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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

ERIC WADE, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

STEEL UNLIMITED, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CVRI2103751

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

CLASS ACTION

**PLAINTIFF'S 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: 396327359754]

*[filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Jodey Lawrence,
Christopher Harmon, and Michael
Johnston; [Proposed] Order; and
Compliance Chart]*

Hearing Date: November 29, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 10

Complaint Filed: August 3, 2021
FAC Filed: September 2, 2022
Trial Date: None Set

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

2 PLEASE TAKE NOTICE on November 29, 2022 at 8:30 a.m., or as soon thereafter
3 as this matter may be heard, at Department 10, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiff Eric Wade (“Plaintiff”), on behalf of himself and all persons
5 similarly situated, will and hereby does move this Court pursuant to Code of Civil
6 Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Plaintiff and Defendant Steel Unlimited, Inc. (“Defendant”), including
9 granting preliminary approval of the following Class: “all current and
10 former hourly-paid or non-exempt employees of Defendant within the State
11 of California at any time during the period from August 3, 2017 to October
12 22, 2022” (“Class,” “Class Members,” and “Class Period”). “Class
13 Members” shall not include any person who submits a timely and valid
14 Request for Exclusion Form;
- 15 (2) Approving the form of notice of class action settlement and procedure for
16 notice to the Class; and
- 17 (3) Setting the Final Approval Hearing.

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

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

25 ///

26 ///

27 ///

1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
2 of the Class shall be fully and finally resolved for the total sum of \$550,000 (“Maximum
3 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
4 Maximum Settlement Amount after the following deductions are made (“Net Settlement
5 Amount”) shall be available for distribution to Class Members who do not submit timely
6 and valid Requests for Exclusion Form:

- 7 • up to \$192,500 to Class Counsel as the attorneys’ fees;
- 8 • up to \$20,000 to Class Counsel as the attorneys’ costs for reimbursement of
9 attorneys’ costs and expenses incurred;
- 10 • up to \$10,000 to Plaintiff as Class Representative Enhancement Payment;
- 11 • up to \$10,000 to Phoenix Class Action Administration Solutions, the
12 Settlement Administrator, as the Settlement Administration Costs; and
- 13 • \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
14 (\$37,500) will be paid to the California Labor and Workforce Development
15 Agency and twenty-five percent (25%) of which (\$12,500) will be
16 distributed to all current and former hourly-paid or non-exempt employees
17 of Defendant within the State of California at any time during the period
18 from June 21, 2020 to October 22, 2022, on a pro rata basis, as their
19 Individual PAGA Payments in accordance with the Settlement Agreement.

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

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

7
8 Dated: October 24, 2022

JUSTICE LAW CORPORATION

9
10 By: 
11 Douglas Han
12 *Attorneys for Plaintiff*

DOUGLAS HAN (SBN 232858)
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ERIC WADE, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

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corporation; and DOES 1 through 100,
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Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 10

CLASS ACTION

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN ORDER
(1) PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS ACTION
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[Reservation ID: 396327359754]

*[filed concurrently with Plaintiff's Notice of
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Lawrence, Christopher Harmon, and Michael
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Eric Wade (“Plaintiff”) filed a wage-and-hour class action lawsuit and
4 representative action against Defendant Steel Unlimited, Inc. (“Defendant”) (collectively,
5 referred to herein as the “Parties”) in the Superior Court of California, County of Riverside,
6 Case Number CVRI2103751 (the “Action”).

7 After engaging in extensive discovery, investigation, and negotiations with the
8 assistance of an experienced mediator Honorable Carl J. West, the Parties agreed to settle all
9 claims alleged on a class wide non-reversionary basis for \$550,000.

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

18 **II. STATUS OF THE LITIGATION**

19 **A. Procedural History**

20 On August 3, 2021, Plaintiff, a former employee of Defendant, filed a wage-and-hour
21 class action lawsuit in the Superior Court of California, County of Riverside, alleging eight (8)
22 causes of action. (Declaration of Douglas Han In Support of Plaintiff’s Motion For
23 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶ 12.)

24 After engaging in discovery, investigation, and negotiations, the Parties remotely
25 attended mediation on August 22, 2022 with the mediator Honorable Carl J. West, resulting in
26 the settlement of this matter. (Han Decl., *supra*, at ¶ 13.)

