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

RICO BARELA and MAHVASH SAFAEI,
individually, and on behalf of other
members of the general public similarly
situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act of 2004 ("PAGA");

Plaintiffs,

v.

HYDROFARM, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CIVSB2222442

Assigned for All Purposes to:
Honorable Joseph T. Ortiz
Department 17

CLASS ACTION

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

*[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed Class
Representative (Rico Barela); Declaration of
Proposed Class Representative (Mahvash Safaei);
Declaration of Lisa Mullins; Declaration of
Proposed Administrator (Lisa Mullins); and
[Proposed] Order filed concurrently herewith]*

Hearing Date: September 6, 2024
Hearing Time: 1:30 p.m.
Hearing Place: Department 17

Complaint Filed: October 5, 2022
FAC Filed: March 20, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 6, 2024 at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Joseph T. Ortiz in Department 17 of the San Bernardino
3 County Superior Court located at 247 West Third Street, San Bernardino, California 92415,
4 Plaintiffs Rico Barela and Mahvash Safaei (“Plaintiffs,” “Plaintiff Barela,” and “Plaintiff Safaei”)
5 will and hereby do move for an Order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the proposed deadlines for the settlement administration process;
- 20 • Approving ILYM Group, Inc. as the Administrator; and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, Class Representative Service Payments,
25 Administration Expenses Payment, and approval of the allocation of the Private
26 Attorney General Act of 2004 (“PAGA”) Penalties.

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

6
7 Dated: May 31, 2024

JUSTICE LAW CORPORATION

8 By: 
9 Douglas Han
10 *Attorneys for Plaintiffs*

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and: (1) all current and former non-
4 exempt employees jointly employed by Defendant Hydrofarm, LLC (“Defendant”) and ADP
5 TotalSource, Inc. who worked on-site at any of Defendant’s worksites within the State of
6 California at any time during the period from October 5, 2018 through May 31, 2024; and (2) all
7 former non-exempt employees jointly employed by Defendant and Nelson Gary D. Nelson
8 Associates, Inc., a California corporation doing business as “Nelson Staffing” and “Nelson
9 Connects,” who worked onsite at any of Defendant’s worksites within the State of California at
10 any time during the period from October 5, 2018 through May 31, 2024 (“Class,” “Class
11 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
12 estimated to be two hundred thirty (230), which was confirmed by Defendant. (Declaration of
13 Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement
14 (“Han Decl.”), ¶¶ 7, 8.)

15 **II. BACKGROUND**

16 On July 27, 2022, Plaintiffs provided written notice to the LWDA and Defendant of the
17 specific Labor Code provisions they contend were violated and the theories supporting their
18 contentions. (Han Decl., *supra*, at ¶ 9; Exhibit 3.)

19 On October 5, 2022, Plaintiff Barela filed a wage-and-hour class action lawsuit in the
20 Superior Court of California, County of San Bernardino, alleging nine (9) causes of action. (Han
21 Decl., *supra*, at ¶ 10; Exhibit 4.)

22 On March 20, 2023, Plaintiff Barela filed a First Amended Complaint that added Plaintiff
23 Safaei as a named plaintiff. (Han Decl., *supra*, at ¶ 11; Exhibit 5.)

24 After engaging in discovery, investigations, and negotiations, on March 27, 2024, the
25 Parties remotely attended mediation with the professional neutral Gail Glick, that resulted in the
26 settlement of this Action via a mediator’s proposal. (Han Decl., *supra*, at ¶ 12.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 14.)
4 The Parties met and conferred and agreed to engage in an informal exchange of data and
5 information and then eventually remotely attended mediation. (*Ibid.*)

6 Prior to the mediation, Defendant produced several documents relating to its policies,
7 practices, and procedures. (Han Decl., *supra*, at ¶ 15.) As part of Defendant’s production, Plaintiffs
8 also reviewed time records, pay records, and information relating to the size and scope of the Class.
9 (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding
10 of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

11 Based on the information provided by Defendant and interviews with putative class
12 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees
13 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
14 failed to include non-discretionary bonuses in employees’ regular rate of pay; (4) failed to
15 reimburse employees for necessary business expenses; (5) issued noncompliant wage statements;
16 and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-24.)

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

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

19 The Parties remotely attended mediation on March 27, 2024 with Gail Glick, an
20 experienced mediator. (Han Decl., *supra*, at ¶ 25.) Under the auspices of the mediator, the Parties
21 reached a settlement via a mediator’s proposal, the terms were memorialized in the Settlement
22 Agreement. (*Id.* at ¶ 25; Exhibits 2, 6.)

