **D.       Adequacy of Class Counsel and Class Representative**

23           Class Counsel are experienced in class actions, have represented their clients zealously,  
24 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 90.d; Exhibit 2.) Moreover, the  
25 Class Representative’s interests are aligned with those of the Class Members, he has suffered  
26 the same injuries as the Class Members, and he has no conflicts of interest. (*Id.* at ¶ 90.d.)

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1           **E.       Predominance and Superiority**

2           Individual issues do not predominate over those common to the Class. (Han Decl.,  
3 *supra*, at ¶ 90.f.) Furthermore, the class action mechanism is superior to individualized actions  
4 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 90.g.)

5           **V.       THE TWO-STEP APPROVAL PROCESS**

6           Any settlement of class litigation must be reviewed and approved by the Court. This is  
7 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review  
8 after notice has been distributed to the class members for their comment or objections. The  
9 Manual for Complex Litigation (Third) states:

10           “Approval of class action settlements involves a two-step process. First,  
11 counsel submits the proposed terms of settlement and the court makes a  
12 preliminary fairness evaluation. If the preliminary evaluation of the  
13 proposed settlement does not disclose grounds to doubt its fairness or  
14 other obvious deficiencies, such as unduly preferential treatment of class  
15 representatives or of segments of the class, or excessive compensation for  
16 attorneys, and appears to fall within the range of possible approval, the  
17 court should direct that notice ... be given to the class members of a  
18 formal fairness hearing, at which arguments and evidence may be  
19 presented in support of and in opposition to the settlement.” § 30.41.

20           Preliminary approval by the trial court is a conditional finding the settlement appears to  
21 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength  
22 of the findings made by a judge at a preliminary hearing or conference concerning a tentative  
23 settlement proposal may vary. The court may find the settlement proposal contains some merit,  
24 is within the range of reasonableness required for a settlement offer, or is presumptively valid  
25 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert  
26 B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

27           The procedures for the Parties’ submission of a proposed settlement for preliminary  
28 approval by the court also are discussed in 4 Newberg on Class Actions:

          When the parties to an action reach a monetary settlement, they will  
usually prepare and execute a joint stipulation of settlement, which is  
submitted to the court for preliminary approval. The stipulation should  
set forth the central terms of the agreement, including but not limited to,  
the amount of settlement, form of payment, manner of determining the

effective date of settlement and any recapture clause, Newberg on Class Actions, at § 11.24.

## **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

As a matter of public policy, the courts both encourage the use of the class action device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.”)

The courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. There is a presumption that the negotiations were conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) Class Members’ reaction to the proposed settlement.

The Agreement satisfies each of these factors. Specifically, Class Counsel conducted extensive discovery before entering meaningful settlement negotiations, including a detailed analysis of Defendant’s policies and a considerable sample of Defendant’s time and pay records. (Han Decl., *supra*, at ¶ 16.) This discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and the risks associated with ongoing litigation. (*Id.* at ¶

19.) In addition, Class Counsel are experienced in the handling of wage-and-hour class actions and support the Settlement. (Han Decl., at ¶¶ 3-10; Exhibit 2.)

**A. The Strength of Plaintiff's Case.**

The claims in this action include failure to provide meal and rest breaks, failure to pay minimum wages, failure to pay overtime wages, failure to pay final wages when due, failure to provide accurate wage statements, failure to reimburse necessary business expenses, and related claims for violations of the Business & Professions Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 27.)

Class Counsel felt confident the claims would be certified given Defendant's policies and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 28-66.)