27 ///

28 ///

1 Pursuant to the settlement, Plaintiff provided written notice to the California Labor and
2 Workforce Development Agency (“LWDA”) and Defendant on August 23, 2022. (Han Decl.,
3 *supra*, at ¶ 14.) Afterwards, on September 2, 2022, Plaintiff filed a First Amended Complaint
4 that: (a) adjusted the Class definition; (b) added a cause of action for violation of Labor Code
5 section 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)); and (c) updated the
6 allegations based on the information acquired prior to and during mediation. (*Ibid.*)

7 **B. Investigation and Discovery**

8 Before filing the lawsuit, Class Counsel investigated and researched the facts and
9 circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 15.)
10 This required thorough discussions and interviews, as well as preliminary research into the
11 various legal issues involved. (*Ibid.*) After conducting an initial investigation, Class Counsel
12 determined the claims were suited for class and representative action adjudication. (*Ibid.*)

13 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
14 and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 16.) This included:

15 • conducting discovery and meeting and conferring with Defendant’s counsel
16 several times throughout this litigation, which produced the following:

- 17 ○ Plaintiff’s personnel records;
- 18 ○ Employment application documents with arbitration agreements;
- 19 ○ Email correspondence regarding meal break corrections, including examples
20 of corrections made to time records;
- 21 ○ Financial statements consisting of a compilation report, balance sheet, and
22 income statement along with a detailed general ledger;
- 23 ○ A copy of Defendant’s most recent employee handbook, including meal
24 break waiver documents and time and attendance memos;
- 25 ○ Class list of non-exempt employees from August 3, 2017 to the present,
26 including their hourly rates, job titles, and work locations;
- 27 ○ A sampling of putative class members’ payroll records within several PDFs.
28 The PDFs were redacted payroll records;

- A sampling of putative class members' time records within several Microsoft Excel Worksheets (*i.e.*, clock ins, clock outs, regular hours worked, overtime hours worked);
- reviewing and analyzing the sampling of time and payroll records, Plaintiff's personnel records, policy documents, employee handbook, email correspondence, financial statements, class list, relevant policies, and other documentation;
- researching the applicable law and potential defenses;
- locating and interviewing several putative class members;
- constructing damage models based on interpretations of California law; and
- reviewing information provided by Defendant. (Han Decl., *supra*, at ¶ 16.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant's records. (Han Decl., *supra*, at ¶ 17.) Class Counsel's investigation revealed there are about one hundred seventy-five (175) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel's investigation also revealed there are approximately one hundred eleven (111) Eligible Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendant contested liability, amount of claimed damages, and propriety of class certification. (Han Decl., *supra*, at ¶ 18.) Given the high level of risk present for both sides, the Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

On August 22, 2022, the Parties remotely participated in full day mediation. (Han Decl., *supra*, at ¶ 19.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From Class Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) This process forced the Parties to make significant compromises in the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

///

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

2 The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han’s declaration.
3 Defendant agreed to pay \$550,000 (“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 ¶ 21.) The Settlement Agreement defines the Class as
6 “all current and former hourly-paid or non-exempt employees of Defendant within the State of
7 California at any time during the period from August 3, 2017 to October 22, 2022” (“Class,”
8 “Class Members,” and “Class Period”). (*Ibid.*) “Class Members” shall not include any person
9 who submits a timely and valid Request for Exclusion Form. (*Ibid.*) The amount remaining in
10 Maximum Settlement Amount after the following deductions shall be distributed to Class
11 Members who do not opt out (“Net Settlement Amount”):

- 12 • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class
13 Counsel as the attorneys’ fees (\$192,500);
- 14 • up to \$20,000 to Class Counsel as the attorneys’ costs for the reimbursement of
15 actual costs and expenses incurred;
- 16 • up to \$10,000 to Plaintiff as the Class Representative Enhancement Payment;
- 17 • up to \$10,000 as the Settlement Administration Costs to the Settlement
18 Administrator, Phoenix Class Action Administration Solutions (“Phoenix”); and
- 19 • up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
20 (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) will be
21 paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment
22 even if they submit valid and timely Request for Exclusion Form (“PAGA Payment” and
23 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 21.)

24 The Net Settlement Amount (approximately \$267,500) will be distributed to the Class
25 Members. (Han Decl., *supra*, at ¶ 22.)

26 The Agreement amount was a compromise, factoring in risks related to certification,
27 liability, and damages. (Han Decl., *supra*, at ¶ 25.) Considering the circumstances of the
28 Action, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

1 **A. Number of Class Members**

2 There are around one hundred seventy-five (175) Class Members and one hundred
3 eleven (111) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 17, 90(a).)

