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

MARIANNE RAMIREZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

DELTA DENTAL OF CALIFORNIA, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CGC-21-589648

Assigned for All Purposes to:
Honorable Andrew Y.S. Cheng
Department 613

CLASS ACTION

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

Hearing Date: September 1, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department 613

Complaint Filed: February 4, 2021
FAC Filed: October 4, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 1, 2023 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Andrew Y.S. Cheng in Department 613 of the San
3 Francisco County Superior Court located at 400 McAllister St., San Francisco, California 94102,
4 Plaintiffs Marianne Ramirez and Wendy Campbell (“Plaintiffs,” “Plaintiff Ramirez,” and
5 “Plaintiff Campbell”) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation of Class and PAGA Action
8 Settlement and Release (“Settlement Agreement,” “Settlement,” or “Agreement”),
9 attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited
10 to, the means of allocation and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiff Ramirez and Plaintiff Campbell as the representatives;
- 13 • Appointing Justice Law Corporation and Lawyers *for* Justice, PC as Class
14 Counsel;
- 15 • Approving the Class Notice attached as **Exhibit A** to the Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the deadlines for the notice and settlement administration process;
- 19 • Approving CPT Group, Inc. as the Settlement Administrator; and
- 20 • Scheduling a hearing to consider whether to grant final approval of the Settlement
21 Agreement, at which time the Court will also consider whether to grant final
22 approval of the requests for the Attorneys’ Fees, Litigation Expenses,
23 Enhancement Award, and Settlement Administration Costs, and Private Attorneys
24 General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han and Joanna Ghosh); Declarations of the
3 Proposed Representatives (Marianne Ramirez and Wendy Campbell); Declaration of Erin
4 Connell; Declaration of Julie Green; Declaration of Joan Graff; [Proposed] Order filed
5 concurrently with this motion; pleadings and other records on file with the Court in this matter;
6 and such documentary evidence and oral argument as may be presented at the hearing on this
7 motion.

8
9 Dated: August 1, 2023

JUSTICE LAW CORPORATION

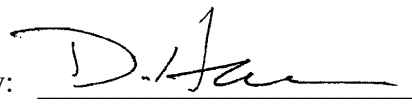
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11 By: 
12 Douglas Han
13 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$8,500,000.00 proposed
3 wage-and-hour class action and PAGA settlement in this lawsuit brought by Plaintiffs on behalf
4 of themselves and all current and former hourly-paid or non-exempt employees who are or were
5 employed by Defendant Delta Dental of California (“Defendant”) within the State of California at
6 any time during the August 10, 2016 to February 8, 2023 (“Class” and “Class Period”). Based on
7 data ending in October 2022, the estimated Class size was approximately one thousand six hundred
8 sixty (1,660) employees. Furthermore, for purposes of the PAGA claim covered by the Settlement,
9 the relevant time period is November 9, 2019, through February 8, 2023 (“PAGA Period”). Based
10 on data ending in October 2022, the estimated size of the representative PAGA group was
11 approximately one thousand two hundred forty-four (1,244) aggrieved employees. Now that the
12 Class Period and PAGA Period have closed, Defendant is updating the class roster and compiling
13 contact information to assist the Settlement Administrator with distribution of the Class Notice.

14 Class Counsel requests this Court grant preliminary approval. Class Counsel are convinced
15 the Settlement is in the best interests of the Class Members, Aggrieved Employees, and State of
16 California based on the negotiations and a detailed knowledge of the issues present in this matter.

17 **II. BACKGROUND**

18 On February 4, 2021, Plaintiff Ramirez filed a wage-and-hour class action lawsuit in the
19 Superior Court of California, County of San Francisco, alleging eight (8) causes of action.
20 (Declaration of Douglas Han (“Han Decl.”), ¶ 11).

21 After engaging in discovery, investigations, and informal exchange of information, the
22 Parties attended mediation with mediator Jeffry Krivis on May 10, 2022. (Han Decl., *supra*, at ¶
23 12.) The Parties were unable to settle and focused their efforts on litigation. (*Ibid.*)

24 On June 28, 2022, Plaintiff Campbell provided written notice to the California Labor and
25 Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 13.)