**B. The Risks Associated with the Merits.**

Plaintiff contends he and other Class Members were not provided proper meal and rest breaks due to Defendant assigning heavy, time-sensitive workloads, being understaffed, having high production quotas, permitting supervisory interference, and generally discouraging overtime work. (Han Decl., *supra*, at ¶¶ 29, 32-33.) Defendant countered it never assigned heavy workloads or have high production quotas to the point where employees were forced to work through, cut short, or take late meal and rest breaks. (*Id.* at ¶¶ 30, 34.) In other words, employees were choosing to forgo receiving proper meal and rest breaks as opposed to being pressured to do so. (*Ibid.*) By extension, this also meant Defendant had no knowledge of supervisors interfering with employees' meal and rest breaks or that employees were forgoing receiving proper breaks to avoid facing supposed disciplinary action. (*Ibid.*) In addition, Defendant asserts if employees were not paid premium wages, it is because Defendant was never made aware of employees not receiving proper meal and rest breaks. (*Ibid.*) Finally, Defendant contend Class Counsel will have to gather declarations from putative class members to prove the existence of improper, uniform meal and rest break policies and practices. (*Ibid.*)

As the consideration concerning meal and rest breaks would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the meal and rest break claims. (Han Decl., *supra*, at ¶¶ 31, 35.) If Defendant's contentions are

1 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,  
2 would be no recovery for the Class Members.

3 Plaintiff also alleged he was not paid for all hours worked, including minimum wages  
4 and overtime wages as applicable due to Defendant's improper, uniform policies and practices,  
5 including a rounding practice. (Han Decl., *supra*, at ¶¶ 36, 39.) Specifically, Defendant only  
6 had one (1) timeclock, supervisors constantly asked employees to work pre-shift and post-shift,  
7 had stringent attendance and timekeeping policies, and generally discouraged overtime work.  
8 (*Ibid.*) When coupled with Defendant expecting employees to complete heavy, time-sensitive  
9 assignments, employees were left no choice but to work additional hours off-the-clock both  
10 pre-shift and post-shift. (*Ibid.*) This was apparently made worse by Defendant having a  
11 rounding practice that was neither fair nor neutral on its face. (*Ibid.*) Defendant countered  
12 these claims are not suitable for class treatment. (*Id.* at ¶¶ 37, 39.) Instead, Defendant argued it  
13 expressly prohibited off-the-clock work, generally approved overtime requests, and was never  
14 made aware of employees working additional hours off-the-clock. (*Ibid.*) In addition,  
15 Defendant contended its rounding practice was both fair and neutral. (*Ibid.*) Finally, Defendant  
16 asserted any unrecorded hours would likely be subject to individual inquiries and unlikely to be  
17 certified. (*Ibid.*) Given the difficulty in certifying this claim, Class Counsel applied a discount  
18 to damages based on this theory. (Han Decl., *supra*, at ¶¶ 38, 40.) If Defendant's contentions  
19 held true, the likely outcome of this claim would be little to no recovery for employees.

### 20 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties**

21 To establish liability for wage statement violations and waiting time penalties, Plaintiff  
22 would first have to establish liability for the underlying claims. But Defendant argued meal and  
23 rest break violations, even if established, could not be the predicate for a Labor Code section  
24 226 wage statement or section 203 waiting time claim. (Han Decl., *supra*, at ¶¶ 43, 47-48.) For  
25 example, the California Supreme Court recently held claims for meal and rest break penalties  
26 do not constitute "action[s] brought for the nonpayment of wages" for the purpose of  
27 determining statutory fees. *Kirby v. Immoos Fire Prot., Inc.* (2012) 53 Cal.4th 1244, 1259. In  
28 *Ling v. P.F. Chang's China Bistro* (2016) 245 Cal.App.4th 1242, the Court of Appeal noted an

1 action for unlawful meal and rest periods under “cannot support a section 203 penalty because  
2 section 203, subdivision (b) tethers the waiting time penalty to a separate action for wages.”).  
3 Authority is divided on this point. Although authority is divided, district court rulings support  
4 the conclusion that any unpaid meal and rest break premium pay cannot give rise to derivative  
5 wage statement liability. *See, e.g., Culley v. Lincare Inc.* (E.D. Cal. 2017) 236 F.Supp.3d 1184,  
6 1195-96; *Soto v. Motel 6 Operating, L.P.* (2016) 4 Cal.App.5th 385, 392-393 (noting a wage  
7 statement need only document compensation *actually received* and the hours used to calculate  
8 that compensation). It is unclear if the Court would have permitted untimely wage penalties or  
9 wage statement violations for Defendant’s failure to provide meal and rest break penalties.