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

6 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
7 Settlement Payment will be about \$1,528.57. (Han Decl., *supra*, at ¶ 22.) Individual
8 Settlement Payments will be calculated and apportioned from the Net Settlement Amount
9 based on the number of Workweeks a Class Member worked during the Class Period as an
10 hourly-paid or non-exempt employee in California. (*Id.* at ¶ 23.) Individual PAGA Payments
11 will be calculated and apportioned from the twenty-five percent (25%) of the PAGA Payment
12 (\$12,500) based on the number of Workweeks an Eligible Aggrieved Employee worked during
13 the PAGA Period as an hourly-paid or non-exempt employee in California. (*Ibid.*)

14 **C. Discovery Exchanged**

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

17 **D. Other Pending Litigation**

18 After making reasonable inquiries, Class Counsel learned there is a similar lawsuit
19 alleged against Defendant in the Superior Court of California, County of Riverside, titled
20 *Granados v. Steel Unlimited, Inc., et al.* (Case No. CVRI2201141) (“Granados Action”). (Han
21 Decl., *supra*, at ¶ 20.) The lawsuit filed on March 22, 2022 and is currently set in Department
22 10. (*Ibid.*) The claims asserted in this lawsuit were like those alleged in the Action. (*Ibid.*) On
23 June 21, 2021, Ms. Granados’ counsel provided written notice to the LWDA, Defendant, and
24 two (2) of Defendant’s owners who are released because of the Agreement. (*Ibid.*) That would
25 mean the PAGA liability period for the Granados Action goes back to June 21, 2020. (*Ibid.*)
26 Ms. Granados is also a Class Member who was employed by Defendant as an hourly-paid,
27 non-exempt employee from approximately January 2021 to June 2021. (*Ibid.*) The Granados
28 Action has a Case Management Conference set for January 9, 2023 at 8:30 a.m. (*Ibid.*)

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

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

3 **F. Settlement Administrator**

4 The Settlement Agreement provides up to \$10,000 will be paid to the Settlement
5 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 86.) The bid is
6 comprised of Not-To-Exceed Total, per hour/unit rates, and per line-item rates. (*Ibid.*)

7 Class Counsel obtained bids from Phoenix and CPT Group, Inc. (“CPT Group”) for the
8 administration of this Action. (Han Decl., *supra*, at ¶ 87.) Phoenix had the most competitive
9 (lowest) bid at \$7,950 when compared to the bid from CPT Group that was \$9,500. (*Ibid.*)

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

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

13 Class Members will receive checks for their Individual Settlement Payments and
14 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 88.) Checks will remain negotiable for
15 one hundred eighty (180) calendar days. (*Ibid.*) Any check not cashed within one hundred
16 eighty (180) calendar days will be void and shall be distributed by the Settlement
17 Administrator to the State Controller’s Unclaimed Property Fund. (*Ibid.*)

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

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

21 [A]ll causes of action and factual or legal theories stated in the operative
22 complaints and those based solely upon the facts alleged in the operative
23 complaints. This includes all of the following claims for relief: (a) failure
24 to pay all regular wages, minimum wages, overtime wages, and sick leave
25 due; (b) failure to provide proper meal and rest breaks and to properly
26 provide premium pay in lieu thereof; (c) failure to provide complete,
27 accurate, or properly formatted wage statements and payroll records; (d)
28 failure to reimburse necessary business expenditures; (e) failure to pay
waiting time penalties; (f) failure to timely pay wages during employment
and after employment; (g) engaging in unfair business practices that could
have been premised on the claims, causes of action or legal theories of

1 relief described above or any of the claims, causes of action or legal
2 theories of relief pleaded in the operative complaints; (h) all claims under
3 PAGA, which shall only bind Plaintiff and the State of California, that
4 were described in Plaintiff's notice letter sent to the LWDA on August 23,
5 2022 and only to the extent these claims were alleged in the operative
6 complaints; and (i) all damages, penalties, interest, and other amounts
recoverable under said claims, causes of action or legal theories of relief.
The period of the Released Claims shall extend to the limits of the Class
Period ("Released Claims").

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

8 Pursuant to the terms set forth in the Settlement Agreement, Released Parties include
9 Defendant together with its officers, directors, employees, and agents ("Released Parties").

