

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHRISTOPHER PETERSEN (SBN 260631)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

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

ALLEN CARAWAY, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

GAR LABORATORIES INC., a California
corporation; CORTECH WEST STAFFING,
LLC, a California limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: CVRI2100812
[Consolidated with Case No.
CVRI2204893]

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

CLASS ACTION

**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**

[Reservation ID: 032208027839]

*[filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Shannon Jenkins, Angelica
Acosta, Nicholas Lansdown, Paula Lycan,
Lisa Mullins; [Proposed] Order; and
Compliance Chart]*

Hearing Date: May 23, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: February 16, 2021
Trial Date: None Set

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

2 PLEASE TAKE NOTICE on May 23, 2024 at 8:30 a.m., or as soon thereafter as
3 this matter may be heard, at Department 1, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiffs Allen Caraway and Jaqueline Canovas (“Plaintiffs”), on behalf
5 of themselves and all persons similarly situated, will and hereby do move this Court
6 pursuant to Code of Civil Procedure section 382 and California Rule of Court 3.769 for an
7 order:

- 8 (1) Preliminarily approving the class action settlement reached between
9 Plaintiffs and Defendants Gar Laboratories Inc. and CorTech West Staffing,
10 LLC (“Defendants,” “Defendant Gar Laboratories Inc.,” and “Defendant
11 CorTech West Staffing, LLC”), including granting preliminary approval of
12 the following Class: “all current and former hourly-paid or non-exempt
13 employees of Defendant Gar Laboratories Inc. and all current and former
14 hourly-paid or non-exempt individuals placed at Defendant Gar
15 Laboratories Inc. by Defendant CorTech West Staffing, LLC within the
16 State of California at any time during the period from May 1, 2018, through
17 January 31, 2024” (“Class,” “Class Members,” and “Class Period”). “Class
18 Members” shall not include any person who submits a timely and valid
19 Request for Exclusion Form;
- 20 (2) Approving the form of notice of class action settlement and procedure for
21 notice to the Class; and
- 22 (3) Setting the Final Approval Hearing.

23 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
24 proposed settlement’s allocation of funds to claims made under the Labor Code section
25 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)).

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1 Pursuant to the Joint Stipulation and Settlement Agreement (“Settlement
2 Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of
3 Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement,
4 Defendants do not oppose the preliminary approval of the settlement.

5 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
6 of the Class shall be fully and finally resolved for the total sum of \$500,000 (“Maximum
7 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
8 Maximum Settlement Amount after the following deductions are made (“Net Settlement
9 Amount”) shall be available for distribution to Class Members who do not submit timely
10 and valid Requests for Exclusion Form:

- 11 • up to \$175,000 to Class Counsel as the attorneys’ fees;
- 12 • up to \$25,000 to Class Counsel as the attorneys’ costs for reimbursement of
- 13 attorneys’ costs and expenses incurred;
- 14 • up to \$10,000 to each Plaintiff (totaling \$20,000) as Class Representative
- 15 Enhancement Payments;
- 16 • up to \$20,000 to ILYM Group, Inc., the Settlement Administrator, as the
- 17 Settlement Administration Costs; and
- 18 • \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
- 19 (\$37,500) will be paid to the California Labor and Workforce Development
- 20 Agency and twenty-five percent (25%) of which (\$12,500) will be
- 21 distributed to all current and former hourly-paid or non-exempt employees
- 22 of Defendant Gar Laboratories Inc. and all current and former hourly-paid
- 23 or non-exempt individuals placed at Defendant Gar Laboratories Inc. by
- 24 Defendant CorTech West Staffing, LLC within the State of California at any
- 25 time during the period from May 1, 2020, through January 31, 2024, on a
- 26 pro rata basis, as their Individual PAGA Payments in accordance with the
- 27 Settlement Agreement.

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1 This Notice of Motion is based on the fact this is a fair and reasonable settlement
2 that benefits the Class and was the product of informed, non-collusive negotiations by the
3 Parties who were represented by experienced and able counsel. (See *Dunk v. Ford Motor*
4 *Co.* (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) §
5 30.44.) The Agreement meets the legal standard for preliminary approval and is in the best
6 interests of the Class. The proposed form of notice explains the Agreement terms in a clear
7 and straightforward manner. The proposed procedures for notice provide the best practical
8 notice to the Class. Finally, Class Members will have an opportunity to participate in, object
9 to, and/or opt-out of the Agreement.

10 This Notice of Motion is based on this Notice, and the exhibits thereto (including the
11 Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form),
12 Memorandum of Points and Authorities, Declaration of Douglas Han, Declaration of
13 Shannon Jenkins, Declaration of Angelica Acosta, Declaration of Nicholas Lansdown,
14 Declaration of Paula Lycan, Declaration of Lisa Mullins, pleadings, records and files in the
15 case, and such other oral and documentary evidence which may be submitted at or before
16 the hearing on this Motion.