10 Plaintiff would have to establish Defendant’s conduct was willful to recover waiting  
11 time penalties. (Lab. Code, § 203.) With these penalties, there is always the risk the trier of  
12 fact would not have held Defendant’s actions were done “willfully.” A good faith belief in a  
13 legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013)  
14 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiff alleges Defendant  
15 failed to pay for all hours worked and premiums for noncompliant meal and rest breaks. (Han  
16 Decl., *supra*, at ¶¶ 29, 32-33, 36, 39.) By extension, Plaintiff contends the Class Members are  
17 entitled to minimum wages, overtime wages, and premium wages, which Plaintiff alleges were  
18 not paid at the time of their termination or resignation. (*Id.* at ¶¶ 45-46.) If Plaintiff is  
19 successful on his claims, the penalties pursuant to Labor Code section 203 shall attach. (*Id.* at  
20 ¶ 49.) Defendant counters it provided employees with reasonable opportunities to take meal  
21 and rest breaks, asked employees to confirm the accuracy of their time records, and had good-  
22 faith defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 47-48.) As such, there was some risk  
23 associated with waiting time penalties Class Counsel had to consider.

#### 24 **D. The Risks Associated with the PAGA Penalties.**

25 Labor Code section 2699.3 gives aggrieved employees the right to recover civil  
26 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a  
27 penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for  
28 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay

1 period for each subsequent violation. (Lab. Code § 2699, subd. (e)(2).) If a civil penalty is  
2 provided in a specified amount by the Labor Code section relating to the underlying alleged  
3 Labor Code violation, that amount shall apply. (*Ibid.*) PAGA also gives the Court discretion to  
4 award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may award a lesser  
5 amount than the maximum civil penalty amount specified by this part if, based on the facts and  
6 circumstances of the particular case, to do otherwise would result in an award that is unjust,  
7 arbitrary and oppressive, or confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.*  
8 (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

9       The provisions of the Labor Code potentially triggering PAGA penalties in this case  
10 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221,  
11 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 1199, 2800, and  
12 2802. (Han Decl., *supra*, at ¶ 54.) Defendant asserted, regardless of the results of the  
13 underlying causes of action, PAGA penalties are not mandatory but permissive and  
14 discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments against the  
15 underlying claims, it had a strong argument it would be unjust to award maximum PAGA  
16 penalties given the law’s unsettled state. (*Ibid.*; *See Thurman v. Bayshore Transit Mgmt.*  
17 (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Thus, without  
18 stacking and limited to the initial violation, PAGA penalties would be limited to **\$3,300** (33  
19 employees x \$100 initial violation) on the low end and **\$19,800** (33 employees x \$100 initial  
20 violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 55-58.)

21       Plaintiff also recognized the risk that any PAGA award could be significantly reduced.  
22 (Han Decl., *supra*, at ¶ 59.) Many of the causes of action brought were duplicative of the  
23 statutory claims, such as violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510,  
24 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) In other words, the maximum penalties for  
25 each pay period are not justified, and it was arguable whether the Court would award the  
26 maximum penalties under the law. (*Ibid.*) Thus, allocating \$15,000 to PAGA civil penalties  
27 was reasonable based on a rate of **\$20.63** per pay period [ $\$15,000 \div 727$  pay periods in the  
28 PAGA Period = **\$20.63**], given the fact Defendant is paying an additional \$135,000 in the class

1 settlement.<sup>1</sup> (Han Decl., *supra*, at ¶ 59.) If PAGA penalties are negotiated in good faith and  
2 “there is no indication that [the] amount was the result of self-interest at the expense of other  
3 Class Members,” such amounts are considered reasonable.<sup>2</sup> (*Ibid.*)

