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

CRISTIAN CHOLICO and ROBERT
MULDREW, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiffs,

v.

VISTA METALS CORP., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CIVSB2126589

Assigned for All Purposes to:
Honorable Jessica Morgan
Department S-26

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); and [Proposed] Order filed
concurrently herewith]

Hearing Date: November 13, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department S-26

Complaint Filed: September 20, 2021
FAC Filed: February 10, 2022
SAC Filed: July 11, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 13, 2023 at 8:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Jessica Morgan in Department S-26 of the San
3 Bernardino County Superior Court (San Bernardino Justice Center) located at 247 West Third
4 Street, San Bernardino, California 92415, Plaintiff Cristian Cholico and Robert Muldrew
5 (“Plaintiffs,” “Plaintiff Cholico,” and “Plaintiff Muldrew”) 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 3** 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 CPT 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, and
25 Administration Expenses Payment, and approval of the allocation of the Private
26 Attorney General Act of 2004 (“PAGA”) Penalties.

27 ///

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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); [Proposed] Order filed concurrently with
3 this motion; pleadings and other records on file with the Court in this matter; and such documentary
4 evidence and oral argument as may be presented at the hearing on this motion.
5

6 Dated: August 31, 2023

JUSTICE LAW CORPORATION

7
8 By:



Douglas Han
Attorney 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 all individuals who worked at
4 least one Qualifying Workweek during the period from March 22, 2017 through September 19,
5 2023 or the date of preliminary approval, whichever date is earlier, for Defendant Vista Metals
6 Corp. (“Defendant”) as non-exempt Union-represented employees and/or as non-exempt non-
7 Union-represented employees that had the title of “Leadman” or “Foreman” in California (“Class,”
8 “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is
9 estimated to be six hundred (600), which was confirmed by Defendant. (Declaration of Douglas
10 Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han
11 Decl.”), ¶¶ 8-9.)

12 **II. BACKGROUND**

13 On September 20, 2021, Plaintiff Cholico filed a wage-and-hour class action lawsuit in the
14 Superior Court of California, County of San Bernardino, alleging eight (8) causes of action. (Han
15 Decl., *supra*, at ¶ 10.)

16 On February 10, 2022, Plaintiff Cholico filed a First Amended Complaint that added Aaron
17 Romano as a named plaintiff and added Aaron Romano’s class claims under the Labor Code but
18 later lost communication with Aaron Romano. (Han Decl., *supra*, at ¶ 11.)

19 On July 11, 2022, Plaintiff Cholico filed a Second Amended Complaint that replaced Aaron
20 Romano with Plaintiff Muldrew as a named plaintiff. (Han Decl., *supra*, at ¶ 12.)

21 On July 11, 2022, Plaintiff Muldrew provided written notice to the California Labor and
22 Workforce Development (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

23 After engaging in extensive discovery, investigation, and negotiation, the Parties remotely
24 attended mediation with experienced professional mediator Deborah Crandall Saxe on June 19,
25 2023, resulting in the settlement of this matter. (Han Decl., *supra*, at ¶ 14.)

26 Pursuant to the settlement, the Parties stipulated to file a Third Amended Complaint
27 adjusting the “Class” definition and adding a cause of action for violation of Labor Code section
28 2698, *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 15; Exhibit 2.)

1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Plaintiffs and Defendant propounded form interrogatories, special interrogatories, requests
4 for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 17.) The Parties
5 responded to the formal discovery requests and drafted motions to compel further responses to the
6 formal discovery requests. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage
7 in an informal exchange of information and eventually remotely attended mediation. (*Ibid.*)

8 Defendant produced several documents relating to its policies, practices, and procedures.
9 (Han Decl., *supra*, at ¶ 18.) Plaintiffs also reviewed time records, pay records, and information
10 relating to the size and scope of the Class. (*Ibid.*) Several putative class members were also located
11 and interviewed (via contact information provided by Defendant and Plaintiffs) to attain a better
12 understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

13 Based on the information provided by Defendant and interviews with putative class
14 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees
15 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
16 failed to include non-discretionary bonuses in employees’ regular rate of pay for purposes of
17 overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse employees
18 for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for
19 waiting time penalties. (Han Decl., *supra*, at ¶¶ 20-27.)