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

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

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1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶
3 29.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
4 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
5 foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable
6 settlement and is in the best interests of the Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the claims and
9 defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 30.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies, practices, and data, permitting Class Counsel
12 to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
14 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
15 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
16 at ¶ 30; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
20 for the non-reversionary total sum of \$345,000 (“Gross Settlement Amount”) which includes: (1)
21 Class Counsel Fees Payment up to \$120,750 (35% of the Gross Settlement Amount); (2) Class
22 Counsel Litigation Expenses Payment up to \$15,000; (3) Class Representative Service Payments
23 totaling \$20,000; (4) Administration Expenses Payment up to \$8,500; and (5) PAGA Penalties up
24 to \$30,000. (Han Decl., *supra*, at ¶ 26.)

25 **ii. Calculating Settlement Payments**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$150,750 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
28 *average* Individual Class Payment estimated at \$655.43. (Han Decl., *supra*, at ¶ 27.)

1 The Participating Class Members will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 25;
3 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
4 to the settlement of wage claims and eighty percent (80%) to the settlement of claims for interest
5 and penalties. (*Id.* at § C(2)(d)(i).)

6 The portion of the PAGA Penalties that is to be paid to each Aggrieved Employee¹ shall
7 be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 25;
8 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA Penalties will be
9 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

10 **iii. Notice to the Class**

11 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
12 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶
13 25; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
14 Class Data, the Administrator will send the Class Notice with a translation to all Class Members
15 identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
18 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §§ D(2), D(3).)
19 Uncashed settlement checks will be canceled and transmitted to the California Controller's
20 Unclaimed Property Fund in the name of the Class Member. (*Id.* at §§ D(3)(a), D(3)(c).)

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24 _____
25 ¹ "Aggrieved Employee" means all current and former non-exempt employees jointly
26 employed by Defendant and ADP TotalSource, Inc. who worked on-site at any of Defendant's
27 worksites within the State of California or who worked from home within the State of California
28 during the period from July 27, 2021 through May 31, 2024; and all former non-exempt employees
jointly employed by Defendant and Nelson Staffing who worked on-site at any of Defendant's
worksites within the State of California at any time during the period from July 27, 2021 through
May 31, 2024.

1 **v. Release of Claims**

2 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
3 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
4 Participating Class Members, on behalf of themselves and their former and present representatives,
5 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
6 the Released Class Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § E(2).)

7 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
8 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
9 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
10 to release, on behalf of themselves and their former and present representatives, agents, attorneys,
11 heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA
12 Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § E(3).)

13 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
14 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
15 Plaintiffs, on behalf of themselves and their former and present spouses, representatives, agents,
16 attorneys, heirs, administrators, successors, and assigns generally release and discharge the
17 Released Parties from the Plaintiffs' Release. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §
18 E(1).) Plaintiffs individually also expressly waive and relinquish the provisions, rights, and
19 benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

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

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

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

8 **IV. ARGUMENT**

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

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

- 14 (a) A settlement or compromise of an entire class action, or a cause of action in
15 a class action, or as to a party, requires the approval of the court after
16 hearing.
17 . . .
18 (c) Any party to a settlement agreement may serve and file a written notice of
19 motion for preliminary approval of the settlement. The settlement
20 agreement and proposed notice to class members must be filed with the
21 motion, and the proposed order must be lodged with the motion.

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

28 ³ The California Supreme Court has authorized California’s trial courts to use Federal Rule
23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate,
the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

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

6 An understanding of the amount in controversy is an important factor in whether the
7 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
8 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
9 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
10 Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for
11 plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot*
12 *Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 130; see also (*Munoz v. BCI Coca-Cola Bottling*
13 *Co. of Los Angeles, supra*, 186 Cal.App.4th at p. 409.)

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

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1 **i. The Settlement Amount of \$345,000 Is Fair and Reasonable**

2 The Settlement Agreement was only possible following significant investigation and
3 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
4 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
5 potential damages. (Han Decl., *supra*, at ¶ 30.)

6 The claims are predicated on the purported: (1) failure to properly calculate and pay
7 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks pay
8 applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage
9 statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation
10 of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 31.) Defendant
11 vehemently denies the theories of liability. (*Id.* at ¶ 32.)

12 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
13 certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court ruled
14 in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always
15 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*
16 have reached different conclusions concerning certification of wage-and-hour claims.⁴ (Han Decl.,
17 *supra*, at ¶ 33.) Thus, the calculations for potential damages were discounted.

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

1 **ii. The PAGA Penalties of \$30,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
3 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
4 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 42.)
5 Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties
6 are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it had a
7 strong argument it would be unjust to award maximum PAGA penalties given the law’s current
8 unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 42; *Thurman v. Bayshore*
9 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
10 Furthermore, Defendant argued without stacking and limited to the initial violation, the PAGA
11 penalties would be limited to about **\$17,400** (174 employees x \$100 penalty for initial violation)
12 on the low end and **\$104,400** (174 employees x \$100 penalty for initial violation x 6 theories of
13 recovery) on the high end. (Han Decl., *supra*, at ¶¶ 43-45.)

