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

TYLER COOMBS, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiff,

v.

IMAGING HEALTHCARE SPECIALISTS,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2020-00043781-CU-OE-CTL

Assigned for All Purposes to:
Honorable Richard S. Whitney
Department C-68

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: December 16, 2022
Hearing Time: 10:30 a.m.
Hearing Place: Department C-68

Complaint Filed: December 1, 2020
FAC Filed: August 2, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 16, 2022 at 10:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Richard S. Whitney in Department C-68 of the San
3 Diego County Superior Court (Hall of Justice), located at 330 West Broadway San Diego,
4 California 92101, Plaintiff Tyler Coombs (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), 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 and PAGA Settlement (“Class
16 Notice”) attached as **Exhibit A** to the Agreement;
- 17 • Approving the proposed Election Not to Participate In Class Action Settlement (or
18 Opt Out) Form (“Exclusion Form”) attached as **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 settlement administration process;
- 23 • Approving Simpluris, Inc. as the Settlement Administrator; and
- 24 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
25 Agreement, at which time the Court will also consider whether to grant Final
26 Approval of the requests for the Attorney Fee Award, Cost Award, Class
27 Representative Enhancement Payment, Administration Costs, and approval of the
28 allocation of the PAGA Payment.

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

5
6 Dated: September 8, 2022

JUSTICE LAW CORPORATION

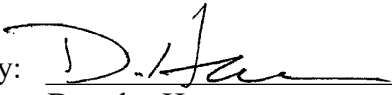
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8 By: 
9 Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,350,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all individuals who have
4 previously been or currently are employed by Defendant Imaging Healthcare Specialists, LLC
5 (“Defendant”) as an hourly paid and/or non-exempt employee within the State of California during
6 the time period from, and including, June 6, 2016 through, and including, May 4, 2022 (“Class,”
7 “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be seven hundred thirty (730). (Declaration of Douglas Han In Support of Plaintiff’s
9 Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 9-10.)

10 **II. BACKGROUND**

11 On December 1, 2020, Plaintiff, a former employee of Defendant, filed a wage-and-hour
12 class action lawsuit in the Superior Court of California, County of San Diego, alleging eight (8)
13 causes of action. (Han Decl., *supra*, at ¶ 11.)

14 The Parties remotely attended mediation with the mediator Marc J. Feder on October 7,
15 2021. (Han Decl., *supra*, at ¶ 12.) While the Parties did not initially settle at mediation, under the
16 auspices of the mediator, the Parties later reached a settlement via a mediator’s proposal. (*Ibid.*)

17 In line with the settlement, Plaintiff provided written notice to the Labor and Workforce
18 Development Agency (“LWDA”) and Defendant on April 15, 2022. (Han Decl., *supra*, at ¶ 13.)
19 Afterwards, on August 2, 2022, Plaintiff filed a First Amended Complaint. (*Ibid.*)

20 **III. INVESTIGATION/ LITIGATION HISTORY**

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

22 After Plaintiff initiated this lawsuit, both Parties engaged in discovery. (Han Decl., *supra*,
23 at ¶ 15.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
24 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production
25 of documents. (*Ibid.*) Defendant responded to Plaintiff’s discovery. (*Ibid.*) Thereafter, the Parties
26 met and conferred and agreed to engage in an informal exchange of information and then remotely
27 attend mediation. (*Ibid.*)

28 ///

1 Prior to mediation, the Parties conducted significant investigation and discovery of the facts
2 and law both before and after this case was filed. (Han Decl., *supra*, at ¶ 16.) Specifically,
3 Defendant produced documents relating to its policies, practices, and procedures. (*Ibid.*) As part
4 of Defendant’s production, Plaintiff also reviewed time records, pay records, and information
5 relating to the size and scope of the Class. (*Ibid.*) Plaintiff also interviewed Class Members who
6 worked for Defendant throughout the Class Period. (*Ibid.*)