17
18 Dated: April 23, 2024

JUSTICE LAW CORPORATION

19
20 By: 

21 Douglas Han
22 *Attorneys for Plaintiff*
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DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF 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**

[Reservation ID: 032208027839]

*[filed concurrently with Notice of Motion;
Declarations of Douglas Han, Shannon Jenkins,
Angelica Acosta, Nicholas Lansdown, Paula
Lycan, Lisa Mullins; [Proposed] Order; and
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Allen Caraway and Jaqueline Canovas (“Plaintiffs,” “Plaintiff Caraway,” and
4 “Plaintiff Canovas”) filed a wage-and-hour class action lawsuit and representative action
5 against Defendants Gar Laboratories Inc. and CorTech West Staffing, LLC (“Defendants,”
6 “Defendant Gar Laboratories, Inc.,” and “Defendant CorTech West Staffing, LLC”)
7 (collectively, the “Parties”) in the Superior Court of California, County of Riverside, Case
8 Number CVRI2100812 (Consolidated with Case Number CVRI2204893) (“Action”).

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

17 **II. STATUS OF THE LITIGATION**

18 **A. Procedural History**

19 On February 16, 2021, Plaintiff Caraway filed a wage-and- hour class action lawsuit in
20 the Superior Court of California, County of Riverside, alleging eight (8) causes of action (Case
21 No. CVRI2100812). (Declaration of Douglas Han In Support of Motion For Preliminary
22 Approval of Class Action Settlement (“Han Decl.”), ¶ 12.)

23 On May 17, 2021, Defendant Gar Laboratories Inc. filed a cross-complaint against
24 Defendant CorTech West Staffing, LLC and CorTech International, LLC. (Han Decl., *supra*, at
25 ¶ 13.) On July 6, 2021, Defendant CorTech West Staffing LLC filed a Cross-Complaint against
26 Defendant Gar Laboratories, Inc. and Accuire, LLC dba Vforce Taffing Solutions. (*Ibid.*)
27 CorTech International, LLC was dismissed as a cross-defendant. (*Ibid.*)

28 ///

1 On May 31, 2022, Plaintiff Canovas provided written notice to the California Labor and
2 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 14.)

3 On November 9, 2022, Plaintiff Canovas filed a representative Private Attorneys
4 General Act of 2004 (“PAGA”) action in the Superior Court of California, County of Riverside
5 (Case No. CVRI2204893). (Han Decl., *supra*, at ¶ 15.)

6 After engaging in discovery, investigations, and negotiation, the Parties remotely
7 attended mediation with the mediator Jeffrey A. Ross on July 12, 2022, eventually resulting in
8 a tentative global settlement. (Han Decl., *supra*, at ¶ 16.)

9 In line with the settlement, Plaintiff Caraway filed a First Amended and Consolidated
10 Class and Representative Action Complaint that adjusted the “class” definition, adjusted the
11 “aggrieved employees” definition,” added Defendant CorTech West Staffing, LLC as a named
12 defendant, and consolidated Plaintiff Caraway and Plaintiff Canovas’ lawsuits and designated
13 the former as the lead case. (Han Decl., *supra*, at ¶ 17.)

14 **B. Investigation and Discovery**

15 Before filing the lawsuit, Class Counsel investigated and researched the facts and
16 circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 18.)
17 After conducting an initial investigation, Class Counsel determined the claims were suited for
18 class and representative action adjudication. (*Ibid.*)

19 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
20 and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 19.) This included:

21 • conducting discovery and meeting and conferring with Defendants’ counsel
22 several times throughout this litigation, which produced the following:

- 23 ○ Personnel records;
- 24 ○ Class list of hourly-paid and non-exempt employees (*e.g.*, job titles, first
25 and last timecards, and hire types);
- 26 ○ A sampling of putative class members’ redacted earnings statements and
27 timecards within several PDFs;

28 ///

- 1 Arbitration agreements, employee handbooks from September 2013 and
2 July 2021, policy documents, and organizational chart; and
- 3 ○ A sampling of putative class members' time and pay data within several
4 Microsoft Excel Worksheets (*e.g.*, ID numbers, hire date, rates paid, pay
5 dates, pay codes, clock ins and clock outs, hours worked);
 - 6 • reviewing and analyzing the sampling of time and pay records, Class list,
7 personnel records, employee handbooks, policy documents, organizational chart, arbitration
8 agreements, and other documentation;
 - 9 • researching the applicable law and potential defenses;
 - 10 • locating and interviewing several putative class members;
 - 11 • constructing damage models based on interpretations of the law; and
 - 12 • reviewing information provided by Defendants. (Han Decl., *supra*, at ¶ 19.)

13 The Class is ascertainable because the Class Members may be readily identified by
14 reference to Defendants' records. (Han Decl., *supra*, at ¶ 20.) Class Counsel's investigation
15 revealed there are about four hundred ninety-nine (499) Class Members, which was confirmed
16 by Defendants. (*Ibid.*) Class Counsel's investigation also revealed there are approximately
17 three hundred seventy-six (376) Eligible Aggrieved Employees. (*Ibid.*)

18 **C. Settlement Efforts**

19 Defendants contested liability, amount of claimed damages, and propriety of class
20 certification. (Han Decl., *supra*, at ¶ 21.) Given the high level of risk present for both sides, the
21 Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

22 On July 12, 2022, the Parties remotely participated in full day mediation. (Han Decl.,
23 *supra*, at ¶ 22.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From
24 Class Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays
25 posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel
26 believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the
27 settlement negotiations, the Agreement was the product of a non-collusive settlement process.
28 (*Ibid.*) The Parties had to make significant compromises in the interest of reaching a full and
complete settlement of this Action. (Han Decl., *supra*, at ¶ 22.)

