

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 304961)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

EARL GANDIONCO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ALLERGAN, INC., a Delaware corporation;
ALLERGAN USA, INC., a Delaware
corporation; ALLERGAN SALES, LLC, a
Delaware limited liability company; ZELTIQ
AESTHETICS, INC., a Delaware
corporation; LANCESOFT, INC., a Virginia
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: STK-CV-UOE-2022-0003077

Assigned for All Purposes to:
Honorable Robert T. Waters
Department 11B

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); and [Proposed] Order filed
concurrently herewith]

Hearing Date:
Hearing Time: 9:00 a.m.
Hearing Place: Department 11B

Complaint Filed: April 27, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on _____ at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Robert T. Waters in Department 11B of the San Joaquin
3 County Superior Court, located at 180 E Weber Ave., San Joaquin, California 95202, Plaintiff Earl
4 Gandionco (“Plaintiff”) will and hereby moves 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,” or “Settlement”), attached as **Exhibit 2** to
8 the declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, the allocations for payments under the Labor
10 Code Private Attorneys General Act of 2004 (“PAGA”), Attorney Fee Award, Cost
11 Award, Class Representative Enhancement Payment, and Administration Costs;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff as the Class Representative;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
16 attached as **Exhibit A** to the Agreement;
- 17 • Approving the Election Not To Participate form (“Exclusion Form”) attached as
18 **Exhibit B** to the Agreement;
- 19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
21 to the proposed Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving Phoenix Class Action Administration Solutions as the Settlement
25 Administrator; and

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- 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: July 8, 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 \$325,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all non-exempt
4 or hourly employees of LanceSoft, Inc. assigned by LanceSoft to perform work, and who did
5 perform work, for Allergan, Inc.; Allergan USA, Inc.; Allergan Sales, LLC; or Zeltiq Aesthetics,
6 Inc. (together, “Allergan Entities”) at any of the Allergan Entities’ facilities or work locations in
7 California at any time from December 17, 2016 to July 1, 2022 (“Class,” “Class Members,” and
8 “Class Period”). Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Zeltiq Aesthetics, Inc.,
9 and LanceSoft, Inc. are collectively known as “Defendants.” At the time of this filing, the number
10 of Class Members is estimated to be seventy-six (76). (Declaration of Douglas Han In Support of
11 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶¶ 8-9.)

12 It is requested this Court grant Preliminary Approval, as when analyzing the strengths and
13 vulnerabilities of the class claims alongside Defendants potential liability exposure, this proposed
14 Settlement of \$325,000 is well within the range of reasonableness.

15 **II. BACKGROUND**

16 On June 14, 2021, Plaintiff, a former employee of Defendants, filed a wage-and-hour class
17 action lawsuit in the Superior Court of California, County of Alameda, Case Number Case Number
18 RG21107065, alleging eight (8) causes of action. (Han Dec., *supra*, at ¶ 10.)

19 The Parties attended mediation on Plaintiff’s claims with mediator Gig Kyriacou on March
20 31, 2022 that resulted in the settlement of this case. (Han Dec., *supra*, at ¶ 11.)

21 In line with the settlement, Plaintiff dismissed his wage-and-hour class action lawsuit in
22 the Superior Court of California, County of Alameda. (Han Dec., *supra*, at ¶ 12.) Then, on April
23 26, 2022, Plaintiff provided written notice to the California Labor and Workforce Development
24 Agency (“LWDA”) and Defendants. (*Ibid.*) On April 27, 2022, Plaintiff filed a wage-and-hour
25 class action lawsuit in the Superior Court of California, County of San Joaquin, Case Number
26 STK-CV-UOE-2022-0003077, alleging nine (9) causes of action. (*Id.* at ¶ 13.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Both Parties engaged in discovery. (Han Dec., *supra*, at ¶ 15.) Plaintiff propounded one
4 (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for
5 admissions, and one (1) set of requests for production of to each Defendant. (*Ibid.*) Thereafter, the
6 Parties met and conferred and agreed to engage in an informal exchange of information. (*Ibid.*)