26 On October 4, 2022, Plaintiff Ramirez filed a First Amended Complaint adding Plaintiff
27 Campbell as a named plaintiff to represent allegedly aggrieved employees and adding a cause of
28 action for violation of Labor Code section 2698 *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 14.)

After engaging in additional formal discovery and investigations, the Parties remotely attended another mediation with mediator Jeffery Ross on February 8, 2023. (Han Decl., *supra*, at ¶ 15.) Under the auspices of the mediator after a full day of mediation, the Parties were presented with a mediator’s proposal which was accepted by the parties. (*Ibid.*)

III. INVESTIGATION/ LITIGATION HISTORY

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

After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 17.) Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of documents. (*Ibid.*) Defendant responded to Plaintiffs’ formal discovery requests. (*Ibid.*) Thereafter, the Parties met and conferred extensively on Defendant’s responses resulting in supplemental responses and significant formal discovery. (*Ibid.*) Class Counsel also engaged in discovery with respect to Defendant’s alleged Labor Code violations in an overlapping action as well.¹

Prior to mediation, the Parties conducted significant investigation and discovery of the relevant facts and law. (Han Decl., *supra*, at ¶ 18.) Defendant produced Class Members’ personnel records and documents relating to its wage-and-hour policies, practices, and procedures. (*Ibid.*) Defendant also assembled and produced a random sampling of timekeeping and earnings data for twenty percent (20%) of the Class Members, information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks and pay periods in the Class Period. (*Ibid.*) Putative class members were also interviewed to attain a better understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

Based upon the information provided by Defendant and interviews with putative class members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated rest and meal breaks; (2) failed to pay employees for all hours worked; (3) failed to properly calculate and pay overtime wages and sick leave pay; (4) failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is

¹ (Declaration of Joanna Ghosh in Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Conditional Certification, Approval of Class Notice, and Setting of Final Approval Hearing Date (“Ghosh Decl.”), ¶ 11.)

1 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 20-28.)

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

3 **i. Parties Attended Mediations Which Led to the Settlement Agreement**

4 During both mediations, the Parties discussed the risks of continued litigation, likelihood
5 of certification, and merits of the claims and defenses versus the benefits of settlement. (Han
6 Decl., *supra*, at ¶ 29.) With the assistance of the mediator, the Parties reached a settlement, the
7 terms of which are memorialized in the Agreement. (Han Decl., *supra*, at ¶ 29; Exhibit 2.)

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

9 The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶
10 32.) Though cordial and professional, the settlement negotiations have always been adversarial
11 and non-collusive in nature. (*Ibid.*) At the mediations, both Parties' counsel conducted extensive
12 arm's-length settlement negotiations until an acceptable settlement was reached. (*Ibid.*)

13 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense
14 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
15 33.) Plaintiffs and Class Counsel considered the uncertainty and risk of further litigation, potential
16 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the foregoing,
17 Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement,
18 and is in the best interests of Class Members, Aggrieved Employees, and the State of California.
19 (*Ibid.*)

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

21 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
22 the claims and defenses before reaching the Settlement and engaged in sufficient investigation,
23 research, and discovery to support the Settlement. (Han Decl., *supra*, at ¶ 34.) The Settlement was
24 possible following significant investigation and evaluation of the relevant policies and procedures
25 and the data produced for the putative class. (*Ibid.*) Furthermore, this case has also reached the
26 stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases"
27 sufficient to support the reasonableness, adequacy, and fairness of the Settlement. (Han Decl.,
28 *supra*, at ¶ 34; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2 **i. Deductions from the Settlement**

3 Parties agreed to settle for the non-reversionary sum of \$8,500,000.00 (“Gross Settlement
4 Amount”), which includes: (a) Attorneys’ Fees not to exceed \$2,833,333.33 (one-third of the Gross
5 Settlement Amount); (b) Litigation Expenses estimated at \$38,000²; (c) Enhancement Award not
6 to exceed \$10,000 to each Plaintiff; (d) Settlement Administration Costs not to exceed \$29,000;
7 and (e) PAGA Penalties not to exceed \$850,000. (Han Decl., *supra*, at ¶ 30.)