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

2 The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han’s declaration.
3 Defendants agreed to pay \$500,000 (“Maximum Settlement Amount”) on a non-reversionary
4 basis to settle and release all claims asserted in the operative complaints on behalf of the
5 proposed Class. (Han Decl., *supra*, at ¶ 24.) The Settlement Agreement defines the Class as
6 “all current and former hourly-paid or nonexempt employees of Defendant Gar Laboratories
7 Inc. and all current and former hourly-paid or non-exempt individuals placed at Defendant Gar
8 Laboratories Inc. by Defendant CorTech West Staffing, LLC within the State of California at
9 any time during the period from May 1, 2018, through January 31, 2024” (“Class,” “Class
10 Members,” and “Class Period”). (*Ibid.*) “Class Members” shall not include any person who
11 submits a timely and valid Request for Exclusion Form. (*Ibid.*) The amount remaining in
12 Maximum Settlement Amount after the following deductions shall be distributed to Class
13 Members who do not opt out (“Net Settlement Amount”):

- 14 • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class
15 Counsel as the attorneys’ fees (\$175,000);
- 16 • up to \$25,000 to Class Counsel as the attorneys’ costs for the reimbursement of
17 actual costs and expenses incurred;
- 18 • up to \$10,000 to each Plaintiff (totaling \$20,000) as the Class Representative
19 Enhancement Payments;
- 20 • up to \$20,000 as the Settlement Administration Costs to the Settlement
21 Administrator, ILYM Group, Inc. (“ILYM Group”); and
- 22 • up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
23 (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) will be
24 paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment
25 even if they submit valid and timely Request for Exclusion Form (“PAGA Payment” and
26 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 24.)

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1 The Net Settlement Amount (approximately \$210,000) will be distributed to the Class
2 Members. (Han Decl., *supra*, at ¶ 25.)

3 The Agreement amount was a compromise, factoring in risks related to certification,
4 liability, and damages. (Han Decl., *supra*, at ¶ 28.) Considering the circumstances of the
5 Action, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

6 **A. Number of Class Members**

7 There are around four hundred ninety-nine (499) Class Members and three hundred
8 seventy-six (376) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 20, 93(a).)

9 **B. Attorney's Estimate of the Recovery by the Average Class Member if the**
10 **Settlement Agreement Were Approved**

11 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
12 Settlement Payment will be about \$420.84. (Han Decl., *supra*, at ¶ 25.) Individual Settlement
13 Payments will be calculated and apportioned from the Net Settlement Amount based on the
14 number of Workweeks a Class Member worked during the Class Period as an hourly-paid or
15 non-exempt employee in California. (*Id.* at ¶ 26.) Individual PAGA Payments will be
16 calculated and apportioned from the twenty-five percent (25%) of the PAGA Payment based
17 on the number of Workweeks an Eligible Aggrieved Employee worked during the PAGA
18 Period as an hourly-paid or non-exempt employee in California. (*Ibid.*)

19 **C. Discovery Exchanged**

20 Section II.B. The description of Class Counsel's investigation above provides a detailed
21 description regarding the discovery that was exchanged.

22 **D. Other Pending Litigation**

23 Class Counsel learned there is a similar lawsuit alleged against Defendant Gar
24 Laboratories Inc. in the Superior Court of California, County of Riverside, titled *Lopez v. Gar*
25 *Laboratories Inc.* (Case No. CVRI2104683) ("Lopez Action"). (Han Decl., *supra*, at ¶ 23.) The
26 Lopez Action was filed on October 12, 2021 and is currently set in Department 1. (*Ibid.*) The
27 Lopez Action seeks recovery of civil penalties relating to alleged violations of Labor Code
28 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, and 1197. (*Ibid.*) The Lopez Action

1 was brought on behalf of all current, former and/or future employees of Defendant who
2 worked, work, or will work for Defendant as non-exempt hourly employees in California. (Han
3 Decl., *supra*, at ¶ 23.) The procedural status of the Lopez Action is there is a Case Management
4 Conference set for April 26, 2024 at 8:30 a.m., and there are no new developments. (*Ibid.*)

5 **E. Defendants’ Counsel’s Declarations**

6 Defendants’ counsel’s declarations are being submitted concurrently with this Motion.

7 **F. Settlement Administrator**

8 The Settlement Agreement provides for up to \$20,000 to be paid to the Settlement
9 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 89.) The bid was
10 calculated through a projected estimate from the following categories: (1) Case Startup; (2)
11 Project Management; (3) Notification / Mailing; (4) Distribution (including EIN Bank Account
12 / QSF Setup; and (5) Case Conclusion. (*Ibid.*)

13 Class Counsel obtained bids from ILYM Group, Phoenix Class Action Administration
14 Solutions (“Phoenix”), CPT Group, Inc. (“CPT Group”), and Apex Class Action
15 Administration (“Apex”) for the administration of this Action. (Han Decl., *supra*, at ¶ 90.)
16 ILYM Group had the most competitive (lowest) bid of \$10,950 when compared to the bids
17 from Phoenix (\$11,000), CPT Group (\$11,500), and Apex (\$11,765.25). (*Ibid.*)

18 ILYM Group has extensive experience in administering employment class action
19 settlements. (Declaration of Lisa Mullins, ¶¶ 2-10; Exhibits A-C.)