7 The Parties conducted significant investigation and discovery of the facts and law both
8 before and after this case was filed. (Han Dec., *supra*, at ¶ 16.) As part of Defendants’ production,
9 Plaintiff reviewed time records, pay records, and information relating to the size and scope of the
10 Class. (*Ibid.*) Class Counsel also interviewed Class Members and Eligible Aggrieved Employees
11 who worked for Defendants during the Class Period and PAGA Period respectively. (*Ibid.*)

12 Based upon the information provided by Defendants and interviews Class Counsel had
13 with non-exempt employees, Plaintiff contends – and Defendants deny – Defendants: (1) failed to
14 provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all
15 hours worked; (3) failed to include non-discretionary bonuses in employees’ regular rates of pay
16 for purposes of overtime compensation, sick leave pay and meal break premiums; (4) failed to
17 reimburse employees for necessary business expenses; (5) issued noncompliant wage statements;
18 and (6) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 18-25.)

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

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

22 The Parties agreed to go to mediation with experienced wage-and-hour mediator, Gig
23 Kyriacou that took place on March 31, 2022. (Han Dec., *supra*, at ¶ 26.) With the assistance of
24 the mediator, the Parties were eventually able to reach an agreement on settlement, the terms of
25 which were memorialized in the Settlement Agreement the Parties now seek Preliminary Approval
26 of. (*Id.* at ¶ 25; Exhibit 2.)

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

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

6 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
7 and length of continued proceedings necessary to continue the litigation against Defendants. (Han
8 Dec., *supra*, at ¶ 39.) Plaintiff and Class Counsel considered the inherent uncertainty and risk of
9 further litigation, the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*)
10 Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
11 reasonable settlement, and is in the Class’s best interests. (*Ibid.*)

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

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

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

22 **i. Deductions from the Settlement**

23 The Parties agreed (subject to and contingent upon the Court’s approval) this action to be
24 settled and compromised for the non-reversionary total sum of \$325,000 (“Gross Settlement
25 Amount”) which includes: (1) Attorney Fee Award of \$113,750 (35% of the Gross Settlement
26 Amount); (2) Cost Award of \$20,000 for litigation costs and expenses; (3) Class Representative
27 Enhancement Payment of \$10,000; (4) Administration Costs of up to \$10,000; and (5) PAGA
28 Payment of \$20,000. (Han Dec., *supra*, at ¶ 27.)

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

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$151,250 ("Net Settlement Amount") will be distributed to Class Members – with an *average*
4 gross Individual Settlement Share estimated at \$1,990.13.¹ (Han Dec., *supra*, at ¶ 28.)

5 Each Participating Class Member will receive a pro-rata share of the Net Settlement
6 Amount that will be calculated by the Settlement Administrator in accordance with the formula
7 set forth in the Agreement. (Han Dec., *supra*, at ¶ 29.) Each Participating Class Member's
8 Individual Settlement Share will be apportioned as follows: one-third (1/3) wages, one-third (1/3)
9 interest, and one-third (1/3) penalties. (*Ibid.*)

10 The Settlement Administrator will pay each Eligible Aggrieved Employee according to his
11 or her proportional share of the \$5,000 of the PAGA Payment allocated to Eligible Aggrieved
12 Employees using the formula set forth the Agreement. (Han Dec., *supra*, at ¶ 30.) Each Eligible
13 Aggrieved Employee's Individual PAGA Payment will be apportioned as one hundred percent
14 (100%) penalties. (*Ibid.*)

15 **iii. Notice to the Class**

16 Within fifteen (15) calendar days after entry of the Preliminary Approval Order, LanceSoft,
17 Inc. shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 32.) Within
18 fourteen (14) calendar days after Defendants' deadline to provide the Class Data to the Settlement
19 Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class
20 Members via first-class regular U.S. Mail. (*Ibid.*) Class Members are not required to submit claim
21 forms to receive their Individual Settlement Shares. (*Ibid.*)

22 **iv. Distribution of Funds**

23 The Settlement will be funded pursuant to the timeline and manner set forth in the
24 Agreement. (Han Dec., *supra*, at ¶ 33.) Uncashed settlement checks will be sent to the California
25 State Controller's Unclaimed Property Fund. (*Ibid.*)

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¹ \$151,250 (Net Settlement Amount) / 76 (Class Members) = \$1,990.13.