8 **ii. Calculation of Settlement Payments**

9 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
10 \$4,729,666.67 (“Net Settlement Amount”) will be distributed to Class Members who do not timely
11 opt out of the non-PAGA portion of the Settlement by submitting opt-out requests to the Settlement
12 Administrator by the opt-out deadline (“Settlement Class Members”) – with an *average* gross
13 Individual Class Settlement Payment of \$2,849.20. (Han Decl., *supra*, at ¶ 31.)

14 The Settlement Administrator will calculate and disburse Individual Class Settlement
15 Payments and Individual PAGA Payments using the formula set forth in the Settlement
16 Agreement. (Settlement Agreement, *supra*, §§ 7.6.3., 7.9.) Individual Class Settlement Payments
17 will be allocated fifty percent (50%) as wages claims and fifty percent (50%) as interest and
18 penalties. (*Id.* § 7.10.) Individual PAGA Payments will be allocated as one hundred percent
19 (100%) penalties. (*Id.* at § 7.6.3.)

20 Defendant’s portion of payroll taxes will be paid in addition to the Gross Settlement
21 Amount (Settlement Agreement, *supra*, § 7.8.) Defendant’s payroll taxes are estimated to be
22 approximately \$358,332.00. (*Ibid.*)

23 The allocation of wages and penalties indicated above was based on the estimated exposure
24 Plaintiffs could receive for meal and rest break premiums and unpaid wages based on their own
25 exposure analysis. (Han Decl., *supra*, at ¶ 54.) First, Plaintiffs added the estimated exposure for
26 rest break premiums and meal break premiums (\$687,125.39 + \$1,228,022.14 = \$1,915,147.53).
27 (*Ibid.*) Plaintiffs then added the \$1,915,147.53 to the estimated low-end exposure for unpaid wages
28

² (See Exhibit 4 to Han Decl.)

1 due to off-the-clock work, low end realistic exposure for underpaid wages due to rounding, unpaid
2 overtime wages due to an improper alternative workweek schedule, and underpaid overtime wages
3 and sick leave (\$1,915,147.53 + \$1,179,363.80 + \$149,810.62 + \$814,249.80 + \$805,503.08 =
4 \$4,864,074.83). (Han Decl., *supra*, at ¶ 54.) The realistic exposure of \$4,864,074.83 Plaintiffs
5 could potentially receive if they were to prevail at trial for meal and rest break premiums, low end
6 unpaid wages due to off-the-clock work, low end realistic exposure for underpaid wages due to
7 rounding, unpaid overtime wages due to an improper alternative workweek schedule, and
8 underpaid overtime wages and sick leave represents about fifty-one percent (50.87%) of the low
9 end total realistic exposure ($\$4,864,074.83 \div \$9,562,152.99^3 = 0.5087 \times 100 = 50.87\%$). (*Ibid.*)
10 Because this represents about fifty percent (50%) of wages, it means allocating fifty percent (50%)
11 as wages and fifty percent (50%) as interest and penalties pursuant to the Agreement is appropriate.
12 (*Ibid.*)

13 **iii. Notice to the Class**

14 Defendant will provide the Settlement Administrator with the Employer Settlement Data
15 within ten (10) calendar days after the Court enters an order granting preliminary approval of the
16 settlement. (Settlement Agreement, *supra*, § 8.5.) Within ten (10) calendar days of receiving the
17 Employee Settlement Data, the Settlement Administrator will send Class Members, by first-class
18 mail, at their last known address, the Court-approved Class Notice. (*Id.* at § 8.6.)

19 **iv. Distribution of Funds**

20 The Gross Settlement Amount will be funded in the manner and timeframe set forth in the
21 Settlement Agreement. (Settlement Agreement, *supra*, §§ 8.8.2., 8.8.3.)