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

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

22 The Parties remotely attended mediation with an experienced mediator on June 19, 2023.
23 (Han Decl., *supra*, at ¶ 28.) Under the auspices of the mediator, the Parties reached a settlement,
24 the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 28; Exhibits 3, 5.)

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26 ///

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

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

6 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
7 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
8 *supra*, at ¶ 32.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further
9 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
10 on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
11 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

13 The Parties investigated and evaluated the strengths and weaknesses of the claims and
14 defenses before reaching the Settlement and engaged in research and discovery to support the
15 Settlement. (Han Decl., *supra*, at ¶ 33.) The Settlement was only possible following significant
16 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
17 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
18 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
19 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
20 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
21 at ¶ 33; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

23 **i. Deductions from the Settlement**

24 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
25 for the non-reversionary total sum of \$1,250,000 (“Gross Settlement Amount”) which includes:
26 (1) Class Counsel Fees Payment not to exceed \$437,500 (35% of the Gross Settlement Amount);
27 (2) Class Counsel Litigation Expenses Payment not to exceed \$20,000; (3) Class Representative
28 Service Payments totaling \$20,000; (4) Administration Expenses Payment not to exceed \$20,000;

and (5) PAGA Penalties not to exceed \$75,000. (Han Decl., *supra*, at ¶ 29.)

ii. Calculating Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$677,500 (“Net Settlement Amount”) will be paid to all Class Members who do not submit valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”) – with a gross *average* Individual Class Payment estimated at \$1,129.17. (Han Decl., *supra*, at ¶ 30.)

Participating Class Member will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 3, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%) to the settlement of wages claims and eighty percent (80%) to the settlement of claims for interest and penalties. (*Id.* at § C(2)(d)(i).)

The portion of the PAGA Penalties that is to be paid to each Allegedly Aggrieved Employee shall be determined using the formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § C(2)(e)(i).) Allegedly Aggrieved Employees’ portion of the PAGA Penalties will be allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

iii. Notice to the Class

No later than thirty (30) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send the Class Notice with a Spanish translation to all Class Members identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

iv. Distribution of Funds

The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed settlement checks will be canceled and paid to the California Controller's Unclaimed Property Fund. (*Id.* at § D(3)(c).)

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1 **v. Release of Claims**

2 Upon the Effective Date and Defendant’s full funding of the Gross Settlement Amount and
3 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 ¶ 28; Exhibit 2, *supra*, at § E(2).)

7 Upon the Effective Date and Defendant’s full funding of the entire Gross Settlement
8 Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class
9 Payments, all Participating and Non-Participating Class Members, who are Allegedly Aggrieved
10 Employees, are deemed to release, on behalf of themselves and their former and present
11 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
12 Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § 5.3.)

13 Upon the Effective Date and Defendant’s full funding of the entire Gross Settlement
14 Amount and all employer payroll taxes owed on the Wage Portion of the Individual Class
15 Payments, Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs,
16 administrators, successors, and assigns generally release and forever discharge the Released
17 Parties from Plaintiffs’ Release. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § E(1).) Plaintiffs
18 also expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of
19 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 are acceptable because they are 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.*)

28 ///

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 ¶¶ 2-7; 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.¹ (*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.²
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
 hearing.

16 ...
17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
 agreement and proposed notice to class members must be filed with the
 motion, and the proposed order must be lodged with the motion.

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

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

27 ² The California Supreme Court has also authorized California's trial courts to use Federal
28 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 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

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

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

18 **i. The Settlement Amount of \$1,250,000 Is Fair and Reasonable**

19 The Settlement Agreement was only possible following significant investigation and
20 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
21 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
22 potential damages. (Han Decl., *supra*, at ¶ 33.)

23 The claims are predicated on the purported: (1) failure to properly calculate and pay
24 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
25 consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5)
26 failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation
27 of PAGA; and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl.,
28 *supra*, at ¶ 34.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 35.)

