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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ANA VARGAS, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

SPATES FABRICATORS, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CVRI2100462

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 10

CLASS ACTION

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

*[filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Jodey Lawrence, Jennifer
Raphael Komsky, and Brent Spates;
[Proposed] Order; and Compliance
Chart]*

[Reservation ID: 866718546796]

Hearing Date: November 14, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 10

Complaint Filed: February 1, 2021
FAC Filed: July 25, 2022
Trial Date: None Set

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

2 PLEASE TAKE NOTICE on November 14, 2022 at 8:30 a.m., or as soon thereafter
3 as this matter may be heard, at Department 10, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiffs Ana Vargas, Felipe Vega Gomez, and Yessica Alvarado
5 (“Plaintiffs”), on behalf of themselves and all persons similarly situated, will and hereby do
6 move this Court pursuant to Code of Civil Procedure section 382 and California Rule of
7 Court 3.769 for an order:

- 8 (1) Preliminarily approving the class action settlement reached between
9 Plaintiffs and Defendant Spates Fabricators, Inc. (“Defendant”), including
10 granting preliminary approval of the following Class: “all current and
11 former hourly-paid or non-exempt employees employed by Defendant
12 within the state of California at any time between February 1, 2017 through
13 June 9, 2022” (“Class,” “Class Members,” and “Class Period”). “Class
14 Members” shall not include any person who submits a timely and valid
15 Request for Exclusion;
- 16 (2) Approving the form of notice of class action settlement and procedure for
17 notice to the Class; and
- 18 (3) Setting the Final Approval Hearing.

19 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
20 proposed settlement’s allocation of funds to claims made under the Labor Code section
21 2698, *et seq.*, Private Attorneys General Act of 2004 (“PAGA”).

22 Pursuant to the Joint Stipulation of Class Action Settlement (“Settlement
23 Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of
24 Douglas Han In Support of Plaintiffs’ Motion For Preliminary Approval of Class Action
25 Settlement, Defendant does not oppose the preliminary approval of the settlement.

26 ///

27 ///

1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
2 of the Class shall be fully and finally resolved for the total sum of \$1,000,000 (“Maximum
3 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
4 Maximum Settlement Amount after the following deductions are made (“Net Settlement
5 Amount”) shall be available for distribution to Class Members who do not submit timely
6 and valid Requests for Exclusion:

- 7 • up to \$350,000 to Class Counsel as the attorneys’ fees;
- 8 • up to \$20,000 to Class Counsel as the attorneys’ costs for reimbursement of
9 attorneys’ costs and expenses incurred;
- 10 • up to \$10,000 to each Plaintiff as their Class Representative Enhancement
11 Payments (totaling \$30,000);
- 12 • up to \$20,000 to the Settlement Administrator, Phoenix Class Action
13 Administration Solutions, as the Settlement Administration Costs; and
- 14 • \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
15 (\$37,500) will be paid to the California Labor and Workforce Development
16 Agency and twenty-five percent (25%) of which (\$12,500) will be
17 distributed to all current and former hourly-paid or non-exempt employees
18 employed by Defendant within the state of California at any time between
19 June 10, 2021 through June 9, 2022, on a pro rata basis, as their Individual
20 PAGA Payments in accordance with the Settlement Agreement.

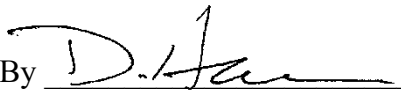
21 This Notice of Motion is based on the fact this is a fair and reasonable settlement
22 that benefits the Class and was the product of informed, non-collusive negotiations by the
23 Parties who were represented by experienced and able counsel. *See Dunk v. Ford Motor Co.*
24 (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) §
25 30.44. The Settlement Agreement meets the legal standard for preliminary approval and is
26 in the best interests of the Class. The proposed form of notice explains the Settlement
27 Agreement terms in a clear and straightforward manner. The proposed procedures for notice
28

1 provide the best practical notice to the Class. Finally, Class Members will have an
2 opportunity to participate in, object to, and/or opt-out of the Settlement Agreement.

3 This Notice of Motion is based on this Notice, and the exhibits thereto (including the
4 Notice of Class Action Settlement, Objection Form, and Request for Exclusion),
5 Memorandum of Points and Authorities, Declaration of Douglas Han, Declaration of
6 Jennifer Raphael Komsky, Declaration of Brent Spates, Declaration of Jodey Lawrence,
7 pleadings, records and files in the case, and such other oral and documentary evidence
8 which may be submitted at or before the hearing on this Motion.

