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

STEVEN MORENO, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

SOUTHERN CALIFORNIA DISCOUNT
TIRE CO., INC., a California corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2022-00050608-CU-OE-CTL

Assigned for All Purposes to:
Honorable Matthew C. Braner
Department C-60

CLASS ACTION

**PLAINTIFF'S 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: May 10, 2024
Hearing Time: 9:00 a.m.
Hearing Place: Department C-60

Complaint Filed: December 19, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 10, 2024 at 9:00 a.m.,or as soon as the matter may
2 be heard, before the Honorable Matthew C. Braner in Department C-60 of the San Diego County
3 Superior Court (Hall of Justice) located at 330 West Broadway San Diego, California 92101,
4 Plaintiff Steven Moreno (“Plaintiff”) will and hereby does move for an order:

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

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); [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: January 26, 2024

JUSTICE LAW CORPORATION

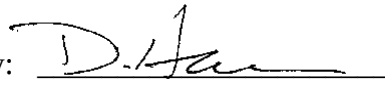
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8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiff on behalf of himself and all individuals who were employed by
4 Defendant Southern California Discount Tire Co., Inc. (“Defendant”) at its California stores as
5 hourly-paid or non-exempt employees during the period from December 19, 2018 through
6 November 30, 2023 or the date of entry of Preliminary Approval, whichever occurs first (“Class,”
7 “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be 10,628, confirmed by Defendant. (Declaration of Douglas Han In Support of
9 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. RELEVANT BACKGROUND**

11 On September 27, 2022, Plaintiff provided written notice to the California Labor and
12 Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

13 On December 19, 2022, Plaintiff filed a wage-and- hour class action lawsuit in the Superior
14 Court of California, County of San Diego, alleging nine (9) causes of action. (Han Decl., *supra*,
15 at ¶ 11; Exhibit 4.)

16 After engaging in extensive formal and informal discovery, investigations, and
17 negotiations, the Parties remotely attended mediation with respected and experienced wage and
18 hour mediator Mark S. Rudy on August 22, 2023, ultimately resulting in the settlement of this
19 matter via a mediator’s proposal days later. (Han Decl., *supra*, at ¶ 12.)

20 **III. INVESTIGATION/ LITIGATION HISTORY**

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

22 Plaintiff propounded form interrogatories, special interrogatories, requests for admission,
23 and requests for production of documents. (Han Decl., *supra*, at ¶ 14.) Defendant propounded
24 requests for production of documents. (*Ibid.*) The Parties’ counsel began communicating and
25 meeting and conferring regularly regarding Plaintiff’s allegations, discovery, path forward in the
26 case, and potential for early resolution of the dispute. (*Ibid.*) The Parties eventually agreed to
27 private mediation before mediator Mark S. Rudy to take place on August 22, 2023.

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1 Prior to mediation, the Parties engaged in extensive back and forth informal discoveries.
2 Defendant produced hundreds of pages of relevant policy documents, representative sampling of
3 time and pay data, personnel files, and information relating to the size and scope of the putative
4 Class. (Han Decl., *supra*, at ¶ 15.) In addition, Plaintiff propounded and Defendant responded to
5 multiple follow-up questions regarding the evidence and data produced. (*Ibid.*) Several putative
6 class members were also located and interviewed to attain a better understanding of the extent and
7 frequency of the alleged day-to-day violations. (*Ibid.*)

8 Based on the information provided by Defendant and interviews with putative class
9 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
10 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
11 maintained a rounding practice that was neither fair nor neutral; (4) failed to include non-
12 discretionary bonuses in employees’ regular rate of pay; (5) failed to reimburse employees for
13 necessary business expenses; (6) issued noncompliant wage statements; and (7) is liable for
14 waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-24.)

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

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

17 The Parties remotely attended mediation before Mark S. Rudy on August 22, 2023. (Han
18 Decl., *supra*, at ¶ 25.) Despite contentious negotiations throughout the day, the Parties did not
19 initially settle at mediation. (*Ibid.*) Under the auspices of the mediator, the Parties did eventually
20 reach a preliminary agreement days later via a mediator’s proposal before the settlement terms
21 were subsequently memorialized in the Settlement Agreement. (*Id.* at ¶ 25; Exhibits 2, 5.)

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

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

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

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

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

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
20 for the non-reversionary total sum of \$5,400,000 (“Gross Settlement Amount”) which includes:
21 (1) Class Counsel Fees Payment not to exceed \$1,800,000 (1/3 of the Gross Settlement Amount);
22 (2) Class Counsel Litigation Expenses Payment not to exceed \$30,000; (3) Class Representative
23 Service Payment not to exceed \$10,000; (4) Administration Expenses Payment not to exceed
24 \$65,000; and (5) PAGA Penalties not to exceed \$250,000. (Han Decl., *supra*, at ¶ 26.)