7 Based upon the information provided by Defendant and interviews Class Counsel had with
8 Class Members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide
9 employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours
10 worked; (3) failed to include non-discretionary bonuses in employees’ regular rate of pay for
11 purposes of overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse
12 employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is
13 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

15 **i. The Parties Attended Mediation Which Led to the Settlement**

16 The Parties remotely attended mediation with the mediator, Marc J. Feder, on October 7,
17 2021. (Han Decl., *supra*, at ¶ 26.) While the Parties did not settle at mediation, under the continued
18 assistance of the mediator, the Parties eventually reached a settlement via a mediator’s proposal,
19 the terms of which were memorialized in the Settlement Agreement the Parties now seek
20 Preliminary Approval of. (*Id.* at ¶ 26; Exhibit 2.)

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

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

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1 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
2 necessary to continue the litigation against Defendant. (Han Decl., *supra*, at ¶ 39.) Plaintiff and
3 Class Counsel also considered the uncertainty and risk of further litigation, potential outcome,
4 existing arbitration agreements, and difficulties and delays inherent in such litigation as well as
5 Defendant’s past and current financial condition. (*Ibid.*) Based on the foregoing, Plaintiff and
6 Class Counsel believe the Settlement Agreement is a fair, adequate, and reasonable settlement,
7 and is in the best interests of the Class Members. (*Ibid.*)

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

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

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (contingent upon the Court’s approval) this action be settled and
20 compromised for the non-reversionary total sum of \$1,350,000 (“Gross Settlement Amount”)
21 which includes: (1) Attorney Fee Award of \$472,500; (2) Cost Award not to exceed \$20,000; (3)
22 Class Representative Enhancement Payment not to exceed \$10,000; (4) Administration Costs not
23 to exceed \$10,000; (5) PAGA Payment of \$100,000; and (6) Defendant’s share of applicable
24 payroll taxes. (Han Decl., *supra*, at ¶ 27.)

25 **ii. Calculating Individual Settlement Shares**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$737,500 (“Net Settlement Amount”) will be distributed to Participating Class Members – with an
28 *average* gross Individual Settlement Share estimated at \$1,010.27. (Han Decl., *supra*, at ¶ 28.)

1 Participating Class Member will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29.)
3 Individual Settlement Share will be apportioned twenty percent (20%) as wages and eighty percent
4 (80%) as penalties and interests. (*Ibid.*) The PAGA Payment that is paid to each Eligible
5 Aggrieved Employee shall be determined using the formula set forth in the Settlement Agreement.
6 (*Id.* at ¶ 30.) Eligible Aggrieved Employees' portion of the PAGA Payment will be allocated as
7 one hundred percent (100%) penalties. (*Ibid.*)

8 **iii. Notice to the Class**

9 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
10 Defendant shall deliver to the Settlement Administrator the Class List. (Han Decl., *supra*, at ¶
11 32.) The Settlement Administrator shall mail the Notice Packet to the Class Members via first-
12 class regular U.S. Mail within fourteen (14) calendar days after the receipt of the Class List. (*Ibid.*)
13 No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Id.* at ¶ 31.)

14 **iv. Distribution of Funds**

15 The Settlement will be funded pursuant to the timeline and manner set forth in the
16 Settlement. (Han Decl., *supra*, at ¶ 33.) Uncashed settlement checks will be mailed to the
17 California Controller's Unclaimed Property Fund. (*Ibid.*)

18 **v. Release of Claims**

19 Upon Defendant's fulfillment of its payment obligations, Participating Class Members
20 waive, release, promise never to assert in any forum, remise and forever discharge the Released
21 Parties from the Released Claims during the Class Period. (Han Decl., *supra*, at ¶ 34.)