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

21 Class Members will receive checks for their Individual Settlement Payments and
22 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 91.) Checks will remain negotiable for one
23 hundred eighty (180) calendar days. (*Ibid.*) The funds from the uncashed checks shall be
24 distributed to the State Controller’s Unclaimed Property Fund. (*Ibid.*)

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

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

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1 [A]ll causes of action and factual or legal theories stated in the operative
2 complaints and those based solely upon the facts alleged in the operative
3 complaints. This includes all of the following claims: (a) failure to pay all
4 regular wages, minimum wages, overtime wages, and sick leave due; (b)
5 failure to provide proper meal and rest breaks and to properly provide
6 premium pay in lieu thereof; (c) failure to provide complete, accurate, or
7 properly formatted wage statements and payroll records; (d) failure to
8 reimburse necessary business expenditures; (e) failure to pay waiting time
9 penalties; (f) failure to timely pay wages during employment and after
10 employment; (g) engaging in unfair business practices that could have
11 been premised on the claims, causes of action or legal theories of relief
12 described above or any of the claims, causes of action or legal theories of
13 relief pleaded in the operative complaints; (h) all claims under PAGA,
14 which shall only bind Plaintiffs and the State of California, described in
15 Plaintiff Canovas' letter to the LWDA and only to the extent these claims
16 were alleged in the operative complaints (Labor Code Sections 201, 202,
17 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
18 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802); and
19 (i) all damages, penalties, interest, and other amounts recoverable under
20 said claims, causes of action or legal theories of relief. The period of the
21 Released Claims shall extend to the limits of the Class Period ("Released
22 Claims").

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

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

26 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 28.)

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

2 Within twenty-one (21) calendar days of entry of the Court’s Order Granting
3 Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.
4 (Han Decl., *supra*, at ¶ 76.) Prior to mailing, the Settlement Administrator will perform a
5 search based on the National Change of Address Database for information to update and
6 correct for any known or identifiable address changes. (*Id.* at ¶ 77.) Within ten (10) calendar
7 days after the Settlement Administrator receives the Class List, the Settlement Administrator
8 will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Ibid.*)

9 The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims
10 involved, material terms of the Agreement, Class Members’ options thereunder, and how Class
11 Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 78.) The
12 Notice Packet also provides for a specific procedure to seek exclusion from the Class and for
13 lodging objections to the Agreement. (*Ibid.*)

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

15 Class Members are not required to submit claim forms to receive their share of the
16 Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 14.)

17 **K. Settlement Does Not Provide Any Reversion to Defendants**

18 Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert
19 to Defendants. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(b).)

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

21 All Individual Settlement Payments will be allocated as follows: (1) twenty percent
22 (20%) as wages; and (2) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶
23 2; Exhibit 1, *supra*, at ¶ 57.) All Individual PAGA Payments will be allocated as one hundred
24 percent (100%) penalties. (*Id.* at ¶ 58.)

25 Defendants shall pay the employer’s share of applicable payroll taxes due on the
26 portion of Individual Settlement Payments allocated to wages separately and in addition to the
27 Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(a).)

28 ///

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

3 The Notice of Class Action Settlement, Objection Form, and Request for Exclusion
4 Form are attached as **Exhibits A-C** respectively in the Agreement and 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*, at
11 pp. 473-475.) The decision to certify a class is a procedural one, and should be based on the
12 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, 439-441.)

14 To certify a settlement class, the Court must find the two 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, 805-809; *Daar v. Yellow*
18 *Cab Company* (1967) 67 Cal.2d 695, 704.) The criteria are met herein.

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 v. Superior Court, supra*, 4 Cal.3d at pp. 821, 822; *Reyes*
22 *v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class
23 members are “ascertainable” where they may be readily identified without unreasonable
24 expense or time.

25 Plaintiffs contend, and Defendants do not dispute, the requirement of numerosity is
26 met. The documents and information exchanged reflect a Class of approximately four hundred
27 ninety-nine (499) Class Members. (Han Decl., *supra*, at ¶ 93(a).) The Class Members were
28 identified by Defendants’ payroll and personnel records. (*Id.* at ¶ 93(b).)

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 v. Superior Court, supra*, 4 Cal.3d at p. 811.) The requirement of a
4 community of interest:

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

15 (*Vasquez v. Superior Court, supra*, 4 Cal.3d. at p. 809.)