22 Settlement Checks will remain negotiable for one hundred eighty (180) calendar days from
23 the original date of mailing. (Settlement Agreement, *supra*, at § 8.8.4.) Funds represented by
24 Settlement Checks returned as undeliverable and those settlement checks remaining uncashed for
25 more than one hundred eighty (180) calendar days after the original date of mailing shall be
26 redistributed to participating Class Members who cashed their checks. (*Ibid.*) Funds represented
27 by these redistributed Settlement Checks that remain uncashed for more than one hundred eighty

28 ³ This amount includes the estimated damages for unpaid wages as well as estimated
statutory penalties for waiting time penalties and wage statement non-compliance.

(180) calendar days after the redistribution date shall be paid to the *cy pres* recipient Legal Aid At Work (“LAAW”). (Settlement Agreement, *supra*, at § 8.8.4.)

v. The *Cy Pres* Recipient Is Appropriate

LAAW satisfies the policy of California “to ensure that the unpaid cash residue and unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent possible, in a manner designed either to further the purposes of the underlying class action or causes of action, or to promote justice for all Californians.” (Code Civ. Proc., § 384(a).) The Code of Civil Procedure further states:

[T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.

(Code Civ. Proc., § 384 (b).)

LAAW directly satisfies the legislature’s purpose and goal under Code of Civil Procedure section 384. The core of LAAW’s work is providing free legal services to low-wage workers with employment claims. (See Declaration of Joan Graff.) LAAW litigates cases that address an array of issues important to low-wage workers, including: (1) violations of wage-and-hour laws; (2) workplace retaliation; (3) discrimination on account of race, national origin, disability, sex, gender identity, sexual orientation, immigration status and language proficiency; (4) harassment; and (5) failure to comply with equal pay laws and family medical leave laws. (*Ibid.*) Additionally, LAAW’s Community Legal Services Program provides advice and counseling to low-wage workers on the full range of employment law issues they face through twelve statewide Workers’ Rights Clinic locations throughout California. (*Ibid.*) There can be no doubt LAAW is the type of non-profit organization the legislature had in mind when drafting and amending section 384. The Parties have no connection to or any relation with LAAW that would create the appearance of impropriety. (Han Decl., *supra*, at ¶ 77; Ghosh Decl., ¶ 16; Declaration of Erin Connell In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement, Conditional

1 Certification, Approval of Class Notice, and Setting of Final Approval Hearing Date, ¶¶ 3-6.)

2 **vi. Release of Claims**

3 When the Court’s final approval order and judgment becomes final and upon funding of
4 the Gross Settlement Amount, the Settlement Class Members shall release the Released Parties
5 from the Class Released Claims. (Settlement Agreement, *supra*, § 9.1.)

6 When the Court’s final approval order and judgment becomes final and upon funding of
7 the Gross Settlement Amount, the Aggrieved Employees shall release and be barred from acting
8 as a proxy of the State of California to allege any of the PAGA Released Claims against the
9 Released Parties. (Settlement Agreement, *supra*, § 9.2.)

10 As consideration for the Enhancement Payments, upon the Effective Date, Plaintiffs, on
11 behalf of themselves and each of their respective heirs, representatives, successors, assigns, and
12 attorneys, shall provide a general release for the Released Parties. (Settlement Agreement, *supra*,
13 § 9.4.) Regarding the Plaintiffs’ Released Claims, Plaintiffs expressly waive all rights under Civil
14 Code section 1542. (*Ibid.*)

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

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

24 Both Parties’ counsel are experienced in wage-and-hour employment law and class actions.
25 (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1; Ghosh Decl. at ¶¶ 2-7.) Class Counsel have prosecuted
26 numerous cases on behalf of employees for Labor Code violations and are experienced and
27 qualified to evaluate the class claims, advantages and disadvantages of settlement versus trial, and
28 viability of the defenses. (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1; Ghosh Decl., *supra*, at ¶¶ 2-7.)

Furthermore, Class Counsel’s experience guided their determination to endorse the proposed Settlement.⁴ (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1; Ghosh Decl., *supra*, at ¶¶ 2-7.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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

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

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

⁴ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

⁵ The California Supreme Court 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, the Parties cite Federal Rule 23 and federal case law in addition to California law.

Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

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

i. The Settlement Amount of \$8,500,000 Is Fair and Reasonable

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class, as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 34.)