9
10 Dated: October 19, 2022

JUSTICE LAW CORPORATION

11
12 By 
13 Douglas Han
14 *Attorneys for Plaintiffs*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Ana Vargas, Felipe Vega Gomez, and Yessica Alvarado (“Plaintiffs,”
4 “Plaintiff Vargas,” “Plaintiff Gomez,” and “Plaintiff Alvarado”) filed a wage-and-hour class
5 action lawsuit and representative action against Defendant Spates Fabricators, Inc.
6 (“Defendant”) (collectively, referred to herein as the “Parties”) in the Superior Court of
7 California, County of Riverside, Case Number CVRI2100462 (the “Action”).

8 After engaging in extensive discovery, investigation, and negotiations with the
9 assistance of an experienced mediator, Lynn S. Frank, Esq., the Parties agreed to settle all
10 claims alleged on a class wide non-reversionary basis for \$1,000,000.

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

19 **II. STATUS OF THE LITIGATION**

20 **A. Procedural History**

21 On February 1, 2021, Plaintiff Vargas, a former employee of Defendant, filed a wage-
22 and-hour class action lawsuit in the Superior Court of California, County of Riverside, alleging
23 eight (8) causes of action (“Action”). (Declaration of Douglas Han In Support of Plaintiffs’
24 Motion For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶ 11.)

25 After engaging in discovery, investigation, and negotiations, the Parties remotely
26 attended mediation on June 9, 2022 with the mediator Lynn S. Frank, Esq., resulting in the
27 settlement of this matter. (Han Decl., *supra*, at ¶ 12.)

28 ///

Pursuant to the settlement, Plaintiff Vargas provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant on June 10, 2022. Afterwards, on July 25, 2022, Plaintiff Vargas filed a First Amended Complaint that: (1) adjusted the Class definition; (2) added a cause of action for violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)); and (c) added Plaintiff Gomez and Plaintiff Alvarado as additional plaintiffs. (Han Decl., *supra*, at ¶ 13.)

B. Investigation and Discovery

Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 14.) This required thorough discussions and interviews, as well as preliminary research into the various legal issues involved. (*Ibid.*) After conducting an initial investigation, Class Counsel determined the claims were suited for class and representative action adjudication. (*Ibid.*)

Class Counsel conducted a thorough investigation of the facts and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 15.) This included:

- conducting discovery and meeting and conferring with Defendant’s counsel several times throughout this litigation, which produced the following:
 - Plaintiffs’ personnel records;
 - Defendant’s most recent employee handbook and break schedules;
 - A sampling of putative class members’ payroll records within several PDF documents. The PDF documents were redacted pay stubs;
 - A sampling of several putative class members’ time records (*i.e.*, clock ins and clock outs) within several Microsoft Excel Worksheets;
 - List of employees who were employed during the putative class period (*i.e.*, name of job title, employee number, beginning and ending payrate, employment start date and end date);
- reviewing and analyzing the sampling of time and payroll records, Defendant’s most recent employment handbook and break schedules, Plaintiffs’ personnel records, relevant policies, and other documentation;

- researching the applicable law and potential defenses;
- locating and interviewing several putative class members;
- constructing damage models based on interpretations of California law; and
- reviewing information provided by Defendant at the mediation. (Han Decl., *supra*, at ¶ 15.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant's records. (Han Decl., *supra*, at ¶ 16.) Class Counsel's investigation revealed there are about one thousand three hundred six (1,306) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel's investigation also revealed there are approximately seven hundred sixty-one (761) Eligible Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendant vigorously contested liability, amount of claimed damages, and propriety of class certification. (Han Decl., *supra*, at ¶ 17.) Given the high level of risk present, the Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

On June 9, 2022, the Parties remotely participated in full day mediation. (Han Decl., *supra*, at ¶ 18.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From Class Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) This process forced the Parties to make significant compromises in the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Parties have executed an Agreement attached as **Exhibit 1** to Douglas Han's declaration. Defendant agreed to pay \$1,000,000 ("Maximum Settlement Amount") on a non-reversionary basis to settle and release all claims asserted in the operative complaints on behalf of the proposed Class. (Han Decl., *supra*, at ¶ 20.) The Settlement Agreement defines the Class as "all current and former hourly-paid or non-exempt employees employed by Defendant

1 within the state of California at any time between February 1, 2017 through June 9, 2022”
2 (“Class,” “Class Members,” and “Class Period”). (Han Decl., *supra*, at ¶ 20.) “Class
3 Members” shall not include any person who submits a timely and valid Request for Exclusion.
4 (*Ibid.*) The amount remaining in the Maximum Settlement Amount after the following
5 deductions have been made shall be available for distribution to Class Members who do not opt
6 out (“Net Settlement Amount”):

- 7 • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class
8 Counsel as the attorneys’ fees (\$350,000);
- 9 • up to \$20,000 to Class Counsel as the attorneys’ costs for the reimbursement of
10 actual costs and expenses incurred;
- 11 • up to \$10,000 to each Plaintiff as the Class Representative Enhancement
12 Payments (totaling \$30,000);
- 13 • up to \$20,000 as the Settlement Administration Costs to the Settlement
14 Administrator, Phoenix Class Action Administration Solutions (“Phoenix”); and
- 15 • up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
16 (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) will be
17 paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment
18 even if they submit valid and timely Requests for Exclusion (“PAGA Payment” and
19 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 20.)