16 Plaintiffs contend, and Defendants do not dispute, common issues of fact and law
17 predominate as to each of the claims alleged. Because Plaintiffs alleged a single scheme, “the
18 relevant proof [does] not vary among class members” and “clearly presents a common question
19 fundamental to all class members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation*
20 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
21 (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-
22 wide causation, class-wide injury, and class-wide damages when a common course of action
23 has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 1350.) This inference
24 “eliminates the need for each class member to prove individually the consequences of the
25 defendants’ actions to him or her.” (*Id.* at p. 1351 (quoting *Rosack v. Volvo of America Corp*
26 (1982) 131 Cal.App.3d 741, 753 [emphasis added])).)

27 This Action involves, *inter alia*, a determination about Defendants’ alleged: (1) failure
28 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
business expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate
overtime wages and sick leave; (5) failure to pay final wages when required; (6) failure to
provide accurate wage statements; and (7) largely derivative claims under the Business &
Professions Code and PAGA. (Han Decl., *supra*, at ¶ 93(e).) Plaintiffs contend these practices

1 affected Class Members in the same way. (Han Decl., *supra*, at ¶ 93(e).) While Defendants
2 maintained otherwise, these issues will not be decided based on facts peculiar to each Class
3 Member but based on facts common to the Class. These issues of liability can be determined
4 on a class-wide basis.

5 **C. The Plaintiffs' Claims Are Typical**

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

17 Plaintiffs contend, and Defendants do not dispute, the claims are typical of Class
18 Members' claims because they arose from the same factual basis and are based on the same
19 legal theories. (Han Decl., *supra*, at ¶ 93(c).) Plaintiffs were employed by Defendants during
20 the Class Period and subject to the allegedly unlawful meal and rest break policies and pay
21 practices at issue in this litigation. (*Ibid.*) The central issues of this litigation (whether
22 Defendants failed to pay all wages, failed to provide meal and breaks, failed to pay premium
23 wages, etc.), which would arise if this were an individual action brought by Plaintiffs, apply to
24 the other Class Members. (*Ibid.*) Consequently, the answer to these questions would determine
25 Defendants' liability to the Class. (*Ibid.*)

26 **D. Adequacy of Class Counsel and Class Representatives**

27 Class Counsel are experienced in class actions, have represented their clients zealously,
28 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 93(d); Exhibit 2.) Plaintiffs'
interests are aligned with those of the Class Members, suffered the same injuries as the Class

Members, and have no conflicts of interest. (Han Decl., *supra*, at ¶ 93(d).)

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. (Han Decl., *supra*, at ¶ 93(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 ¶ 93(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 court is a conditional finding that 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 *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
effective date of settlement and any recapture clause, Newberg on Class
Actions. (§ 11.24.)

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

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

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

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

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1 The Agreement satisfies these factors. Class Counsel conducted extensive discoveries
2 before entering meaningful settlement negotiations, including a detailed analysis of the policies
3 and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 18, 19.) This
4 discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and the
5 risks associated with litigation. (*Id.* at ¶ 19.) Class Counsel are experienced in the handling of
6 wage-and-hour class actions and support the Settlement. (*Id.* at ¶¶ 3-10; Exhibit 2.)

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

8 The claims in this action include: (1) failure to provide meal and rest breaks; (2) failure
9 to pay minimum wages; (3) failure to pay and properly calculate overtime wages and sick
10 leave; (4) failure to pay final wages when due; (5) failure to provide accurate wage statements;
11 (6) failure to reimburse necessary business expenses; and (7) related claims for violations of
12 the Business & Professions Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 30.)

13 Class Counsel felt confident the claims would be certified given Defendants' policies
14 and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 31-69.)

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

16 Plaintiffs contend Defendants did not have Brinker-compliant meal break policies and
17 would frequently assign employees heavy workloads and expected employees to prioritize
18 completing daily quotas. (Han Decl., *supra*, at ¶¶ 32, 35, 36.) This was purportedly made
19 worse by Defendants being understaffed, permitting supervisory interference, expecting
20 employees to don and doff their uniforms during their meal and rest breaks, and automatically
21 deducting meal breaks from employees' time records. (*Ibid.*) Defendants countered they
22 always maintained compliant meal and rest break policies, did not permit supervisors to
23 interfere with employees' breaks, rarely assigned heavy workloads, permitted employees to
24 don and doff their uniforms during their shifts, and never attempted to conceal instances of
25 noncompliant breaks. (*Id.* at ¶¶ 33, 37.) In other words, employees were choosing to don and
26 doff their uniforms during their meal and rest breaks and to prioritize completing daily quotas
27 above all else. (*Ibid.*) By extension, Defendants may even produce evidence to demonstrate
28 employees were advised of their right to take additional meal and rest breaks, but most

1 employees did not work the requisite hours to qualify for additional breaks. (Han Decl., *supra*,
2 at ¶¶ 33, 37.) Finally, Defendants contended Class Counsel will have to gather declarations
3 from putative class members to prove the existence of improper, uniform policies and
4 practices. (Han Decl., *supra*, at ¶¶ 33, 37.)