4 Finally, Class Counsel are confident they would successfully prove Defendant’s alleged  
5 wage-and-hour violations were knowing and intentional, specifically with regards to Plaintiff’s  
6 meal and rest break and minimum/overtime wage allegations. (Han Decl., *supra*, at ¶ 60.)  
7 Firstly, Plaintiff contends Defendant intentionally assigned employees heavy, time-sensitive  
8 workloads, maintained high production quotas, and permitted supervisors to interfere with  
9 employees’ breaks. (*Ibid.*) This was purportedly made worse by Defendant knowingly having  
10 in place policies that generally discouraged overtime work. (*Ibid.*) By extension, Plaintiff  
11 asserts Defendant knowingly and intentionally failed to pay meal and rest break premium  
12 pay/penalties. (*Ibid.*) Secondly, Plaintiff alleges Defendant knew having only one (1)  
13 timeclock forced employees to arrive to work earlier than usual, that supervisors asked  
14 employees to work off-the-clock, and that Defendant’s policies generally discouraged overtime  
15 work. (*Ibid.*) In other words, Defendant knew and intended for its supervisors and policies to  
16 pressure employees to work additional hours off-the-clock. (*Ibid.*) Thirdly, Plaintiff contends  
17 Defendant intentionally maintained a rounding practice neither fair nor neutral since a simple  
18 examination of employees’ timecards would reveal they were being undercompensated. (*Ibid.*)  
19 Thus, Plaintiff asserts Defendant knowingly and intentionally implemented its purportedly  
20 improper, uniform policies and practices, resulting in the alleged violations. (*Ibid.*)

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24 <sup>1</sup> (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of  
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of  
26 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

27 <sup>2</sup> (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.  
28 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           **E.       The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

2           Given the risks outlined above, the issues in this case were complex and the risk for  
3 Plaintiff and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶  
4 67-71.) A class trial would have required the retention of expensive expert witnesses, the  
5 accrual of extensive litigation costs, and the Parties would have had to spend a substantial  
6 amount of time. (*Id.* at ¶ 71.) Given the complexity and unsettled nature of the issues, it is  
7 likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id.* at ¶¶  
8 68-71.) Finally, an appeal would result in further delay for the Class Members who have  
9 already waited years for resolution in this matter. (*Id.* at ¶¶ 68, 71.)

10           **F.       The Risk of Maintaining Class Action Status Through Trial.**

11           In class actions, decertification is always a possibility. There is always a risk that a trial  
12 of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*  
13 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class  
14 actions, decertification is a real risk that Class Counsel must consider.

15           **G.       The Amount Offered in Settlement.**

16           There is no doubt the Agreement is the result of vigorous, adversarial, non-collusive,  
17 and arm's-length negotiations. To determine the approximate potential damages owed to each  
18 Class Member, Class Counsel analyzed a sampling of time and pay records. Using this  
19 information, Class Counsel estimated the full value of the case if Plaintiff prevailed at trial.

20           Excluding the civil penalties, which could be completely discretionary, the total  
21 estimated potential exposure, assuming certification and prevailing at trial, would be around  
22 **\$979,242.86** on the low end and **\$1,083,875.89** on the high end. (Han Decl., *supra*, at ¶ 62.)

23       ///

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| Category                                | Potential Exposure                                 | Certification Risk | Merits Risk | Realistic Exposure                               |
|-----------------------------------------|----------------------------------------------------|--------------------|-------------|--------------------------------------------------|
| Rest Break Premiums                     | \$157,807.52                                       | 70%                | 60%         | \$18,936.90                                      |
| Meal Break Premiums                     | \$70,309.26                                        | 60%                | 60%         | \$11,249.48                                      |
| Overtime/Minimum Wage:<br>Off-the-Clock | \$209,266.05<br>to<br>\$313,899.08                 | 60%                | 50%         | \$41,853.21<br>to<br>\$62,779.82                 |
| Overtime/Minimum Wage:<br>Rounding      | \$2,405.63                                         | 30%                | 40%         | \$1,010.36                                       |
| Unreimbursed Business Expenses          | \$88,932                                           | 30%                | 60%         | \$24,900.96                                      |
| Wage Statement Penalty                  | \$107,500                                          | 30%                | 40%         | \$45,150                                         |
| Waiting Time Penalty                    | \$343,022.40                                       | 30%                | 40%         | \$144,069.41                                     |
| <b>MAXIMUM TOTAL EXPOSURE</b>           | <b>\$979,242.86</b><br>to<br><b>\$1,083,875.89</b> |                    |             | <b>\$287,170.32</b><br>to<br><b>\$308,096.93</b> |