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

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

12 Within twenty-one (21) calendar days of entry of the Court's Order Granting
13 Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.
14 (Han Decl., *supra*, at ¶ 73.) Prior to mailing, the Settlement Administrator will perform a
15 search based on the National Change of Address Database for information to update and
16 correct for any known or identifiable address changes. (*Id.* at ¶ 74.) Within ten (10) calendar
17 days after the Settlement Administrator receives the Class List, the Settlement Administrator
18 will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Ibid.*)

19 The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims
20 involved, material terms of the Agreement, Class Members' options thereunder, and how Class
21 Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 75.) The
22 Notice Packet also provides for a specific procedure to seek exclusion from the Class and for
23 lodging objections to the Agreement. (*Ibid.*)

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

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

27 **K. Settlement Does Not Provide Any Reversion to Defendant**

28 Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert

1 to Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(b).)

2 **L. Employer's Share of Payroll Taxes and the Allocation of Settlement Payments**

3 All Individual Settlement Payments will be allocated as follows: (a) twenty percent
4 (20%) as wages; and (b) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶
5 2; Exhibit 1, *supra*, at ¶ 57.) All Individual PAGA Payments will be allocated as one hundred
6 percent (100%) penalties. (*Ibid.*)

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

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

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

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

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

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

28 ///

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

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

6 Plaintiff contends, and Defendant does not dispute, the requirement of numerosity is
7 met. The documents and information exchanged reflect a Class of approximately one hundred
8 seventy-five (175) Class Members. (Han Decl., *supra*, at ¶ 90(a).) The Class Members were
9 identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 90(b).)

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

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

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

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

20 Plaintiff contends, and Defendant does not dispute, common issues of fact and law
21 predominate as to each of the claims alleged, and the Class is united in its proof. Because
22 Plaintiff alleged a single scheme, “the relevant proof [does] not vary among class members”
23 and “clearly presents a common question fundamental to all class members.” *See In Re*
24 *NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re*
25 *NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California
26 courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and class-wide
27 damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal.
28 App. 3d at 1350. This inference ““eliminates the need for each class member to prove

1 individually the consequences of the defendants' actions to him or her.” *B.W.I. Custom*
2 *Kitchen*, 191 Cal. App. 3d at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal.
3 App. 3d 741, 753 [emphasis added]).

4 This Action involves, *inter alia*, a determination about Defendant’s alleged: (1) failure
5 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
6 business expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate
7 overtime wages and sick leave; (5) failure to pay final wages when required; (6) failure to
8 provide accurate wage statements; and (7) largely derivative claims under the Business &
9 Professions Code and PAGA. (Han Decl., *supra*, at ¶ 90(e).) Plaintiff contends these practices
10 affected Class Members in the same way. (*Ibid.*) While Defendant maintained otherwise, these
11 issues will not be decided based on facts peculiar to each Class Member but based on facts
12 common to the Class. Finally, these issues of liability can be determined on a class-wide basis.

13 C. The Plaintiff’s Claims Are Typical

14 A class representative’s claims are typical when they arise from the same event,
15 practice, or course of conduct that gives rise to the claims of other putative class members, and
16 if their claims rest on the same legal theories. The class representative’s claims must be
17 “typical” but not necessarily identical to the claims of other class members. It is sufficient that
18 the representative is similarly situated so that he or she will have the motive to litigate on
19 behalf of all class members. *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom*
20 *Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 (“[I]t has never been the
21 law in California that the class representative must have identical interests with the class
22 members.”). Thus, it is not necessary the class representative should have personally incurred
23 all the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.*
24 (2001) 91 Cal.App.4th 224, 228.

25 Plaintiff contends, and Defendant does not dispute, the claims are typical of Class
26 Members’ claims because they arose from the same factual basis and are based on the same
27 legal theories. (Han Decl., *supra*, at ¶ 90(c).) Plaintiff was employed by Defendant during the
28 Class Period and subject to the allegedly unlawful meal and rest break policies and pay

practices at issue in this litigation. (Han Decl., *supra*, at ¶ 90(c).) The central issues of this litigation (whether Defendant failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages, etc.), which would arise if this were an individual action brought by Plaintiff, apply to the other Class Members. (Han Decl., *supra*, at ¶ 90(c).) Consequently, the answer to these questions would determine Defendant's liability to the Class. (*Ibid.*)

D. Adequacy of Class Counsel and Class Representative

Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 90(d); Exhibit 2.) Moreover, Plaintiff's interests are aligned with those of the Class Members, they suffered the same injuries as the Class Members, and have no conflicts of interest. (*Id.* at ¶ 90(d).)

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. (Han Decl., *supra*, at ¶ 90(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 ¶ 90(g).)