5 As the consideration concerning meal and rest breaks would likely depress the damages
6 ultimately awarded, Class Counsel applied significant and appropriate discounts to the meal
7 and rest break claims. (Han Decl., *supra*, at ¶¶ 34, 38.) If Defendants' contentions are proven
8 true and prevail in trial, the likely outcome of these claims, particularly rest breaks, would be
9 no recovery for the Class Members.

10 Plaintiffs also alleged Defendants failed to pay and properly calculate all applicable
11 wages owed, including minimum wages, overtime wages, and sick leave. (Han Decl., *supra*, at
12 ¶¶ 39, 42.) Defendants' stringent policies purportedly pressured employees into arriving at
13 work before the start of their shifts to avoid appearing tardy and deterred employees from
14 recording all hours worked. (*Ibid.*) Examples of off-the-clock work supposedly ranged from
15 donning and doffing uniforms, cleaning workstations, and completing tasks that could not be
16 completed during shifts. (*Ibid.*) This was apparently made worse by Defendants paying
17 employees non-discretionary bonuses and failing to factor such bonuses into employees'
18 regular rate of pay for overtime compensation and sick leave pay purposes. (*Ibid.*) Defendants
19 countered these claims are not suitable for class treatment. (*Id.* at ¶¶ 40, 42.) Instead,
20 Defendants argued their policies were not drafted with the intent to pressure employees to
21 work off-the-clock or to refrain from recording all hours worked. (*Ibid.*) Defendants added that
22 they expressly prohibited off-the-clock work and that if employees ever complained about not
23 being compensated for all hours worked, Defendants would attempt to immediately rectify the
24 issue. (*Ibid.*) Defendants also contended any payment of bonuses was completely discretionary,
25 meaning the bonuses did not need to be factored into employees' regular rates of pay. (*Ibid.*)
26 Furthermore, Defendants asserted any unrecorded hours would likely be subject to individual
27 inquiries and unlikely to be certified. (*Ibid.*) Given the difficulty in certifying this claim, Class
28 Counsel applied a discount to damages. (*Id.* at ¶¶ 41, 43.) If Defendants' contentions held true,

1 the outcome of this claim would be little to no recovery for employees.

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

3 To establish liability for wage statement violations and waiting time penalties, Plaintiffs
4 would first have to establish liability for the underlying claims. But Defendants argued the
5 claim for further Labor Code section 226(e) penalties would depend on the underlying rest
6 break, meal break, and wage claims, meaning it would be subject to the same defenses listed
7 above. (Han Decl., *supra*, at ¶ 46.) Defendants added the above-mentioned violations did not
8 occur every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Thus,
9 Defendants concluded employees need to show they suffered injury because of Defendants'
10 noncompliance and that such noncompliance was knowing and intentional. (*Ibid.*)

11 Similarly, Defendants also countered the claim for section 203 penalties is dependent
12 on the underlying meal and rest break and wage claims, meaning it would be subject to the
13 same defenses listed and described above. (Han Decl., *supra*, at ¶¶ 50, 51.) With these
14 penalties, there is always the risk the trier of fact would not have held Defendants' actions were
15 done "willfully." A good faith belief in a legal defense can preclude a finding of willfulness.
16 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As
17 discussed above, Plaintiffs allege Defendants failed to pay for all hours worked and premiums
18 for noncompliant meal and rest breaks. (Han Decl., *supra*, at ¶¶ 32, 35, 36, 39, 42.) By
19 extension, Plaintiffs contend the Class Members are entitled to minimum wages, overtime
20 wages, and premium wages, which were allegedly not paid at the time of their termination or
21 resignation. (*Id.* at ¶¶ 48, 49.) Defendants countered that they provided employees with
22 reasonable opportunities to take breaks, asked employees to confirm the accuracy of their time
23 records, and had good-faith defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 51, 52.)

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

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

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

8 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
9 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510,
10 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*,
11 at ¶ 57.) Defendants asserted, regardless of the results of the underlying causes of action,
12 PAGA penalties are only permissive and discretionary. (*Ibid.*) Defendants maintained, in
13 addition to the strong arguments against the underlying claims, they had a strong argument it
14 would be unjust to award maximum PAGA penalties given the law’s unsettled state. (Han
15 Decl., *supra*, at ¶ 57; See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203
16 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Without stacking and
17 limited to the initial violation, PAGA penalties would be **\$37,600** (376 employees x \$100
18 initial violation) on the low end and **\$263,200** (376 employees x \$100 initial violation x 7
19 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 58-61.)

20 Plaintiffs recognized the risks any PAGA award could be reduced. (Han Decl., *supra*, at
21 ¶ 62.) The maximum penalties for each pay period are not justified, and it was arguable the
22 Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to
23 PAGA civil penalties was reasonable based on a rate of **\$5.82** per pay period [$\$50,000 \div 8,590$
24 pay periods in the PAGA Period] given that Defendants are paying an additional \$450,000 in
25
26
27
28

1 the class settlement.¹ (*Ibid.*) If PAGA penalties are negotiated in good faith and “there is no
2 indication that [the] amount was the result of self-interest at the expense of other Class
3 Members,” such amounts are considered reasonable.² (Han Decl., *supra*, at ¶ 62.)