1 **v. Release of Claims**

2 As of the Effective Final Settlement Date, except as to such rights or claims as may be
3 created by the Agreement, in exchange for the consideration in the Agreement, Plaintiff and the
4 Participating Class Members, on their own behalf, and on behalf of their respective current, former
5 and future heirs, spouses, executors, administrators, agents, attorneys, and assigns fully release the
6 Released Parties from the Released Claims for the Class Period. (Han Dec., *supra*, at ¶ 34.)

7 As of the Effective Final Settlement Date, Plaintiff, all Aggrieved Employees, and
8 California will be barred from prosecuting and will release the Released Parties from all PAGA
9 claims, whether known or unknown, that were pled or could have been pled based on the factual
10 allegations contained in the complaint, amendments thereto, or any PAGA letters submitted by
11 Plaintiff that occurred during the PAGA Period. (Han Dec., *supra*, at ¶ 35.)

12 36. Plaintiff provides and agrees to a general release on behalf of himself and his heirs,
13 spouses, executors, administrators, attorneys, agents, and assigns of any and all claims of any
14 nature, known or unknown, contingent or accrued, against all Released Parties, whether in tort,
15 contract or equity, including but not limited to the Released Claims, and any claims arising out of
16 or relating to work performed by Plaintiff for the Released Parties. Plaintiff further provides and
17 agrees to a section 1542 general release of claims, and as such he agrees and represents he is aware
18 and familiar with the provisions of Civil Code section 1542. (Han Dec., *supra*, at ¶ 36.)

19 With regards to class action releases, “[A] court may release not only those claims alleged
20 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
21 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
22 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases in
23 this case are acceptable because they are limited to the scope of the allegations in the complaint.
24 Moreover, the released claims are ““based on *the identical factual predicate* as that underlying
25 the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do not ““go
26 beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

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

2 Counsel for both Parties are experienced in wage-and-hour employment law and class
3 actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel prosecuted numerous cases on
4 behalf of employees for Labor Code violations and are experienced and qualified to evaluate the
5 class claims, the settlement versus trial on a fully informed basis, and the viability of the defenses.
6 (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further litigation
7 and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

8 **IV. ARGUMENT**

9 **a. Class Action Settlements Are Subject to Court Review**

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

14 (a) A settlement or compromise of an entire class action, or a cause of action in
15 a class action, or as to a party, requires the approval of the court after
16 hearing.

16 ...

17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
19 agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion.

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

28 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

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

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

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

23 **i. The Settlement Amount of \$325,000 Is Fair and Reasonable**

24 The Settlement was possible following significant investigation and evaluation of
25 Defendants’ relevant policies and procedures, as well as the data Defendants produced for the
26 putative class, as referenced in Section III above, which permitted Class Counsel to engage in a
27 comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 40.)

28 ///

1 Plaintiff's claims are predicated on Defendants' purported: (1) failure to properly calculate
2 and pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums;
3 (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant
4 wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code section
5 2698, *et seq.*; and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec.,
6 *supra*, at ¶ 41.) Defendants deny Plaintiff's theories of liability. (*Id.* at ¶ 42.)

7 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
8 to certification are always present. (Han Dec., *supra*, at ¶ 43.) As the California Supreme Court
9 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
10 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
11 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
12 (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

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

14 The provisions of the Labor Code potentially triggering PAGA penalties in this case
15 include, but are not limited to, Labor Code sections 201, 202, 203, 226, 226.7, 246 (l), 510, 512,
16 1174, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, and 2802. (Han Dec., *supra*,
17 at ¶ 52.) Defendants assert, regardless of the results of the underlying causes of action, PAGA
18 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain, in
19 addition to their strong arguments against the underlying claims, they had a strong argument it
20 would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*;
21 *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30%
22 under this authority].) Defendants argued without stacking and limited to the initial violation, the
23 PAGA penalties would be limited to **\$4,500** (45 employees x \$100 initial violations) on the low

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

1 end and **\$27,000** (45 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec.,
2 *supra*, at ¶¶ 53-56.)