V. THE TWO-STEP APPROVAL PROCESS

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

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

Preliminary approval by the trial court is a conditional finding the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength

1 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
2 settlement proposal may vary. The court may find the settlement proposal contains some merit,
3 is within the range of reasonableness required for a settlement offer, or is presumptively valid
4 subject only to any objections that may be raised at a final hearing.” 4 Alba Conte & Herbert
5 B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

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

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

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

14 As a matter of public policy, the courts both encourage the use of the class action
15 device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000)
16 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a
17 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
18 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
19 where complex class action litigation is concerned.”)

20 The courts presume the absence of fraud or collusion in the negotiation of a settlement
21 unless evidence to the contrary is offered. There is a presumption the negotiations were
22 conducted in good faith. *Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
23 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
24 438, 447. Courts do not substitute their judgment for that of the proponents, particularly when
25 settlement was reached by experienced counsel familiar with the litigation. *Rodriguez*, 2007
26 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.

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

8 The Agreement satisfies these factors. Specifically, Class Counsel conducted extensive
9 discovery before entering meaningful settlement negotiations, including a detailed analysis of
10 Defendant's policies and a considerable sample of Defendant's time and pay records. (Han
11 Decl., *supra*, at ¶¶ 15-16.) This discovery permitted Class Counsel to evaluate the strengths
12 and weaknesses of the case and the risks associated with ongoing litigation. (*Id.* at ¶ 19.) In
13 addition, Class Counsel are experienced in the handling of wage-and-hour class actions and
14 support the Settlement. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)

15 **A. The Strength of Plaintiff's Case.**

16 The claims in this action include failure to provide meal and rest breaks, failure to pay
17 minimum wages, failure to pay and properly calculate overtime wages and sick leave, failure to
18 pay final wages when due, failure to provide accurate wage statements, failure to reimburse
19 necessary business expenses, and related claims for violations of the Business & Professions
20 Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 27.)

21 Class Counsel felt confident the claims would be certified given Defendant's policies
22 and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 28-66.)

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

24 Plaintiff contends Defendant's meal and rest break policies were not *Brinker*-compliant,
25 employees were not permitted to take additional breaks, and heavy, time-sensitive workloads
26 prevented the receipt of proper breaks. (Han Decl., *supra*, at ¶¶ 29, 32-33.) This was
27 purportedly made worse by Defendant's strict attendance policies and Defendant expecting
28 employees to don their personal protective equipment ("PPE") during their breaks and waiting

1 in line to clock back in. (Han Decl., *supra*, at ¶¶ 29, 32-33.) Defendant countered it always
2 maintained compliant meal and rest break policies, did not permit supervisors to interfere with
3 the receipt of proper breaks, rarely assigned heavy, time-sensitive workloads, and was never
4 made aware of there being a line of employees trying to clock back in. (*Id.* at ¶¶ 30, 34.) In
5 other words, employees were choosing to don their PPEs during their breaks and prematurely
6 end their breaks rather than being forced to do so. (Han Decl., *supra*, at ¶¶ 30, 34.) By
7 extension, Defendant may even produce evidence to demonstrate employees were advised of
8 their right to take additional breaks, but most employees did not work the requisite hours to
9 qualify for additional breaks. (*Ibid.*) Defendant also asserted if employees were not paid
10 premium wages, it is because Defendant was never made aware of employees not receiving
11 proper breaks. (*Ibid.*) Finally, Defendant contended Class Counsel will have to gather
12 declarations from putative class members to prove the existence of improper, uniform policies
13 and practices. (*Ibid.*)

14 As the consideration concerning meal and rest breaks would likely depress the damages
15 *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the
16 meal and rest break claims. (Han Decl., *supra*, at ¶¶ 31, 35.) If Defendant's contentions are
17 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
18 would be no recovery for the Class Members.

19 Plaintiff also alleged Defendant failed to pay and properly calculate all applicable
20 wages owed, including minimum wages, overtime wages, and sick leave. (Han Decl., *supra*,
21 at ¶¶ 36, 39.) Specifically, Defendant allegedly expected employees to engage in various pre-
22 shift and post-shift duties for which they were not compensated. (*Ibid.*) Specifically,
23 employees were purportedly required to don their PPEs before clocking in and to be at their
24 workstations ready to work at the start of their shifts to avoid disciplinary measures. (*Ibid.*)
25 This was apparently made worse by Defendant paying employees non-discretionary bonuses
26 but failing to factor them into employees' regular rate of pay for overtime compensation and
27 sick leave pay purposes. (*Ibid.*) Defendant countered these claims are not suitable for class
28 treatment. (*Id.* at ¶¶ 37, 39.) Instead, Defendant argued it expressly prohibited off-the-clock