20 After the above-mentioned deductions, the Net Settlement Amount (approximately
21 \$530,000) will be distributed to the Class Members. (Han Decl., *supra*, at ¶ 21.)

22 The Agreement amount was a compromise figure, factoring in the inherent risks related
23 to certification, liability, and damages. (Han Decl., *supra*, at ¶ 24.) Considering all the
24 circumstances of the Action and the defenses raised by Defendant against certification, liability
25 and damages, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

26 **A. Number of Class Members**

27 There are around one thousand three hundred six (1,306) Class Members and seven
28 hundred sixty-one (761) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 16, 89(a).)

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

3 Plaintiffs estimate the gross *average* Individual Settlement Payment will be about
4 \$405.82. (Han Decl., *supra*, at ¶ 21.) Individual Settlement Payments will be calculated and
5 apportioned from the Net Settlement Amount based on the number of Workweeks a Class
6 Member worked during the Class Period as an hourly-paid or non-exempt employee in
7 California. (*Id.* at ¶ 22.) Individual PAGA Payments will be calculated and apportioned from
8 the twenty-five percent (25%) of the PAGA Payment (\$12,500) based on the number of
9 Workweeks an Eligible Aggrieved Employee worked during the PAGA Period as an hourly-
10 paid or non-exempt employee in California. (*Ibid.*)

11 **C. Discovery Exchanged**

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

14 **D. Other Pending Litigation**

15 After making reasonable inquiries, Class Counsel are not aware of any class,
16 representative, or other collective action in any other court in this or any other jurisdiction that
17 asserts claims similar to those asserted in this case on behalf of a class or group of individuals
18 some or all of whom would also be members of the Class. (Han Decl., *supra*, at ¶ 19.)

19 **E. Defendant’s Counsel’s Declaration**

20 Defendant’s counsel’s declaration is being submitted concurrently with this Motion.

21 **F. Settlement Administrator**

22 The Settlement Agreement provides up to \$20,000 will be paid to the Settlement
23 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 85.) The bid is
24 comprised of Not-To-Exceed Total, per hour/unit rates, and per line-item rates. (*Ibid.*)

25 Class Counsel obtained bids from Phoenix and CPT Group, Inc. (“CPT Group”) for the
26 administration of this Action. (Han Decl., *supra*, at ¶ 86.) Phoenix had the most competitive
27 (lowest) bid at \$16,000 when compared to the bid from CPT Group that was \$17,000. (*Ibid.*)

28 ///

Phoenix has extensive experience in administering employment class action settlements.
(Declaration of Jodey Lawrence, ¶¶ 5-7, 9-15; Exhibit A.)

G. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds

Class Members and Eligible Aggrieved Employees will receive checks for their Individual Settlement Payments and Individual PAGA Payments. (Han Decl., *supra*, at ¶ 87.) Checks will remain negotiable for one hundred twenty (120) calendar days. (*Ibid.*) Any check not cashed within one hundred twenty (120) calendar days will be void. (*Ibid.*) The funds from the uncashed checks shall be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund. (*Ibid.*)

H. Release by Class Members is Limited

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

[A]ll causes of action and factual or legal theories stated in the operative complaints and those based solely upon the facts alleged in the operative complaints. This includes all of the following claims for relief: (a) failure to pay all regular wages, minimum wages, overtime wages, and sick leave due; (b) failure to provide proper meal and rest breaks and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate, or properly formatted wage statements and payroll records; (d) failure to reimburse necessary business expenditures; (e) failure to pay waiting time penalties; (f) failure to timely pay wages during employment and after employment; (g) engaging in unfair business practices that could have been premised on the claims, causes of action or legal theories of relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaints; (h) all claims under PAGA, which shall only bind Plaintiffs and the State of California, that were described in Plaintiff Vargas' notice letter sent to the LWDA on June 10, 2022 and only to the extent these claims were alleged in the operative complaints; and (i) all damages, penalties, interest, and other amounts recoverable under said claims, causes of action or legal theories of relief. The period of the Released Claims shall extend to the limits of the Class Period (collectively, the "Released Claims").

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

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Pursuant to the terms set forth in the Settlement Agreement, Released Parties include Defendant together with its officers, directors, employees, and agents (“Released Parties”). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 27.)