3 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
4 (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory
5 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
6 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties was
7 reasonable based on a rate of **\$14.08** per pay period [$\$20,000 \div 1,420$ pay periods in PAGA date
8 range = **\$14.08**], given the fact Defendants are also paying an additional \$305,000 in the class
9 settlement.⁵ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication
10 that [the] amount was the result of self-interest at the expense of other Class Members,” such
11 amounts are generally considered reasonable.⁶ (*Ibid.*)

12 Considering Defendants’ defenses, its supporting evidence, and its position that the case is
13 not suitable for class treatment, the Settlement of \$325,000 is reasonable, adequate, and fair.

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

15 Excluding the civil penalties, which could be completely discretionary, for the reasons
16 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
17 be approximately **\$995,659.48** on the low end and **\$1,058,831.48** on the high end. (Han Dec.,
18 *supra*, at ¶ 58.)

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

26 ⁶ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,
28 “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
damages to the PAGA claims”.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$189,627.48	70%	60%	\$22,755.30
Meal Break Premiums	\$91,227.80	60%	50%	\$18,245.56
Overtime/Minimum Wage: Off-the-Clock Work	\$126,344 to \$189,516	50%	50%	\$31,586 to \$47,379
Overtime/Minimum Wage: Regular Rate	\$6,067	30%	40%	\$2,548.14
Unreimbursed Business Expenses	\$12,560	30%	70%	\$2,637.60
Wage Statement Penalty	\$141,750	40%	40%	\$51,030
Waiting Time Penalty	\$428,083.20	40%	40%	\$154,109.95
MAXIMUM TOTAL EXPOSURE	\$995,659.48 to \$1,058,831.48⁷			\$282,912.55 to \$298,705.55⁸

Based on this analysis, the realistic recovery for this case is **\$282,912.55** on the low end and **\$298,705.55** on the high end. (Han Dec., *supra*, at ¶ 66.) The Gross Settlement Amount of \$325,000 is about thirty percent (30.69%) of the maximum potential exposure and around one hundred nine percent (108.80%) of the maximum realistic exposure at trial. (*Ibid.*)

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

⁷ (Han Dec., *supra*, at ¶¶ 44-51.)

⁸ (*Id.* at ¶¶ 59-65.)

significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 67.) Plaintiff contends as a former hourly-paid, non-exempt employee of Defendants, his claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately seventy-six (76) Class Members. (Han Dec., *supra*, at ¶ 68.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

11 **1. Common Issues Predominate**

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

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 69.) Plaintiff contends all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 71.) Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understand his fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Plaintiff has no interest averse to the interests of the other Class Members. (*Ibid.*)

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

111

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

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

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

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

11 If the court has certified the action as a class action, notice of the final approval
12 hearing must be given to class members in the manner specified by the court. The
13 notice must contain an explanation of the proposed settlement and procedures for
14 class members to follow in filing written objections to it and in arranging to appear
at the settlement hearing and state any objections to the proposed settlement.

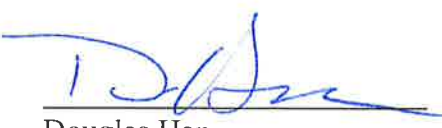
15 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
16 advises the Class Members of their right to participate in the Settlement; how and when to object
17 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
18 hearing.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

19 **V. CONCLUSION**

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

24
25 Dated: July 8, 2022

JUSTICE LAW CORPORATION

26
27 
28 Douglas Han
Attorney for Plaintiff

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On July 12, 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: **Gandionco v. Allergan, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-880564-22**
Court Case No.: STK-CV-UOE-2022-0003077
San Joaquin 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 July 12, 2022, at Pasadena, California.



Mariah Anderson