1 work, always required employees to don their PPEs during their shifts, and was never made
2 aware of employees working off-the-clock. (Han Decl., *supra*, at ¶¶ 36, 39.) In addition,
3 Defendant contended any payment of bonuses was completely discretionary, meaning the
4 bonuses did not need to be factored into employees' regular rates of pay. (*Ibid.*) Finally,
5 Defendant asserted any unrecorded hours would likely be subject to individual inquiries and
6 unlikely to be certified. (Han Decl., *supra*, at ¶¶ 37, 39) Given the difficulty in certifying this
7 claim, Class Counsel applied a discount to damages. (*Id.* at ¶¶ 38, 40.) If Defendant's
8 contentions held true, the outcome of this claim would be little to no recovery for employees.

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

10 To establish liability for wage statement violations and waiting time penalties, Plaintiff
11 would first have to establish liability for the underlying claims. But Defendant argued the claim
12 for further Labor Code section 226(e) penalties would depend on the underlying rest break,
13 meal break, and wage claims, meaning it would be subject to the same defenses listed above.
14 (Han Decl., *supra*, at ¶ 43.) In addition, Defendant added the above-mentioned violations did
15 not occur every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Thus,
16 Defendant concluded employees need to show they suffered injury because of Defendant's
17 noncompliance and that such noncompliance was knowing and intentional. (*Ibid.*)

18 Similarly, Defendant also countered the claim for section 203 penalties is dependent on
19 the underlying meal and rest break and wage claims, meaning it would be subject to the same
20 defenses listed and described above. (Han Decl., *supra*, at ¶¶ 47-48.) With these penalties,
21 there is always the risk the trier of fact would not have held Defendant's actions were done
22 "willfully." A good faith belief in a legal defense can preclude a finding of willfulness.
23 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As
24 discussed above, Plaintiff alleges Defendant failed to pay for all hours worked and premiums
25 for noncompliant meal and rest breaks. (Han Decl., *supra*, at ¶¶ 29, 32-33, 36, 39.) By
26 extension, Plaintiff contends the Class Members are entitled to minimum wages, overtime
27 wages, and premium wages, which were allegedly not paid at the time of their termination or
28 resignation. (*Id.* at ¶¶ 45-46.) Defendant counters it provided employees with reasonable

opportunities to take breaks, asked employees to confirm the accuracy of their time records, and had good-faith defenses under *Brinker* and its progeny. (Han Decl., *supra*, at ¶¶ 48-49.)

D. The Risks Associated with the PAGA Penalties.

Labor Code section 2699.3 gives aggrieved employees the right to recover civil penalties for specific Labor Code violations by way of a civil action. The PAGA provides a penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. (Lab. Code § 2699, subd. (e)(2).) If a civil penalty is provided in a specified amount by the Labor Code section relating to the underlying alleged Labor Code violation, that amount shall apply. (*Ibid.*) PAGA also gives the Court discretion to award any lesser amount than the maximum civil penalty. (*Id.* [“...a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”]); *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1135 [reducing PAGA award on this basis].)

The provisions of the Labor Code potentially triggering PAGA penalties include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 54.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments against the underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*; *See Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Without stacking and limited to the initial violation, PAGA penalties would be **\$11,100** (111 employees x \$100 initial violation) on the low end and **\$77,700** (111 employees x \$100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 55-58.)

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1 Plaintiff recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at
2 ¶ 59.) The maximum penalties for each pay period are not justified, and it was arguable the
3 Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to
4 PAGA civil penalties was reasonable based on a rate of **\$7.03** per pay period [$\$50,000 \div 7,115$
5 pay periods in the PAGA Period = **\$7.03**], given Defendant is paying an additional \$500,000 in
6 the class settlement.¹ (Han Decl., *supra*, at ¶ 59.) If PAGA penalties are negotiated in good
7 faith and “there is no indication that [the] amount was the result of self-interest at the expense
8 of other Class Members,” such amounts are considered reasonable.² (*Ibid.*)

9 Finally, Class Counsel are confident they would successfully prove Defendant’s alleged
10 wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 60.) Plaintiff
11 contends Defendant failed to maintain *Brinker*-compliant meal and rest break policies and
12 frequently assigned employees heavy, time-sensitive workloads that prevented the receipt of
13 proper breaks. (*Ibid.*) By extension, Defendant allegedly expected employees to don their
14 PPEs before clocking back in from their meal breaks and even allowed a line of employees
15 trying to clock back in to form. (*Ibid.*) This was purportedly made worse by Defendant
16 requiring employees to be at their workstations ready to work at their scheduled shift time
17 before clocking back in. (*Ibid.*) By extension, Plaintiff asserts Defendant knowingly and
18 intentionally failed to pay premium wages for noncompliant meal and rest breaks despite these
19 violations. (*Ibid.*) Plaintiff also alleges Defendant knew its stringent policies pressured
20 employees to arrive to work earlier than their scheduled shifts to avoid appearing tardy. (*Ibid.*)
21 Finally, Plaintiff contends Defendant intentionally paid employees bonuses non-discretionary
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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
\$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

27 ² (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
28 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.”).)