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

Within twenty-one (21) calendar days of entry of the Court’s Order Granting Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 72.) Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. (*Id.* at ¶ 73.) Within ten (10) days after the Settlement Administrator receives the Class List, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Ibid.*)

The Notice Packet fully apprises Class Members of the nature of the lawsuit, the claims involved, the material terms of the Agreement, Class Members’ options thereunder, and how Class Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 74.) The Notice Packet also provides for a specific procedure to seek exclusion from the Class and for lodging objections to the Agreement. (*Ibid.*)

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

Class Members are not required to submit claim forms to receive their share of the Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 13.)

K. Settlement Does Not Provide Any Reversion to Defendant

Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert to Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 14(b).)

L. Employer’s Share of Payroll Taxes and the Allocation of Settlement Payments

All Individual Settlement Payments will be allocated: (1) twenty percent (20%) as wages; and (2) eighty percent (80%) as interest, penalties, and reimbursement. (Han Decl., *supra*, at ¶ 23.) All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. (*Ibid.*) Defendant shall pay the employer’s share of applicable payroll taxes due on the portion of Individual Settlement Payments allocated to wages separately and in

1 addition to the Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 23.)

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

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

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

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

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

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

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

24 Plaintiffs contend, and Defendant does not dispute, the requirement of numerosity is
25 met. The documents and information exchanged reflect a Class of approximately one thousand
26 three hundred six (1,306) Class Members. (Han Decl., *supra*, at ¶ 89(a).) The Class Members
27 were identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 89(b).)

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

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

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

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

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

22 This Action involves, *inter alia*, a determination about Defendant’s alleged: (1) failure
23 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
24 business expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate
25 overtime wages and sick leave; (5) resulting failure to pay final wages when required; (6)
26 failure to provide accurate wage statements; and (7) largely derivative claims under the
27 Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶ 89(e).) Plaintiffs contend
28 these practices affected Class Members in the same way. (*Ibid.*) While Defendant maintained

otherwise, these issues will not be decided on the basis of facts peculiar to each Class Member but on the basis of facts common to the Class. Finally, these issues of liability can be determined on a class-wide basis.

C. The Plaintiffs' Claims Are Typical

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

Plaintiffs contend, and Defendant does not dispute, Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 89(c).) Plaintiffs were employed by Defendant during the Class Period and subject to the allegedly unlawful meal and rest break policies and pay practices at issue in this litigation. (*Ibid.*) The central issues of this litigation (whether Defendant failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages, etc.), which would arise if this were an individual action brought by Plaintiffs, apply to the other Class Members. (*Ibid.*) Consequently, the answer to these questions would determine Defendant's liability to the Class. (*Ibid.*)

D. Adequacy of Class Counsel and Class Representatives

Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-10, 89(d); Exhibit 2.) Moreover, Plaintiffs' interests are aligned with those of the Class Members, they suffered the same

injuries as the Class Members, and have no conflicts of interest. (Han Decl., *supra*, at ¶ 89(d).)

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. (Han Decl., *supra*, at ¶ 89(f).) Furthermore, the class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 89(g).)

V. THE TWO-STEP APPROVAL PROCESS

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

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

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

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

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1 When the parties to an action reach a monetary settlement, they will
2 usually prepare and execute a joint stipulation of settlement, which is
3 submitted to the court for preliminary approval. The stipulation should
4 set forth the central terms of the agreement, including but not limited to,
5 the amount of settlement, form of payment, manner of determining the
6 effective date of settlement and any recapture clause, Newberg on Class
7 Actions, at § 11.24.

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

9 As a matter of public policy, the courts both encourage the use of the class action
10 device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000)
11 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a
12 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
13 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
14 where complex class action litigation is concerned.”)

15 The courts presume the absence of fraud or collusion in the negotiation of a settlement
16 unless evidence to the contrary is offered. There is a presumption that the negotiations were
17 conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
18 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
19 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when
20 settlement has been reached by experienced counsel familiar with the litigation. *Rodriguez*,
21 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

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

The Agreement satisfies these factors. Specifically, Class Counsel conducted extensive
discovery before entering meaningful settlement negotiations, including a detailed analysis of

1 Defendant's policies and a considerable sample of Defendant's time and pay records. (Han
2 Decl., *supra*, at ¶ 15.) This discovery permitted Class Counsel to evaluate the strengths and
3 weaknesses of the case and the risks associated with ongoing litigation. (*Id.* at ¶ 18.) In
4 addition, Class Counsel are experienced in the handling of wage-and-hour class actions and
5 support the Settlement. (Han Decl., *supra*, at ¶¶ 3-9; Exhibit 2.)