4 Finally, Class Counsel are confident they would successfully prove the alleged wage-
5 and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 63.) Plaintiffs
6 contend Defendants knowingly failed to maintain *Brinker*-compliant meal break policies
7 during the relevant time period and intentionally assigned employees heavy workloads. (*Ibid.*)
8 Defendants allegedly expected employees to prioritize meeting daily quotas above all else and
9 permitted supervisors to interfere with employees’ meal and rest breaks. (*Ibid.*) This was
10 purportedly made worse by Defendants requiring employees to don and doff their uniforms
11 during their meal and rest breaks and automatically deducting meal breaks from employees’
12 time records. (*Ibid.*) Plaintiffs assert Defendants knowingly and intentionally failed to pay
13 premium wages for noncompliant meal and rest breaks. (*Ibid.*) Plaintiffs also allege Defendants
14 knew their stringent policies pressured employees to arrive at work earlier than their scheduled
15 shifts to avoid appearing tardy and facing disciplinary actions. (*Ibid.*) Defendants knew and
16 intended for their policies to pressure employees to work additional hours off-the-clock and to
17 deter employees from recording all hours worked. (*Ibid.*) Finally, Plaintiffs contend
18 Defendants intentionally paid employees bonuses non-discretionary in nature but knowingly
19 failed to factor such payments into regular rate of pay. (*Ibid.*)

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

21 Given the risks outlined above, the issues in this case were complex and the risk for
22 Plaintiffs and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
23

24
25 ¹ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
26 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
27 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

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

70-74.) A class trial would have required extensive preparations, thereby requiring the Parties to expend a substantial amount of time. (*Ibid.*) Given the complexity and unsettled nature of the issues, it is likely any outcome at trial would have resulted in a lengthy and costly appeal. (Han Decl., *supra*, at ¶¶ 70-74.) Finally, an appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Ibid.*)

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, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$4,041,821.37** on the low end and **\$4,188,865.41** on the high end. (Han Decl., *supra*, at ¶ 65.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$471,045.72	70%	60%	\$56,525.49
Meal Break Premiums	\$1,169,652.92	60%	60%	\$187,144.47
Overtime/Minimum Wage: Off-the-Clock	\$294,088.08 to \$441,132.12	60%	60%	\$47,054.09 to \$70,581.14
Regular Rates	\$29,640.25	40%	50%	\$8,892.08
Unreimbursed Business Expenses	\$176,940	20%	70%	\$42,465.60
Wage Statement Penalty	\$846,000	60%	60%	\$135,360
Waiting Time Penalty	\$1,054,454.40	60%	60%	\$168,712.70
MAXIMUM TOTAL EXPOSURE	\$4,041,821.37 to \$4,188,865.41			\$646,154.43 to \$669,681.48

1 Based on this analysis, the total estimated realistic exposure for this case would be
2 approximately **\$646,154.43** on the low end and **\$669,681.48** on the high end. (Han Decl.,
3 *supra*, at ¶ 66.) The Maximum Settlement Amount is about twelve percent (11.94%) of the
4 high end total potential exposure at trial and around seventy-four percent (74.66%) of the high
5 end total realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

6 The allocation of wages, penalties, and interest indicated above was based on the
7 realistic exposure Plaintiffs could expect to receive for meal and rest break premiums and
8 unpaid wages. (Han Decl., *supra*, at ¶ 67.) Plaintiffs added the realistic exposure for rest break
9 premiums and meal break premiums ($\$56,525.49 + \$187,144.47 = \$243,669.96$). (*Ibid.*)
10 Plaintiffs then added the \$243,669.96 to the low end realistic exposure for unpaid wages due to
11 off-the-clock work and underpaid overtime wages and sick leave ($\$243,669.96 + \$47,054.09 +$
12 $\$8,892.08 = \$299,616.13$). (*Ibid.*) The realistic exposure of \$299,616.13 Plaintiffs can expect
13 to receive if they were to prevail at trial for meal and rest break premiums, low end unpaid
14 wages due to off-the-clock work, and underpaid overtime wages and sick leave represents
15 about twenty percent (19.83%) of the low end total realistic exposure and PAGA penalties
16 ($\$299,616.13 \div \$1,510,954.43 = 0.1983 \times 100 = 19.83\%$). (*Ibid.*) Because this represents about
17 twenty percent (20%) of wages, allocating twenty percent (20%) as wages and eighty percent
18 (80%) as interest and penalties pursuant to the Settlement Agreement is appropriate. (*Ibid.*)

19 Once Class Counsel determined the maximum potential damages, they established a
20 fair and reasonable settlement for the Class after analyzing the likelihood of success on the
21 merits. (Han Decl., *supra*, at ¶ 28.) After reviewing the facts and circumstances of this matter,
22 Class Counsel concluded the Class had a reasonable likelihood of success on the core claims.
23 (*Id.* at ¶¶ 65-74.) Defendants dispute this contention, deny all wrongdoing in this matter, and
24 are confident they have strong legal and factual defenses to the claims. (*Id.* at ¶¶ 71, 73.) After
25 considering the likelihood of success and the challenges faced with certification, Class Counsel
26 determined the Agreement amount was fair and reasonable.