22 Upon Defendant's fulfillment of its payment obligations, the LWDA and any other
23 representative, proxy, or agent thereof, including, but not limited to, Plaintiff and any and all
24 Eligible Aggrieved Employees during the PAGA Timeframe, will be barred from and will be
25 deemed and considered to have released and waived the ability to seek and/or pursue any action
26 for civil penalties under PAGA against Defendant and/or the Released Parties based on or arising
27 out of alleged violations of Labor Code sections and/or wage and hour laws alleged in Plaintiff's
28 letter to the LWDA and the operative complaints. (Han Decl., *supra*, at ¶ 35.)

1 Upon Defendant’s fulfillment of its payment obligations, and in exchange for the Class
2 Representative Enhancement Payment, in recognition of his work and efforts in obtaining the
3 benefits for the Class and undertaking the risk for the payment of costs if this matter had not
4 resolved, Plaintiff provides a general release of claims for himself and his respective spouse, heirs,
5 successors and assigns. (Han Decl., *supra*, at ¶ 36.) Plaintiff also stipulates and agrees, as of the
6 Effective Final Settlement Date, Plaintiff shall be deemed to have expressly waived and
7 relinquished the provisions, rights, and benefits of section 1542 of the Civil Code. (*Ibid.*)

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

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

17 Both Parties’ counsel are experienced in wage-and-hour employment law and class actions.
18 (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
19 of employees for Labor Code violations and are experienced and qualified to evaluate the class
20 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
21 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
22 their determination to endorse the Settlement.¹ (*Ibid.*)

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26 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
27 the Notice Packet has been provided to the Class, and they have had an opportunity to respond.
28 This information will be provided to the Court in conjunction with the Motion for Final Approval
of Class Action Settlement.

1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

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

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

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

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28 ² 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 In weighing the strength of the plaintiff's case, *Kullar* instructs the court is not to "decide
2 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
3 the attorneys." (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) Finally,
4 *Kullar* does not require an explicit statement of the maximum amount the class could recover if
5 the plaintiff prevailed on all his claims, provided there is a record that allows "an understanding
6 of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz*
7 *v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p. 409.) Put differently,
8 "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
9 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of
10 reasonableness." (*Kullar*, at p. 133.)

11 **i. The Settlement Amount of \$1,350,000 Is Fair and Reasonable**

12 The Settlement was possible following significant investigation and evaluation of
13 Defendant's relevant policies and procedures, as well as the data Defendant produced for the Class,
14 as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis
15 of liability and potential damages. (Han Decl., *supra*, at ¶ 40.)

16 Plaintiff's claims are predicated on Defendant's purported: (a) failure to properly calculate
17 and pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide meal and rest
18 breaks and pay applicable premium wages; (d) failure to timely pay wages; (e) failure to issue
19 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of PAGA; and
20 (h) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 41.)
21 Defendant denies Plaintiff's theories of liability. (*Id.* at ¶ 42.)

22 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
23 to certification are always present. (Han Decl., *supra*, at ¶ 43.) As the California Supreme Court
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
25 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
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1 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
2 (Han Decl., *supra*, at ¶ 43.) This led Plaintiff to discount the calculations for potential damages.

3 **ii. The PAGA Payment of \$100,000 Is Reasonable**

4 The provisions of the Labor Code potentially triggering PAGA penalties in this case
5 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
6 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, and
7 2802. (Han Decl., *supra*, at ¶ 52.) Defendant asserted, regardless of the results of the underlying
8 causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*)
9 Defendant also maintained, in addition to its strong arguments against the underlying claims, it
10 had a strong argument it would be unjust to award maximum PAGA penalties given the law's
11 unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112
12 [reducing penalties by 30% under this authority].) Defendant argued without stacking and limited
13 to the initial violation, the PAGA penalties would be limited to **\$60,600** (606 employees x \$100
14 initial violations) on the low end and **\$545,400** (606 employees x \$100 x 9 theories of recovery)
15 on the high end. (Han Decl., *supra*, at ¶¶ 53-56.)