Based on this analysis, the realistic recovery for this case is approximately **\$287,170.32** on the low end and **\$308,096.93** on the high end. (Han Decl., *supra*, at ¶ 63.) The Maximum Settlement Amount of \$150,000 is about fourteen percent (13.84%) of the high end maximum potential exposure and around forty-seven percent (48.69%) of the high end maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 64.) It has been determined “missed-break premium pay constitutes wages for purposes of Labor Code section 203, and so waiting time penalties are available under that statute if the premium pay is not timely paid.” (*Naranjo v. Spectrum Security Services, Inc.* (May 23, 2022, No. S258966) \_\_\_Cal.5th\_\_\_ [2022 Cal. LEXIS 2878, at \*31].) Similarly, “[A]n employer’s obligation under Labor Code section 226 to report wages earned includes an obligation to report premium pay for missed breaks.” (*Id.* at p. 38.) As a result, Plaintiff added the realistic exposure for rest break premiums and meal break premiums (\$18,936.90 + \$11,249.48 = \$30,186.38). (Han Decl., *supra*, at ¶ 64.) Plaintiff then added the \$30,186.38 to the low end realistic exposure for unpaid wages due to off-the-clock work and rounding (\$30,186.38 + \$41,853.21 + \$1,010.36 = \$73,049.95). (*Ibid.*) The realistic

1 exposure of \$73,049.95 Plaintiff can expect to receive if he were to prevail at trial for meal and  
2 rest break premiums and low end unpaid wages due to off-the-clock work and rounding  
3 represents about twenty percent (20.30%) of the low end realistic exposure of the maximum  
4 total exposure and PAGA penalties ( $\$73,049.95 \div 359,770.32 = 0.2030 \times 100 = 20.30\%$ ).  
5 (Han Decl., *supra*, at ¶ 64.) Because this represents twenty percent (20%) of wages, allocating  
6 twenty percent (20%) as wages, forty percent (40%) as interest, and forty percent (40%) as  
7 penalties pursuant to the Agreement was deemed appropriate. (*Ibid.*)

8         Once Class Counsel determined the maximum potential damages, they established a  
9 fair and reasonable settlement for the Class after analyzing the likelihood of success on the  
10 merits. (Han Decl., *supra*, at ¶ 25.) After reviewing the facts and circumstances of this matter,  
11 Class Counsel concluded the Class had a reasonable likelihood of success on the core claims.  
12 (*Id.* at ¶¶ 62-71.) Defendant disputes this contention, denies all wrongdoing in this matter, and  
13 is confident it has strong legal and factual defenses to Plaintiff's claims. (*Id.* at ¶¶ 68, 70.)  
14 Class Counsel determined the likelihood of success for Plaintiff's claims was not as strong  
15 because of various defenses, including Defendant's arguments that the issues were not suitable  
16 for class treatment due to their individualized nature. (*Ibid.*) After considering the likelihood  
17 of success on each claim and the challenges faced with certifying these claims, Class Counsel  
18 determined the Agreement amount of \$150,000 was fair and reasonable.

19         The Agreement is the result of extensive settlement negotiations between the Parties,  
20 conducted at arm's length, and informed by substantial factual and legal investigations. (Han  
21 Decl., *supra*, *passim*.) Class Members have been represented by experienced counsel with  
22 many years of experience in employment class action litigation. (*Id.* at ¶¶ 3-10.) Specifically,  
23 Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶  
24 15-19.) This included, among other things: (1) interviewing Plaintiff at length on repeated  
25 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with  
26 Defendant's counsel; (3) reviewing and analyzing time and pay records, employee handbook,  
27 and personnel records; (4) researching California law; (5) interviewing putative class members  
28 regarding their experiences; (6) preparing for and attending mediation; and (7) negotiating and

1 finalizing the Settlement Agreement. (Han Decl., *supra*, *passim*.)