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1 Class Members have been represented by experienced counsel with many years of
2 experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)
3 Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶
4 18-22.) This included, among other things: (1) interviewing Plaintiffs at length on repeated
5 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with
6 Defendants' counsel; (3) reviewing and analyzing time and pay records, Class list, employee
7 handbooks, policy documents, and personnel records; (4) researching the law; (5) locating and
8 interviewing putative class members; (6) preparing for and attending mediation; and (7)
9 negotiating and finalizing the Settlement Agreement. (Han Decl., *supra*, *passim*.)

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

14 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR**
15 **AND REASONABLE**

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

19 Plaintiffs are entitled to reasonable service payments for their efforts in this matter.
20 (Han Decl., *supra*, at ¶ 84.) Plaintiffs spent significant time better apprising themselves of their
21 rights, deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

22 By suing Defendants, Plaintiffs increased the risk of retaliation by future employers.
23 (Han Decl., *supra*, at ¶ 85.) The lawsuit has cost Defendants considerable resources, and such
24 conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment
25 opportunities is real in the information age that contains quick background checks. (*Ibid.*)

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1 Plaintiffs did not allow fears of the potential repercussions of being class
2 representatives to deter them from acting for the benefit of Class Members. (Han Decl., *supra*,
3 at ¶ 86.) Instead, Plaintiffs have been intimately involved in this case since its inception and
4 have devoted a substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

5 Plaintiffs spent hours with Class Counsel detailing their knowledge of Defendants'
6 practices. (Han Decl., *supra*, at ¶ 87.) Plaintiffs diligently, adequately, and fairly represented
7 Class Members and did not place their interests above the Class Members. (*Ibid.*) The Class
8 Representative Enhancement Payments are intended to recognize Plaintiffs' time and effort,
9 and the amount requested is fair and appropriate based on his contributions. (*Ibid.*)

10 Thus, Class Counsel believe the Class Representative Enhancement Payments of
11 \$10,000 to each Plaintiff are fair and reasonable. (Han Decl., *supra*, at ¶ 88.)

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

14 Under the Agreement, Class Counsel request, without opposition from Defendants, an
15 award of Attorneys' Fees and Costs consisting of: (1) up to \$175,000 as the attorneys' fees;
16 and (2) up to \$25,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 81.) The requested fees are
17 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
18 consuming litigation on a contingent basis. (*Id.* at ¶¶ 81, 82.)

19 California courts look to the federal courts on class action approvals. The Ninth Circuit
20 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
21 percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*
22 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
23 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
24 active beneficiary does not bear the entire burden alone." (*Ibid.*) Courts have discretion to
25 choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
26 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295, 1296.)

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Courts have expressed frustration with the lodestar approach to deciding fee awards. The percentage approach can be preferable in certain situations because it: (1) aligns the interests of class counsel and absent class members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378, 1379.) The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378, 379 (approving attorneys' fee of 33 1/3% of settlement fund).)

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

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

In similar lawsuits, courts approved attorney's fees consistent with or greater than the percentage requested herein. (See *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC 262247 (May 2005) (Honorable Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004)

(Honorable Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Superior Court, Case No. 01CC00140 (Honorable Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359 (Sept. 2006) (Honorable Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*, Orange County Superior Court, Case No.02CC10201 (2006) (Honorable Ronald L. Bauer).)

Class Counsel have borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 81, 82.) The Court should also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the requested attorneys' fees award is reasonable.

A. Fee Splitting Agreement

Class Counsel are not splitting the costs associated with the settlement with any other individuals or firms. (Han Decl., *supra*, at ¶ 92.)

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

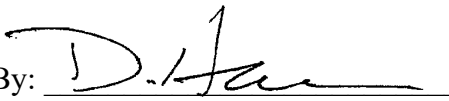
The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement attached to Douglas Han's declaration as **Exhibit 1**;
2. Review and approve the Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form attached to the Proposed Order as **Exhibits A-C** respectively;
3. Consider and determine the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;
4. Conditionally certify the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and Settlement Agreement;
5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Christopher Peterson of Justice Law Corporation to serve as Class Counsel for settlement purposes;
6. Approve and appoint ILYM Group to handle the notice procedures as set forth in the Settlement Agreement;

- 1 7. Approve the proposed allocation of funds to the claims made under PAGA;
2 8. Order Defendants to disclose the Class List to ILYM Group in accordance with
3 the manner set forth in the Settlement Agreement;
4 9. Order ILYM Group to mail the Notice Packet to Class Members; and
5 10. Set a date for the Final Approval Hearing.

6
7 Dated: April 23, 2024

JUSTICE LAW CORPORATION

8
9 By: 
10 Douglas Han
11 Attorneys for Plaintiffs
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 23, 2024, I served the foregoing document described as

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 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: **Caraway, et al. v. Gar Laboratories, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 886738-22**
Court Case No.: CVRI2100812 Consolidated with Case No. CVRI2204893
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 April 23, 2024, at Pasadena, California.



Mariah Anderson