6 **A. The Strength of Plaintiffs' Case.**

7 The claims in this action include failure to provide meal and rest breaks, failure to pay
8 minimum wages, failure to pay and properly calculate overtime wages and sick leave, failure to
9 pay final wages when due, failure to provide accurate wage statements, failure to reimburse
10 necessary business expenses, and related claims for violations of the Business & Professions
11 Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 26.)

12 Class Counsel felt confident the claims would be certified given Defendant's policies
13 and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 27-65.)

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

15 Plaintiffs contend proper meal and rest breaks were not provided due to Defendant
16 assigning heavy, time-sensitive workloads, having high production demands, maintaining a
17 limited number of timeclocks, and not advising employees of their right to take additional
18 breaks. (Han Decl., *supra*, at ¶¶ 28, 31-32.) Defendant countered it never assigned heavy,
19 time-sensitive workloads, did not pressure employees to prioritize completing their tasks over
20 taking breaks, was not made aware of there being a line of employees trying to clock in and out
21 simultaneously, and properly advised employees of their right to take additional breaks. (*Id.* at
22 ¶¶ 29, 33.) In other words, employees were choosing to forgo receiving proper meal and rest
23 breaks as opposed to being pressured to do so. (*Ibid.*) By extension, Defendant may even
24 produce evidence at trial to demonstrate employees waived their right to take breaks. (*Ibid.*)
25 Defendant also asserts if employees were not paid premium wages, it is because Defendant was
26 never made aware of employees not receiving proper breaks. (*Ibid.*) Finally, Defendant
27 contend Class Counsel will have to gather declarations from putative class members. (*Ibid.*)

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1 As the consideration concerning meal and rest breaks would likely depress the damages
2 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
3 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 30, 34.) If Defendant’s contentions are
4 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
5 would be no recovery for the Class Members.

6 Plaintiffs also alleged Defendant failed to pay and properly calculate all applicable
7 wages owed, including minimum wages, overtime wages, and sick leave. (Han Decl., *supra*,
8 at ¶¶ 35, 38.) Specifically, Defendant’s policies prohibited early clocks in and late clock outs
9 but purportedly also discouraged overtime work. (*Ibid.*) When coupled with Defendant
10 expecting employees to complete urgent pre-shift duties, assigning significant workloads, and
11 there being a line of employees trying to use the timeclock, it allegedly caused employees to
12 work additional hours off-the-clock. (*Ibid.*) This was apparently made worse by Defendant
13 paying employees non-discretionary bonuses but failing to factor them into employees’ regular
14 rate of pay for overtime compensation and sick leave pay purposes. (*Ibid.*) Defendant
15 countered these claims are not suitable for class treatment. (*Id.* at ¶¶ 36, 38.) Instead,
16 Defendant argued it expressly prohibited off-the-clock work, generally approved overtime
17 requests, and was never made aware of employees working off-the-clock. (*Ibid.*) In addition,
18 Defendant contended any payment of bonuses was completely discretionary, meaning the
19 bonuses did not need to be factored into employees’ regular rates of pay. (*Ibid.*) Finally,
20 Defendant asserted any unrecorded hours would likely be subject to individual inquiries and
21 unlikely to be certified. (*Ibid.*) Given the difficulty in certifying this claim, Class Counsel
22 applied a discount to damages based on this theory. (*Id.* at ¶¶ 37, 39.) If Defendant’s
23 contentions held true, the outcome of this claim would be little to no recovery for employees.

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

25 To establish liability for wage statement violations and waiting time penalties, Plaintiffs
26 would first have to establish liability for the underlying claims. But Defendant argued the claim
27 for further Labor Code section 226(e) penalties would depend on the underlying rest break,
28 meal break, and wage claims, meaning it would be subject to the same defenses listed above.

1 (Han Decl., *supra*, at ¶ 42.) In addition, Defendant added the above-mentioned violations did
2 not occur every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Thus,
3 Defendant concluded employees need to show they suffered injury because of Defendant’s
4 noncompliance and that such noncompliance was knowing and intentional. (*Ibid.*)

5 Similarly, Defendant also countered the claim for section 203 penalties is dependent on
6 the underlying meal and rest break and wage claims, meaning it would be subject to the same
7 defenses listed and described above. (Han Decl., *supra*, at ¶¶ 46-47.) With these penalties,
8 there is always the risk the trier of fact would not have held Defendant’s actions were done
9 “willfully.” A good faith belief in a legal defense can preclude a finding of willfulness.
10 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As
11 discussed above, Plaintiffs allege Defendant failed to pay for all hours worked and premiums
12 for noncompliant meal and rest breaks. (Han Decl., *supra*, at ¶¶ 28, 31-32, 35, 38.) By
13 extension, Plaintiffs contend the Class Members are entitled to minimum wages, overtime
14 wages, and premium wages, which were allegedly not paid at the time of their termination or
15 resignation. (*Id.* at ¶¶ 44-45.) Defendant counters it provided employees with reasonable
16 opportunities to take breaks, asked employees to confirm the accuracy of their time records,
17 and had good-faith defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 47-48.)