1 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 36.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
6 (*Ibid.*) Thus, the calculations for potential damages were discounted.

7 **ii. The PAGA Penalties of \$75,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5,
10 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*,
11 at ¶ 45.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA
12 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it
13 had a strong argument it would be unjust to award maximum PAGA penalties given the law's
14 current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 45; *Thurman v.*
15 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
16 authority].) Furthermore, Defendant argued without stacking and limited to the initial violation,
17 the PAGA penalties would be limited to about **\$49,200** (492 employees x \$100 penalty for initial
18 violation) on the low end **\$344,400** (492 employees x \$100 penalty for initial violation x 7 theories
19 of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 46-48.)

20 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
21 at ¶ 49.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
22 Allocating \$75,000 to PAGA civil penalties was reasonable given that Defendant is also paying
23 an additional \$1,175,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
24

25 ³ (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].)

good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (Han Decl., *supra*, at ¶ 49.)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$9,778,129.50** on the low end and around **\$10,518,729.50** on the high end. (Han Decl., *supra*, at ¶ 50.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,212,658.44	70%	65%	\$127,329.14
Meal Break Premiums	\$2,258,618.40	60%	55%	\$406,551.31
Overtime/Minimum Wage: Off-the-Clock Work	\$1,481,200 to \$2,221,800	55%	55%	\$299,943 to \$449,914.50
Regular Rate	\$412,357.46	35%	45%	\$147,417.79
Unreimbursed Business Expenses	\$652,620	25%	80%	\$97,893
Wage Statement Penalty	\$1,968,000	65%	65%	\$241,080
Waiting Time Penalty	\$1,792,675.20	65%	65%	\$219,602.71
MAXIMUM TOTAL EXPOSURE	\$9,778,129.50 to \$10,518,729.50⁵			\$1,539,816.95 to \$1,689,788.45⁶

The realistic recovery for this case is about **\$1,539,816.95** on the low end and **\$1,689,788.45** on the high end. (Han Decl., *supra*, at ¶ 58.) The Gross Settlement Amount is about twelve percent (11.88%) of the maximum potential exposure and around seventy-four percent (73.97%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

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

⁵ (Han Decl., *supra*, at ¶¶ 37-44.)

⁶ (*Id.* at ¶¶ 51-57.)

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. Ceullar Alaska*
7 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in
8 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
9 The 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 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 ¶ 59.) Plaintiffs contends their
21 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
22 the interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual
23 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

25 “Ascertainability is required in order to give notice to putative class members as to whom
26 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
27 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
28 by describing a set of common characteristics sufficient to allow a member of that group to identify

1 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
2 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
3 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

4 This case involves approximately six hundred (600) Class Members, meaning the Class is
5 sufficiently numerous. (Han Decl., *supra*, at ¶ 60; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
6 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former
7 employees” is sufficiently numerous].)

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

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

18 **1. Common Issues Predominate**

19 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
20 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
21 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts
22 determine whether the elements necessary to establish liability are susceptible to common proof,
23 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*
24 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
25 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC*
26 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
27 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
28 (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 ¶ 61.) 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 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 ¶ 62.) Plaintiffs seek relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 63.) 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. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs have no interest averse to the interests of the other Class Members. (*Ibid.*)

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.

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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 jtorrez@justicelawcorp.com

On August 31, 2023, 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: **Cholico, et al. v. Vista Metals Corp.**
LWDA/Court Case No.: **LWDA Case No.: CM-894732-22**
Court Case No.: CIVSB2126589
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

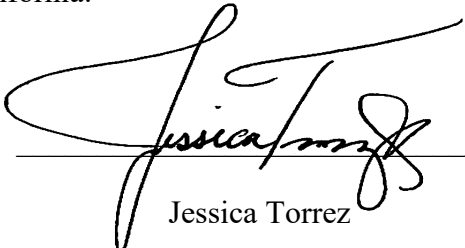
[X] BY ELECTRONIC SUBMISSION

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 August 31, 2023, at Pasadena, California.


Jessica Torrez