This investigation and evaluation informed the central theories of liability. (Han Decl., *supra*, at ¶ 35.) The claims are predicated on the alleged: (1) failure to properly calculate and pay overtime wages; (2) failure to provide compliant rest and meal breaks and pay applicable premiums; (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code section 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 35.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 36.)

While Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 37.) As the California Supreme Court

1 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
2 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
3 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁶
4 (*Ibid.*) These factors led to discounting the potential exposure.

5 **ii. The PAGA Penalties of \$850,000 Is Reasonable**

6 The provisions of the Labor Code potentially triggering PAGA penalties in this case
7 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
8 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800,
9 and 2802. (Han Decl., *supra*, at ¶ 48.) Defendant asserts, regardless of the results of the underlying
10 causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*)
11 Defendant also maintains it had a strong argument it would be unjust to award maximum PAGA
12 penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*,
13 at ¶ 48; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by
14 30% under this authority].) The maximum potential PAGA penalties could range anywhere from
15 **\$6,494,100** (64,941 pay periods x \$100 penalty for initial violation) on the low end to **\$38,964,600**
16 (64,941 pay periods x \$100 penalty for initial violation x 6 theories of recovery) on the high end.
17 (Han Decl., *supra*, at ¶¶ 49-51.) However, the amount of penalties awarded under PAGA is within
18 the court's sound discretion and may be reduced to avoid the imposition of penalties that are
19 "unjust, arbitrary and oppressive, or confiscatory." (Lab. Code, § 2699, subd. (e)(2).)

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

21 Defendant denied and continues to deny that it ever violated any provision of the Labor
22 Code. Even if any violations were proven, it is not clear that heightened penalties (applicable to
23 subsequent violations) would apply. Furthermore, many trial courts have declined to assess
24 heightened and/or cumulative penalties for the maximum number of possible, separate Labor Code

25 ⁶ (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].)

violations. Plaintiffs recognized the risk that any PAGA award could be reduced and uncertainty regarding the assessment of penalties. (Han Decl., *supra*, at ¶ 52.)⁷ Allocating \$850,000 to PAGA civil penalties amounts to a rate of roughly **\$13.09** per pay period [$\$850,000 \div 64,941$ pay periods in PAGA date range], fulfills the objectives of the PAGA statute and is reasonable, especially given that Defendant is paying an additional \$7,650,000 in the class settlement.⁸ (Han Decl.,

⁷ Class Counsel are aware of several court decisions assessing much lower amounts of civil penalties against employers than were sought by the plaintiffs. (See, e.g., *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5 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]; *Morales v. Bridgestone Retail Operations LLC*, Orange County Superior Court No. 30-2017-00900244 (Aug. 2, 2018) [of \$7 million PAGA penalties requested, the court awarded \$425,000]; *Arnold v. San Diego Second Chance Program*, San Diego County Superior Court No. 37-2016-00018375 (Dec. 18, 2017) [no PAGA penalties awarded]; *Felczer v. Apple Inc.*, San Diego County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) [no PAGA penalties awarded]; *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 [the court declined to award PAGA penalties after trial]; *Allen v. American Multi-Cinema*, Alameda County Superior Court No. RG11585502 (July 24, 2016) [no PAGA penalties awarded]; *Atempa v. Pama*, San Diego County Superior Court (July 31, 2015) [of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00]; *Driscoll v. Granite Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) [the court declined to award PAGA penalties]; *Fleming v. Covidien, Inc.*, No. ED CV10-01487 RGK (OPx) (C.D. Cal. Aug. 12, 2011) 2011 U.S. Dist. LEXIS 154590 at **8-9 [of \$2,800,000 PAGA penalties requested, the court awarded \$500,000]; *Thurman v. Bayshore Transit Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1119, 1135, disapproved on other grounds in *ZB, N.A. v. Superior Court* (2019) 8 Cal. 5th 175, 196 n.8 [of \$512,000 PAGA penalties requested, the court awarded \$358,588]; *Aguirre v. Genesis Logistics*, No. SACV 12-00687-JVS (ANx) (C.D. Cal. Dec. 30, 2013) 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000); *Halevi v. Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) [the court declined to award PAGA penalties after trial awarding wages to class].)