18 **D. The Risks Associated with the PAGA Penalties.**

19 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
20 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a
21 penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
22 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
23 period for each subsequent violation. (Lab. Code § 2699, subd. (e)(2).) If a civil penalty is
24 provided in a specified amount by the Labor Code section relating to the underlying alleged
25 Labor Code violation, that amount shall apply. (*Ibid.*) PAGA also gives the Court discretion to
26 award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may award a lesser
27 amount than the maximum civil penalty amount specified by this part if, based on the facts and
28 circumstances of the particular case, to do otherwise would result in an award that is unjust,

arbitrary and oppressive, or confiscatory.”)]; *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

The provisions of the Labor Code potentially triggering PAGA penalties include Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 246(l), 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 53.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments against the underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*; *See Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Thus, without stacking and limited to the initial violation, PAGA penalties would be limited to **\$76,100** (761 employees x \$100 initial violation) on the low end and **\$532,700** (761 employees x \$100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 54-57.)

Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 58.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) The maximum penalties for each pay period are not justified, and it was arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based on a rate of **\$3.33** per pay period [$\$50,000 \div 15,030$ pay periods in the PAGA Period = **\$3.33**], given the fact Defendant is paying an additional \$950,000 in the class settlement.¹ (*Ibid.*) If 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 considered reasonable.² (*Ibid.*)

¹ (See *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).)

² (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579

1 Finally, Class Counsel are confident they would successfully prove Defendant's alleged
2 wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 59.) Plaintiffs
3 contend Defendant intentionally assigned employees heavy, time-sensitive workloads, had high
4 production demands, only maintained a few timeclocks, and failed to advise employees of the
5 right to receive additional breaks. (*Ibid.*) This was purportedly made worse by Defendant
6 knowingly having policies prohibiting early clock ins and late clock outs but also generally
7 discouraging overtime work, thereby pressuring employees to work off-the-clock. (*Ibid.*) By
8 extension, Plaintiffs assert Defendant knowingly and intentionally failed to pay premium
9 wages for noncompliant meal and rest breaks. (*Ibid.*) Plaintiffs also allege Defendant knew
10 having few timeclocks forced employees to arrive to work earlier than usual, that its policies
11 frightened employees with disciplinary action for clocking in early and clocking out late, and
12 that its policies generally discouraged overtime work. (*Ibid.*) Plaintiffs contend Defendant
13 intentionally paid non-discretionary bonuses to employees but knowingly failed to factor such
14 payments into employees' regular rate of pay. (*Ibid.*) Therefore, Plaintiffs assert Defendant
15 knowingly and intentionally implemented its improper, uniform policies and practices. (*Ibid.*)

16 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

17 Given the risks outlined above, the issues in this case were complex and the risk for
18 Plaintiffs and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
19 66-70.) A class trial would have required extensive preparations, thereby requiring the Parties
20 to expend a substantial amount of time. (*Id.* at ¶ 70.) Given the complexity and unsettled
21 nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and
22 costly appeal. (*Id.* at ¶¶ 67-70.) Finally, an appeal would result in further delay for the Class
23 Members who have already waited years for resolution in this matter. (*Id.* at ¶¶ 67, 70.)

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28 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims.”).)

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

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

G. The Amount Offered in Settlement.

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

Excluding the civil penalties, the estimated potential exposure, assuming certification and prevailing at trial, would be around **\$9,686,781.86** on the low end and **\$10,247,796.86** on the high end. (Han Decl., *supra*, at ¶ 61.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,459,880.60	70%	60%	\$175,185.67
Meal Break Premiums	\$574,495.74	60%	60%	\$91,919.32
Overtime/Minimum Wage: Off-the-Clock	\$1,122,030 to \$1,683,045	60%	50%	\$224,406 to \$336,609
Overtime/Minimum Wage: Regular Rates	\$246,755.92	30%	40%	\$103,637.49
Unreimbursed Business Expenses	\$679,772	30%	70%	\$142,752.12
Wage Statement Penalty	\$1,483,950	70%	60%	\$178,074
Waiting Time Penalty	\$4,119,897.60	70%	60%	\$494,387.71
MAXIMUM TOTAL EXPOSURE	\$9,686,781.86 to \$10,247,796.86			\$1,410,362.31 to \$1,522,565.31

Based on this analysis, the realistic recovery for this case is about **\$1,410,362.31** on the low end and **\$1,522,565.31** on the high end. (Han Decl., *supra*, at ¶ 62.) The Maximum Settlement Amount of \$1,000,000 is about nine percent (9.76%) of the high end total potential exposure at trial and around sixty-five percent (65.68%) of the high end total realistic exposure at trial, which is a good settlement. (*Ibid.*)