16 Plaintiff also recognized the risk any PAGA award could be significantly reduced. (Han
17 Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory
18 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
19 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was
20 reasonable based on a rate of **\$4.00** per pay period [$\$100,000 \div 24,986$ pay periods in PAGA date
21 range = **\$4.00**], given Defendant is also paying an additional \$1,250,000 in the class settlement.⁴

22 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
23 of class claiming misclassification and ordering summary adjudication in favor of employees],
24 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
25 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
26 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].)

27 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
28 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].)

(Han Decl., *supra*, at ¶ 57.) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁵ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position the case is not suitable for class treatment, the Settlement of \$1,350,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$7,954,013.50** on the low end and **\$8,645,069.64** on the high end. (Han Decl., *supra*, at ¶ 58.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$511,468.06	70%	60%	\$61,376.17
Meal Break Premiums	\$816,615.14	60%	60%	\$130,658.42
Overtime/Minimum Wage: Off-the-Clock Work	\$1,381,648.78 to \$2,072,704.92	60%	50%	\$276,329.76 to \$414,540.98
Overtime/Minimum Wage: Regular Rate	\$29,748.72	40%	50%	\$8,924.62
Unreimbursed Business Expenses	\$415,272	30%	70%	\$87,207.12
Wage Statement Penalty	\$2,424,000	60%	60%	\$387,840
Waiting Time Penalty	\$2,375,260.80	60%	60%	\$380,041.73
MAXIMUM TOTAL EXPOSURE	\$7,954,013.50 to \$8,645,069.64⁶			\$1,332,377.82 to \$1,470,589.04⁷

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⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

⁶ (Han Decl., *supra*, at ¶¶ 44-51.)

⁷ (*Id.* at ¶¶ 59-65.)

1 Based on this analysis, the realistic recovery for this case is **\$1,332,377.82** on the low end
2 and **\$1,470,589.04** on the high end. (Han Decl., *supra*, at ¶ 66.) The Gross Settlement Amount of
3 \$1,350,000 is about fifteen percent (15.62%) of the maximum potential exposure and
4 approximately ninety-two percent (91.80%) of the maximum realistic exposure at trial. (*Ibid.*)

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

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

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

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

1 create the risk of inconsistent or varying adjudications. (Han Decl., *supra*, at ¶ 67.)

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

3 “Ascertainability is required in order to give notice to putative class members as to whom
4 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
5 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
6 by describing a set of common characteristics sufficient to allow a member of that group to identify
7 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
8 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
9 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

10 This case involves about seven hundred thirty (730) Class Members. (Han Decl., *supra*, at
11 ¶ 68.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008)
12 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and
13 former employees” is sufficiently numerous].)

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

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

24 **1. Common Issues Predominate**

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

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

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

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

12 Typical claims rely on legal theories and facts that are substantially like those of other class
13 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of
14 Defendant and alleges he and the Class Members were employed by the same company and injured
15 by Defendant's common policies and practices related to the claims described above. (Han Decl.,
16 *supra*, at ¶ 70.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class
17 Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based
18 on the same legal theories as those applicable to the Class. (*Ibid.*)

19 **3. Plaintiff Is Adequate to Represent the Class**

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

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

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

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

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

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

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

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

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

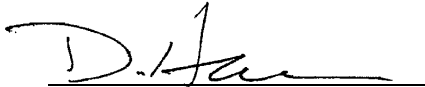
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1 **V. CONCLUSION**

2 Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class
3 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
4 should be conditionally certified for settlement purposes, and Notice Packet should be approved.
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6 Dated: September 8, 2022

JUSTICE LAW CORPORATION

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9 Douglas Han
10 *Attorneys for Plaintiff*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 9, 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: **Coombs v. Imaging Healthcare Specialists, LLC.**
LWDA/Court Case No.: **LWDA-CM-878912-22**
37-2020-00043781-CU-OE-CTL
San Diego 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 September 9, 2022, at Pasadena, California.



Mariah Anderson