2       There were other matters considered as well. These considerations included: (1) the  
3 strength of Plaintiff's case versus the amounts offered in settlement; (2) the risks, expenses,  
4 and length of further litigation; (3) the present unsettled state of the law; (4) the present value  
5 of a settlement versus the long wait necessitated by any potential judgment in Class Members'  
6 favor; (5) the burdens of proof necessary to establish liability; and (6) Defendant's defenses to  
7 the Action. (Han Decl., *supra*, *passim*.)

8       These above-mentioned factors indicated the interests of Class Members are best served  
9 by a settlement of this Action in the manner set forth in the Settlement Agreement. The  
10 Individual Settlement Payment for each Class Member will be tailored to their Total Hours  
11 Worked during the Class Period. Furthermore, Class Counsel secured prospective relief for the  
12 Class where Defendant will ensure its policies comply with California law.

13       Finally, Class Counsel believe the Settlement Agreement serves the best interests of the  
14 Class. The court can consider counsel's recommendations if counsel have been involved in  
15 litigation for some period, appear to be competent, and have experience with this type of  
16 litigation, and significant discovery has been completed. *See Newberg*, § 11.47.

## 17 **VII. THE ENHANCEMENT PAYMENT IS FAIR AND REASONABLE**

18       It is appropriate to provide a relatively modest additional incentive payment to the class  
19 representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)  
20 901 F.Supp. 294.

21       Plaintiff is entitled to reasonable service payments for his efforts in this matter. (Han  
22 Decl., *supra*, at ¶ 81.) Plaintiff spent significant time better apprising himself of his rights,  
23 deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)  
24 Plaintiff decided to vindicate not only his own rights but also those of his co-workers by filing  
25 a representative PAGA action and wage-and-hour class action lawsuit. (*Ibid.*)

26       By suing Defendant, Plaintiff increased the risk of retaliation by prospective employers.  
27 (Han Decl., *supra*, at ¶ 82.) Plaintiff's lawsuit has cost Defendant considerable resources and  
28 such conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment

opportunities is real in the information age contain quick background checks. (Han Decl., *supra*, at ¶ 82.)

But Plaintiff did not allow his fears of the potential repercussions of being class representative deter him from acting for the benefit of Class Members. (Han Decl., *supra*, at ¶ 83.) Instead, Plaintiff has been intimately involved in this case since its inception. (*Ibid.*) Specifically, Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this Action at every stage of the litigation. (*Ibid.*)

Plaintiff spent a significant amount of time with Class Counsel detailing his knowledge of Defendant's practices. (Han Decl., *supra*, at ¶ 84.) Plaintiff has diligently, adequately, and fairly represented Class Members and has not placed his own interests above the Class. (*Ibid.*) The Enhancement Payment is intended to recognize Plaintiff's time and effort, and the amount requested is fair and appropriate based on his contribution and involvement. (*Ibid.*)

Thus, Class Counsel believe the combined Enhancement Payment of \$10,000 to the Class Representative is fair and reasonable. (Han Decl., *supra*, at ¶ 85.)

#### **VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED**

Under the Agreement, Class Counsel request, without opposition from Defendant, an award of Attorneys' Fees and Costs consisting of: (1) up to \$52,500 as the attorneys' fees; and (2) up to \$20,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 78.) The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 78-79.) Class Counsel's request for Attorneys' Fees and Costs will not be opposed by Defendant.

California courts routinely look to the federal courts on class action approvals. The Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id.* Courts

1 have discretion to choose either the percentage-of-the-fund method or the lodestar method. *In*  
2 *re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

3 Several courts have expressed frustration with the “lodestar” approach for deciding fee  
4 awards, which usually involves wading through voluminous time records. In other words, the  
5 percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns  
6 the interests of class counsel and absent class members; (2) it encourages efficient resolution of  
7 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces  
8 the demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-  
9 79. The Ninth Circuit has used the percentage of the common fund approach to determine the  
10 award of attorneys’ fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d  
11 373, 378-79 (approving attorneys’ fee of 33 1/3% of settlement fund).