1 The allocation of wages, penalties, and interest was based on the realistic exposure
2 Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages. (Han
3 Decl., *supra*, at ¶ 63.) As a result, Plaintiffs added the realistic exposure for rest break
4 premiums and meal break premiums ($\$175,185.67 + \$91,919.32 = \$267,104.99$). (*Ibid.*)
5 Plaintiffs then added the $\$267,104.99$ to the low end realistic exposure for unpaid wages due to
6 off-the-clock work and underpaid overtime wages and sick leave ($\$267,104.99 + \$224,406 +$
7 $\$103,637.49 = \$595,148.48$). (Han Decl., *supra*, at ¶ 63.) The realistic exposure of
8 $\$595,148.48$ Plaintiffs can expect to receive if they were to prevail at trial for meal and rest
9 break premiums, low end unpaid wages due to off-the-clock work, and underpaid overtime
10 wages and sick leave represents about twenty percent (20.30%) of the low end total realistic
11 exposure and PAGA penalties ($\$595,148.48 \div \$2,932,362.31 = 0.20295 \times 100 = 20.30\%$).
12 (*Ibid.*) Because this represents twenty percent (20%) of wages, allocating twenty percent
13 (20%) as wages and eighty percent (80%) as interest, penalties, and reimbursement pursuant to
14 the Agreement is appropriate. (*Ibid.*)

15 Once Class Counsel determined the total potential damages, they established a fair and
16 reasonable settlement for the Class after analyzing the likelihood of success on the merits.
17 (Han Decl., *supra*, at ¶ 24.) After reviewing the facts and circumstances of this matter, Class
18 Counsel concluded the Class had a reasonable likelihood of success on the core claims. (*Id.* at
19 ¶¶ 61-70.) Defendant disputes this contention, denies all wrongdoing in this matter, and is
20 confident it has strong legal and factual defenses to the claims. (*Id.* at ¶¶ 67, 69.) Class
21 Counsel determined the likelihood of success for the claims was not as strong because of
22 various defenses, including Defendant's arguments the issues were not suitable for class
23 treatment due to their individualized nature. (*Ibid.*) After considering the likelihood of success
24 on each claim and the challenges faced with certifying these claims, Class Counsel determined
25 the Agreement amount of $\$1,000,000$ was fair and reasonable.

26 The Agreement is the result of extensive settlement negotiations between the Parties,
27 conducted at arm's length, and informed by substantial factual and legal investigations. (Han
28 Decl., *supra*, *passim*.) Class Members have been represented by experienced counsel with

1 many years of experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-9;
2 Exhibit 2.) Specifically, Class Counsel devoted a considerable amount of time to the
3 prosecution of this case. (*Id.* at ¶¶ 14-18.) This included, among other things: (1) interviewing
4 Plaintiffs at length on repeated occasions; (2) drafting pleadings, conducting discovery, and
5 meeting and conferring with Defendant's counsel; (3) reviewing and analyzing time and pay
6 records, employee handbook, break schedules, and personnel records; (4) researching
7 California law; (5) interviewing putative class members; (6) preparing for and attending
8 mediation; and (7) negotiating and finalizing the Settlement Agreement. (Han Decl., *supra*,
9 *passim*.)

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

15 These above-mentioned factors indicated the interests of Class Members are best served
16 by a settlement of this Action in the manner set forth in the Settlement Agreement. The
17 Individual Settlement Payment for each Class Member will be tailored to their Workweeks
18 worked during the Class Period. Furthermore, Class Counsel secured prospective relief for the
19 Class where Defendant will ensure its policies comply with California law.

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

24 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR**
25 **AND REASONABLE**

26 It is appropriate to provide a relatively modest additional incentive payment to the class
27 representative. *See Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
28 901 F.Supp. 294.

1 Plaintiffs are entitled to reasonable service payments for their efforts in this matter.
2 (Han Decl., *supra*, at ¶ 80.) Plaintiffs spent significant time better apprising themselves of their
3 rights, deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)
4 Plaintiffs decided to vindicate not only their rights but also those of their co-workers by filing a
5 wage-and-hour class action lawsuit. (*Ibid.*)

6 By suing Defendant, Plaintiffs increased the risk of retaliation by future employers.
7 (Han Decl., *supra*, at ¶ 81.) The lawsuit has cost Defendant considerable resources and such
8 conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment
9 opportunities is real in the information age that contains quick background checks. (*Ibid.*)