1 in nature but knowingly failed to factor such payments into regular rate of pay. (Han Decl.,
2 *supra*, at ¶ 60.) Plaintiff asserts Defendant knowingly and intentionally implemented its
3 improper, uniform policies and practices, which resulted in the alleged violations. (*Ibid.*)

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

5 Given the risks outlined above, the issues in this case were complex and the risk for
6 Plaintiff and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
7 67-71.) A class trial would have required extensive preparations, thereby requiring the Parties
8 to expend a substantial amount of time. (*Id.* at ¶ 71.) Given the complexity and unsettled
9 nature of the issues, it is likely any outcome at trial would have resulted in a lengthy and costly
10 appeal. (*Id.* at ¶¶ 68-71.) Finally, an appeal would result in further delay for the Class
11 Members who have already waited years for resolution in this matter. (*Id.* at ¶¶ 68, 71.)

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

13 In class actions, decertification is always a possibility. There is always a risk a trial of
14 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*
15 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class
16 actions, decertification is a real risk Class Counsel must consider.

17 **G. The Amount Offered in Settlement.**

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

22 Excluding the civil penalties, which could be completely discretionary, the total
23 estimated potential exposure, assuming certification and prevailing at trial, would be around
24 **\$2,114,456.35** on the low end and **\$2,325,083.29** on the high end. (Han Decl., *supra*, at ¶ 62.)

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Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$134,821.61	70%	60%	\$16,178.59
Meal Break Premiums	\$395,559.20	60%	50%	\$79,111.84
Overtime/Minimum Wage: Off-the-Clock	\$421,086.45 to \$631,713.39	50%	50%	\$105,271.61 to \$157,928.35
Overtime/Minimum Wage: Regular Rates	\$33,317.09	30%	40%	\$13,993.18
Unreimbursed Business Expenses	\$70,000	30%	70%	\$14,700
Wage Statement Penalty	\$444,000	60%	60%	\$71,040
Waiting Time Penalty	\$615,672	60%	60%	\$68,507.52
MAXIMUM TOTAL EXPOSURE	\$2,114,456.35 to \$2,325,083.29			\$368,802.74 to \$421,459.48

Based on this analysis, the total estimated realistic exposure for this case would be approximately **\$368,802.74** on the low end and **\$421,459.48** on the high end. (Han Decl., *supra*, at ¶ 63.) The Maximum Settlement Amount of \$550,000 is about twenty-three percent (23.66%) of the high end total potential exposure at trial and around one hundred thirty percent (130.50%) of the high end total realistic exposure at trial. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 64.) As a result, Plaintiff added the realistic exposure for rest break premiums and meal break premiums (\$16,178.59 + \$79,111.84 = \$95,290.43). (*Ibid.*) Plaintiff then added the \$95,290.43 to the low end realistic exposure for unpaid wages due to off-the-clock work and underpaid overtime wages and sick leave (\$95,290.43 + \$105,271.61 + \$13,993.18 = \$214,555.22). (*Ibid.*) The realistic exposure of \$214,555.22 Plaintiff can expect to receive if he were to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-clock work, and underpaid overtime wages and sick leave represents about twenty percent (19.88%) of the low end total realistic exposure and PAGA penalties (\$214,555.22 ÷ \$1,079,202.74 = 0.19881 x 100 = 19.88%). (*Ibid.*) Because this represents about twenty percent (20%) of wages, allocating twenty percent (20%) as wages and eighty percent (80%) as interest and penalties pursuant to the Agreement is appropriate. (*Ibid.*)

1 Once Class Counsel determined the maximum potential damages, they established a
2 fair and reasonable settlement for the Class after analyzing the likelihood of success on the
3 merits. (Han Decl., *supra*, at ¶ 25.) After reviewing the facts and circumstances of this matter,
4 Class Counsel concluded the Class had a reasonable likelihood of success on the core claims.
5 (*Id.* at ¶¶ 62-71.) Defendant disputes this contention, denies all wrongdoing in this matter, and
6 is confident it has strong legal and factual defenses to the claims. (*Id.* at ¶¶ 68, 70.) Class
7 Counsel determined the likelihood of success for the claims was not as strong because of
8 various defenses. (*Ibid.*) After considering the likelihood of success and the challenges faced
9 with certification, Class Counsel determined the Agreement amount was fair and reasonable.