14 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 46.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Allocating \$30,000 to PAGA civil penalties was reasonable given that Defendant is also paying
17 an additional \$315,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
18 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
19 of other Class Members,” such amounts are reasonable.⁵ (*Ibid.*)

20 Considering the defenses, supporting evidence, and position that the case is not suitable for
21 class treatment, the Settlement Agreement is reasonable, adequate, and fair.

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26 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,
28 “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
damages to the PAGA claims”.)

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$1,789,983.05** on the low end and around **\$1,913,500.37** on the high end. (Han Decl., *supra*, at ¶ 47.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$335,269.56	70%	60%	\$40,232.35
Meal Break Premiums	\$197,022.32	60%	60%	\$31,523.57
Overtime/Minimum Wage: Off-the-Clock Work	\$247,034.64 to \$370,551.96	60%	50%	\$49,406.93 to \$74,110.39
Regular Rate	\$6,823.33	40%	50%	\$2,047
Unreimbursed Business Expenses	\$98,240	30%	70%	\$20,630.40
Wage Statement Penalty	\$183,750	50%	50%	\$45,937.50
Waiting Time Penalty	\$721,843.20	50%	50%	\$180,460.80
MAXIMUM TOTAL EXPOSURE	\$1,789,983.05 to \$1,913,500.37⁶			\$370,238.55 to \$394,942.01⁷

The realistic recovery for this case is about **\$370,238.55** on the low end and **\$394,942.01** on the high end. (Han Decl., *supra*, at ¶ 55.) The Gross Settlement Amount is about eighteen percent (18.03%) of the maximum potential exposure and around eighty-seven percent (87.35%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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⁶ (Han Decl., *supra*, at 34-41.)

⁷ (*Id.* at ¶¶ 48-54.)

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594
3 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
4 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
5 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
6 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska*
7 *P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation
8 and avoidance of wasteful and expensive litigation that induce consensual settlements. The
9 proposed settlement is not to be judged against a hypothetical or speculative measure of what
10 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
11 if Plaintiffs prevailed at trial and provides a significant recovery for the Class Members.

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

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

18 The Class is ascertainable and numerous as to make it impracticable to join all Class
19 Members, and there are common questions of law and fact that predominate over any questions
20 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 56.) Plaintiffs contend their claims
21 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
22 interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual Class
23 Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

9 This case involves approximately two hundred thirty (230) Class Members, including
10 ninety-eight (98) members of the Barela subclass and one hundred thirty-two (132) members of
11 the Safaei subclass, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 57;
12 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed
13 class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

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1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court certified class of dancers on state law claims].)

Plaintiffs assert common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 58.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiffs’ Claims Are Typical of the Class Claims

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

Plaintiffs are former employees of Defendant and allege they and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 59; Declaration of Rico Barela Re Adequacy In Support of Motion for Preliminary Approval (“Barela Decl.”), ¶¶ 2-9, 13-16; Declaration of Mahvash Safaei Re Adequacy In Support of Motion for Preliminary Approval (“Safaei Decl.”), ¶¶ 2-8, 12-14.) Plaintiffs seek relief for these claims and derivative claims on behalf of the Class. (Han Decl., *supra*, at ¶ 59; Barela Decl., *supra*, at ¶¶ 2-9, 13-16; Safaei Decl., *supra*, at ¶¶ 2-8, 12-14.) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (Han Decl., *supra*, at ¶ 59; Barela Decl., *supra*, at ¶¶ 2-9, 13-16; Safaei Decl., *supra*, at ¶¶ 2-8, 12-14.)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives for the Class. (Han Decl., *supra*, at ¶ 60; Barela Decl., *supra*, at ¶¶ 10-12, 17-22; Safaei Decl., *supra*, at ¶¶ 9-11, 15-20.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (Han Decl., *supra*, at ¶ 60; Barela Decl., *supra*, at ¶¶ 10-12, 17-22; Safaei Decl., *supra*, at ¶¶ 9-11, 15-20.) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (Han Decl., *supra*, at ¶ 60; Barela Decl., *supra*, at ¶¶ 10-12, 17-22; Safaei Decl., *supra*, at ¶¶ 9-11, 15-20.) Plaintiffs also have no interest averse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 60; Barela Decl., *supra*, at ¶¶ 10-12, 17-22; Safaei Decl., *supra*, at ¶¶ 9-11, 15-20.)

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

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

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

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

Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for settlement purposes, and Class Notice should be approved.

JUSTICE LAW CORPORATION

By: D. Han
Douglas Han
Attorneys for Plaintiff

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 31, 2024, I served the foregoing document described as

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

for the following case: **Rico Barela, et al. v. Hydrofarm, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-897915-22**
Court Case No.: CIVSB2222442
San Bernardino 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 May 31, 2024, at Pasadena, California.



Christina Castro