12 When considering the facts and circumstances of this case, the request for attorneys’  
13 fees is within the range of reasonableness. Historically, courts have awarded percentage fees in  
14 the range of twenty percent (20%) to fifty percent (50%) of the common fund, depending on  
15 the circumstances of the case. *Newberg*, at § 14.03; *see also In re Activision Securities*  
16 *Litigation*, 723 F. Supp. at 1378. *Newberg* further notes: “[A]chievement of a substantial  
17 recovery with modest hours expended should not be penalized but should be rewarded for  
18 considerations of time saved by superior services performed.” *Id.* at §§ 14-10:14-11.

19 The attorneys’ fees request provided for in the Settlement Agreement is commensurate  
20 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or  
21 greater than the percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities*  
22 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common  
23 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375  
24 (awarding plaintiffs’ counsel 32.8% of the common fund created to settle the litigation); *In re*  
25 *Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F. Supp. 494 (awarding 45% of \$7.3 million  
26 settlement fund); *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming  
27 fee award to counsel of one-third (1/3) of recovery achieved).

28 ///

1 In wage-and-hour class actions, California trial courts have approved attorney's fees  
2 consistent with or greater than the percentage of the common fund requested in this case. *See*  
3 *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Super. Ct. Case No. BC 262247 (May  
4 2005) (Hon. Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Super.Ct.  
5 Case No. BC 278170 (April 2004) (Hon. Douglas M. Minning); *Josiah Eaton v. Adolph Coors*  
6 *Company* (2003) Orange County Super. Ct. Case No. 01CC00140 (Hon. Stephen J. Sundvold);  
7 *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Super.Ct. Case No. BC  
8 277359 (Sept. 2006) (Hon. Kenneth R. Freeman); *Daum v. Claim Jumper Restaurants*, Orange  
9 County Super.Ct. Case No.02CC10201 (2006) (Hon. Ronald L. Bauer).

10 Class Counsel have borne the entire risk and costs of litigation and will not receive any  
11 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 78-79.) The Court should  
12 also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the  
13 requested attorneys' fees award for Class Counsel is reasonable.

#### 14 **A. Fee Splitting Agreement**

15 Class Counsel is not splitting the costs associated with the settlement with any other  
16 individuals or firms. (Han Decl., *supra*, at ¶ 89.)

### 17 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 18 **APPROVAL**

19 The Parties respectfully request this Court, as part of the preliminary approval process,  
20 to grant the following relief and make the following orders:

21 1. Review and approve the Settlement Agreement attached to Douglas Han's  
22 declaration as **Exhibit 1**;

23 2. Review and approve the Notice of Class Action Settlement, the Objection Form,  
24 and the Request for Exclusion attached to the Proposed Order as **Exhibit A, Exhibit B, and**  
25 **Exhibit C** respectively;

26 3. Consider and determine the proposed class action settlement as set forth in the  
27 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

28 ///

1           4.       Conditionally certify the action as a class action for settlement purposes only  
2 and preliminarily approving the proposed class action settlement and Settlement Agreement;

3           5.       Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and John Bickford  
4 of Justice Law Corporation to serve as Class Counsel for settlement purposes;

5           6.       Approve and appoint Simpluris as the Settlement Administrator to handle the  
6 notice procedures as set forth in the Settlement Agreement;

7           7.       Approve the proposed allocation of funds to the claims made under PAGA;

8           8.       Order Defendant to disclose the Class List to Simpluris in accordance with the  
9 manner set forth in the Settlement Agreement;

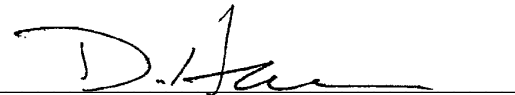
10          9.       Order Simpluris to mail the Notice Packet to Class Members; and

11          10.      Set a date for the Final Approval Hearing.

12  
13 Dated: June 16, 2022

**JUSTICE LAW CORPORATION**

14  
15 By



Douglas Han

Attorneys for Plaintiff

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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 20, 2022, I served the foregoing document described as

for the following case: **Nguyen v. Brenner-Fiedler & Associates, Inc.**  
 LWDA/Court Case No.: **LWDA Case No.: CM-873416-22**  
**Court Case No.: CVRI2100690**  
**Riverside 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 20, 2022, at Pasadena, California.

Moini Andersen

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Mariah Anderson