10 Class Members have been represented by experienced counsel with many years of
11 experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)
12 Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶
13 15-19.) This included, among other things: (1) interviewing Plaintiff at length on repeated
14 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with
15 Defendant's counsel; (3) reviewing and analyzing time and pay records, Class list, employee
16 handbook, policies documents, and personnel records; (4) researching California law; (5)
17 interviewing putative class members; (6) preparing for and attending mediation; and (7)
18 negotiating and finalizing the Settlement Agreement. (Han Decl., *supra*, *passim*.)

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

23 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND**
24 **REASONABLE**

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

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1 Plaintiff is entitled to reasonable service payment for his efforts in this matter. (Han
2 Decl., *supra*, at ¶ 81.) Plaintiff spent significant time better apprising himself of his rights,
3 deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)
4 Plaintiff decided to vindicate not only his rights but also those of co-workers by filing a wage-
5 and-hour class action lawsuit. (*Ibid.*)

6 By suing Defendant, Plaintiff increased the risk of retaliation by future employers.
7 (Han Decl., *supra*, at ¶ 82.) The lawsuit has cost Defendant considerable resources and such
8 conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment
9 opportunities is real in the information age that contains quick background checks. (*Ibid.*)

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

15 Plaintiff spent hours with Class Counsel detailing his knowledge of Defendant's
16 practices. (Han Decl., *supra*, at ¶ 84.) Plaintiff diligently, adequately, and fairly represented
17 Class Members and did not place his interests above the Class Members. (*Ibid.*) The Class
18 Representative Enhancement Payment is intended to recognize Plaintiff's time and effort, and
19 the amount requested is fair and appropriate based on his contributions. (*Ibid.*)

20 Therefore, Class Counsel believe the Class Representative Enhancement Payment of
21 \$10,000 to Plaintiff is fair and reasonable. (Han Decl., *supra*, at ¶ 85.)

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

24 Under the Agreement, Class Counsel request, without opposition from Defendant, an
25 award of Attorneys' Fees and Costs consisting of: (1) up to \$192,500 as the attorneys' fees;
26 and (2) up to \$20,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 78.) The requested fees
27 are fair compensation for a law firm involved in undertaking complex, risky, expensive, and
28 time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 78-79.) Class Counsel's request for

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

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

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

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

25 The attorneys' fees request provided for in the Settlement Agreement is commensurate
26 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
27 greater than the percentage requested in this case. *See, e.g., In re Pacific Enterprises Securities*
28 *Litigation* (9th Cir. 1995) 47 F.3d 373, 379 (affirming an award equal to 33% of the common

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

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

15 Class Counsel have borne the entire risk and costs of litigation and will not receive any
16 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 78-79.) The Court should
17 also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the
18 requested attorneys' fees award for Class Counsel is reasonable.

19 **A. Fee Splitting Agreement**

20 Class Counsel is not splitting the costs associated with the settlement with any other
21 individuals or firms. (Han Decl., *supra*, at ¶ 89.)

22 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY** 23 **APPROVAL**

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

26 1. Review and approve the Settlement Agreement attached to Douglas Han's
27 declaration as **Exhibit 1**;

28 ///

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 Phillip Song of Justice Law Corporation to serve as Class Counsel for settlement purposes;
6. Approve and appoint Phoenix as the Settlement Administrator to handle the notice procedures as set forth in the Settlement Agreement;
7. Approve the proposed allocation of funds to the claims made under PAGA;
8. Order Defendant to disclose the Class List to Phoenix in accordance with the manner set forth in the Settlement Agreement;
9. Order Phoenix to mail the Notice Packet to Class Members; and
10. Set a date for the Final Approval Hearing.

Dated: October 24, 2022

JUSTICE LAW CORPORATION

By: 
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 manderson@justicelawcorp.com

On October 24, 2022, I served the foregoing document described as

PLAINTIFF'S 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 PLAINTIFF'S 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: **Wade v. Steel Unlimited, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-903573-22**
Court Case No.: CVRI2103751
Riverside County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on October 24, 2022, at Pasadena, California.



Mariah Anderson