⁸ 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 reasonable. (See *Carrington*, *supra*, 529.) With respect to a PAGA claim, the trial court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA statute’s objectives, which are “to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *4 (citing *Arias v. Superior Court* (2009) 46 Cal.4th 969 at 986) and to “benefit[] the public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance.” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–33, 1135; see *Arias*, *supra*, 46 Cal.4th at 980; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. The PAGA statute “does not establish a specific benchmark for PAGA settlements[,]” and in approving a settlement of PAGA claims, courts focus on whether the settlement is robust enough to deter future violations. *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017, Case No. 16-cv-04708-LHK) 2017 WL 3670794; *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct.

supra, at ¶ 52.)⁹

Excluding the civil penalties, which could be discretionary, Plaintiffs estimated the total potential exposure, assuming certification and prevailing at trial, would be about **\$34,234,079.39** on the low end and **\$37,817,705.43** on the high end. (Han Decl., *supra*, at ¶ 53.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$5,726,044.90	70%	60%	\$687,125.39
Meal Break Premiums	\$6,140,110.68	60%	50%	\$1,228,022.14
Overtime/Minimum Wage: Off-the-Clock Work	\$6,739,221.72 to \$10,108,832.60	65%	50%	\$1,179,363.80 to \$1,769,045.70
Overtime/Minimum Wage: Rounding	\$428,030.33 to \$642,045.49	30%	50%	\$149,810.62 to \$224,715.92
Overtime/Minimum Wage: Regular Rate	\$1,938,690	30%	40%	\$814,249.80
Overtime Wage: Alternative Workweek	\$2,301,437.36	30%	50%	\$805,503.08
Unreimbursed Business Expenses	\$3,539,940	25%	60%	\$1,061,982
Wage Statement Penalty	\$3,014,550	30%	30%	\$1,477,129.50
Waiting Time Penalty	\$4,406,054.40	30%	30%	\$2,158,966.66
MAXIMUM TOTAL EXPOSURE	\$34,234,079.39 to \$37,817,705.43 ¹⁰			\$9,562,152.99 to \$10,226,740.19 ¹¹

11, 2016, Case No. 15-cv-02987-EMC) 2016 WL 5907869. Here, the Settlement will provide a significant sum of money to the Aggrieved Employees and to the State of California (to finance state labor law enforcement activities and education), and the fact that Defendant has agreed to pay a substantial sum for settlement of the Labor Code allegations (in the total amount of \$8,500,000) despite the highly-disputed nature of the allegations, confirms that the action and the settlement will have the deterrent effect intended by the statute.

⁹ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 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”).)

¹⁰ (Han Decl., *supra*, at ¶¶ 39-47.)

¹¹ (*Id.* at ¶¶ 55-63.)

1 Based on this analysis, the estimated recovery for this case is **\$9,562,152.99** on the low end
2 and **\$10,226,740.19** on the high end. (Han Decl., *supra*, at ¶ 64.) The Gross Settlement Amount is
3 about twenty-two percent (22.47%) of the maximum potential exposure and around eighty-three
4 percent (83.12%) 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 Plaintiffs prevailed at trial and provides a
15 significant recovery for the Class, State of California, and Aggrieved Employees.

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.) Courts certify class actions where the plaintiff identifies “both [1] an
21 ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

22 The Class is ascertainable and numerous as to make it impracticable to join all Class
23 Members, and there are common questions of law and fact that predominate over any individual
24 questions. (Han Decl., *supra*, at ¶ 65.) Plaintiffs contend, as former hourly-paid, non-exempt
25 employees of Defendant, their claims are typical of the Class’s claims, and Class Counsel will
26 fairly and adequately protect the Class’s interests. (*Ibid.*) Plaintiffs assert prosecution of separate
27 actions by Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

28 ///

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

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

9 This case involves more than one thousand six hundred sixty (1,660) Class Members,
10 meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 66; see *Ghazaryan v. Diva*
11 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many
12 as 190 current and former employees” is sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

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

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

7 Plaintiffs assert common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 67; Declaration of Marianne Ramirez (“Ramirez Decl.”), ¶¶ 14-
9 17; Declaration of Wendy Campbell (“Campbell Decl.”), ¶¶ 13-16.) Plaintiffs contend all Class
10 Members and Aggrieved Employees were subject to the same or similar employment practices,
11 policies, and procedures, described in detail above. (Han Decl., *supra*, at ¶ 67; Ramirez Decl.,
12 *supra*, ¶¶ 14-17; Campbell Decl., *supra*, ¶¶ 13-16.)