10 But Plaintiffs did not allow the fears of the potential repercussions of being class
11 representatives deter them from acting for the benefit of Class Members. (Han Decl., *supra*, at
12 ¶ 82.) Instead, Plaintiffs have been intimately involved in this case since its inception. (*Ibid.*)
13 Specifically, Plaintiffs devoted a substantial amount of time to helping Class Counsel
14 effectively develop and prosecute this Action at every stage of the litigation. (*Ibid.*)

15 Plaintiffs spent several hours with Class Counsel detailing their knowledge of
16 Defendant's practices. (Han Decl., *supra*, at ¶ 83.) Plaintiffs diligently, adequately, and fairly
17 represented Class Members and did not place their interests above the Class. (*Ibid.*) The Class
18 Representative Enhancement Payments are intended to recognize Plaintiffs' time and effort,
19 and the amount requested is fair and appropriate based on their contributions. (*Ibid.*)

20 Therefore, Class Counsel believe the Class Representative Enhancement Payments of
21 \$10,000 to each Plaintiff is fair and reasonable. (Han Decl., *supra*, at ¶ 84.)

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

24 Under the Agreement, Class Counsel request, without opposition from Defendant, an
25 award of Attorneys' Fees and Costs consisting of: (1) up to \$350,000 as the attorneys' fees;
26 and (2) up to \$20,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 77.) The requested fees
27 are fair compensation for a law firm involved in undertaking complex, risky, expensive, and
28 time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 77-78.) Class Counsel's request for

1 Attorneys' Fees and Costs will not be opposed by Defendant.

2 California courts look to the federal courts on class action approvals. The Ninth Circuit
3 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
4 percentage of the "common fund" created as a result of the settlement. *Vincent v. Hughes Air*
5 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common fund/percentage
6 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
7 active beneficiary does not bear the entire burden alone." *Vincent*, 557 F.2d at 769. Courts have
8 discretion to choose either the percentage-of-the-fund method or the lodestar method. *In re*
9 *Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

10 Several courts expressed frustration with the "lodestar" approach for deciding fee
11 awards, which usually involves wading through voluminous time records. In other words, the
12 percentage approach can be preferable to the lodestar in certain situations because it: (1) aligns
13 the interests of class counsel and absent class members; (2) encourages efficient resolution of
14 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces
15 the demands on judicial resources. *In re Activision Securities Litigation*, 723 F. Supp. at 1378-
16 79. The Ninth Circuit has used the percentage of the common fund approach to determine the
17 award of attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d
18 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).

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

26 The attorneys' fees request provided for in the Settlement Agreement is commensurate
27 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
28 greater than the percentage requested in this case. See, e.g., *In re Pacific Enterprises Securities*

1 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common
2 fund); *In re Activision Securities Litigation* (N.D. Cal. 1989) 723 F.Supp. 1373, 1375
3 (awarding plaintiffs' counsel 32.8% of the common fund created to settle the litigation); *In re*
4 *Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F. Supp. 494 (awarding 45% of \$7.3 million
5 settlement fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568
6 (affirming fee award to counsel of one-third (1/3) of recovery achieved).

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

17 Class Counsel have borne the entire risk and costs of litigation and will not receive any
18 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 77-78.) The Court should
19 also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the
20 requested attorneys' fees award for Class Counsel is reasonable.

21 **A. Fee Splitting Agreement**

22 Class Counsel is not splitting the costs associated with the settlement with any other
23 individuals or firms. (Han Decl., *supra*, at ¶ 88.)

24 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 25 **APPROVAL**

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

- 28 1. Review and approve the Settlement Agreement attached to Douglas Han's

1 declaration as **Exhibit 1**;

2 2. Review and approve the Notice of Class Action Settlement, Objection Form,
3 and Request for Exclusion attached to the Proposed Order as **Exhibits A-C** respectively;

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

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

8 5. Approve and appoint Douglas Han and Shunt Tatavos-Gharajeh of Justice Law
9 Corporation to serve as Class Counsel for settlement purposes;

10 6. Approve and appoint Phoenix as the Settlement Administrator to handle the
11 notice procedures as set forth in the Settlement Agreement;

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

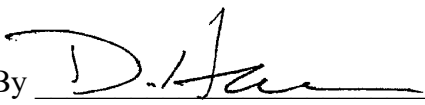
13 8. Order Defendant to disclose the Class List to Phoenix in accordance with the
14 manner set forth in the Settlement Agreement;

15 9. Order Phoenix to mail the Notice Packet to Class Members; and

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

17
18 Dated: October 19, 2022

JUSTICE LAW CORPORATION

19
20 By 
21 Douglas Han
22 Attorneys for Plaintiffs
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24
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26
27
28

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On October 20, 2022, I served the foregoing document described as

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

for the following case: **Vargas v. Spates Fabricators, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-888665-22**
Court Case No.: CVRI2100462
Riverside County Superior Court

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

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 20, 2022, at Pasadena, California.



Mariah Anderson