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

14 Typical claims rely on legal theories and facts that are substantially like those of other class
15 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

16 Plaintiffs are former employees of Defendant and allege they and the Class and Aggrieved
17 Employees were employed by the same company and injured by the common policies and
18 practices related to the claims detailed above. (Han Decl., *supra*, at ¶ 68; Ramirez Decl., *supra*, at
19 ¶¶ 2-9, 14-17; Campbell Decl., *supra*, at ¶¶ 2-8, 13-16.) Plaintiffs seeks relief for these claims and
20 derivative claims on behalf of all Class Members. (Han Decl., *supra*, at ¶ 68; Ramirez Decl.,
21 *supra*, at ¶¶ 2-9, 14-17; Campbell Decl., *supra*, at ¶¶ 2-8, 13-16.) Thus, the claims arise from the
22 same employment practices and are based on the same legal theories applicable to the Class
23 Members. (Han Decl., *supra*, at ¶ 68; Ramirez Decl., *supra*, at ¶¶ 2-9, 14-17; Campbell Decl.,
24 *supra*, at ¶¶ 2-8, 13-16.)

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

26 Plaintiffs have proven to be adequate representatives. (Han Decl., *supra*, at ¶ 69; Ramirez
27 Decl., *supra*, at ¶¶ 10-13, 18-23; Campbell Decl., *supra*, at ¶¶ 9-12, 17-22.) Plaintiffs conducted
28 themselves diligently and responsibly in representing the Class Members, understands their

1 fiduciary obligations, and actively participated in the prosecution of this case. (Han Decl., *supra*,
2 at ¶ 69; Ramirez Decl., *supra*, at ¶¶ 10-13,18-23; Campbell Decl., *supra*, at ¶¶ 9-12, 17-22.)
3 Plaintiffs spent time in meetings and conferences with Class Counsel to provide Class Counsel
4 with an understanding of the work environment and requirements. (Han Decl., *supra*, at ¶ 69;
5 Ramirez Decl., *supra*, at ¶¶ 10-13,18-23; Campbell Decl., *supra*, at ¶¶ 9-12, 17-22.) Plaintiffs have
6 no interest adverse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 69; Ramirez
7 Decl., *supra*, at ¶¶ 10-13,18-23; Campbell Decl., *supra*, at ¶¶ 9-12, 17-22.)

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

10 A class action is superior to other available means for the fair and efficient adjudication of this
11 controversy. Plaintiffs contends the joinder of all Class Members is impractical and that class treatment will
12 permit many similarly situated persons to prosecute their common claims for settlement purposes
13 simultaneously in a single forum without the duplication of effort and expense that numerous individual
14 actions would necessitate. A class action is superior to a multitude of individual lawsuits. Given the
15 size and amount of each individual Class Member’s potential claim, Class Members likely have
16 little incentive to litigate their claims on an individual basis because the out-of-pocket expense and
17 personal commitment necessary to litigate each claim outweighs any potential recovery. In sum,
18 class treatment is superior to individual, case-by-case adjudication.

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

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

28 ///

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

The Class Notice meets all these requirements. The Class Notice advises the Class Members of their right to participate in the Settlement, how and when to object to or request exclusion from the Settlement, and the date, time, and location of the Final Approval Hearing.

Plaintiffs submit the Settlement is in the best interests of the Class, Aggrieved Employees, and State of California, and is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for purposes of settlement only, and Class Notice should be approved.

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiffs

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On August 1, 2023, I served the foregoing document described as

on interested parties in this action by electronically submitting as follows:

[X] BY ELECTRONIC SUBMISSION

[X] STATE

Executed on August 1, 2023, at Pasadena, California.

Maith Andarsen

Mariah Anderson