25 **ii. Calculating Settlement Payments**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$3,245,000 (“Net Settlement Amount”) will be paid to Participating Class Members. (Han Decl.,
28 *supra*, at ¶ 27.)

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

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

10 **iii. Notice to the Class**

11 Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of
12 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
13 ¶ 25; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
14 Class Data, the Administrator will send the Class Notice to all Class Members identified in the
15 Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

16 **iv. Distribution of Funds**

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

21 **v. Release of Claims**

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

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

7 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
8 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
9 Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs,
10 administrators, successors, and assigns generally release and discharge Released Parties from
11 Plaintiff's Release. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § E(1).) Plaintiff also expressly
12 waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil
13 Code. (*Id.* at § E(1)(a).)

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

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

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

3 **IV. ARGUMENT**

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

5 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
6 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
7 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
8 preliminary approval of class settlements:

9 (a) A settlement or compromise of an entire class action, or a cause of action in
10 a class action, or as to a party, requires the approval of the court after
hearing.

11 . . .
12 (c) Any party to a settlement agreement may serve and file a written notice of
13 motion for preliminary approval of the settlement. The settlement
agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

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

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

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
21 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
22 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

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
Class Action Settlement.

26 ² The California Supreme Court has also authorized California’s trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
28 *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.

Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 130; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

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

i. The Settlement Amount of \$5,400,000 Is Fair and Reasonable

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

The claims are predicated on the purported: (1) failure to properly calculate and pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 31.) Defendant vehemently denies the theories of liability and asserted several procedural and merits-based defenses, including but not limited to, the fact it maintained lawful policies and practices, paid a significant amount of premium payments to putative class members, reimbursed for all necessary expenses, did not work putative class members off-the-clock, and properly compensated putative class members for all hours worked. (*Id.* at ¶ 32.)

1 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 33.) 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 \$250,000 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 ¶ 43.) 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 ¶ 44; *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 **\$642,100** (6,421 employees x \$100 penalty for
18 initial violation) on the low end and **\$3,852,600** (6,421 employees x \$100 penalty for initial
19 violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 44-46.)

20 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
21 at ¶ 47.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
22 Allocating \$250,000 to PAGA civil penalties was reasonable given that Defendant is also paying
23 an additional \$5,151,000 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].)

1 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
2 of other Class Members,” such amounts are reasonable.⁴ (Han Decl., *supra*, at ¶ 47.)

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

5 **c. Discount Analysis Justifies the Settlement**

6 Excluding the civil penalties, which could be completely discretionary, Plaintiff estimates
7 a maximum total potential exposure of \$8,502,247.57 in rest break premiums, \$12,366,405.20 in
8 meal break premiums, \$18,197,464.70 to \$24,000,604.70 in minimum wages/overtime wages
9 (covering off-the-clock, rounding, and regular rate claims), \$5,448,920 in unreimbursed business
10 expenses, \$25,684,000 in wage statement penalties, and \$24,772,003.20 in waiting time penalties.
11 (Han Decl., *supra*, at ¶¶ 34-42.)⁵

12 After accounting for reasonable class certification and merits-based litigation risks,
13 however, Plaintiff estimates the realistic potential exposure is approximately \$531,390.47 in rest
14 break premiums, \$1,112,976.47 in meal break premiums, \$1,637,771.82 to \$2,160,054.42 in
15 minimum wages/overtime wages, \$449,535.90 in unreimbursed business expenses, \$1,605,250 in
16 wage statement penalties, and \$1,548,250.20 in waiting time penalties. (Han Decl., *supra*, at ¶¶
17 49-54.) In sum, Plaintiff believes the potential recovery for this case totals around **\$94,971,040.67**
18 on the low end and **\$100,774,180.67** on the high end, and the realistic recovery for this case totals
19 about **\$6,885,174.86** on the low end and **\$7,407,457.46** on the high end. (*Id.* at ¶¶ 48, 55.)⁶ The
20

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

24 ⁵ Plaintiff’s exposure model assumes a one hundred percent (100%) violation rate, does not
25 include offsets for premium payments, overtime wages, or expense reimbursements that may
26 already have been paid, and assumes Defendant would lose at class certification and on the merits
27 of all its asserted defenses. Defendant contends this number is inflated and not representative of
the potential recovery in this action.

28 ⁶ Defendant contends the actual potential recovery, if any, would be much less than the
Plaintiff estimates herein.

Gross Settlement Amount is about five percent (5.36%) of the maximum potential exposure and around seventy-three percent (72.90%) of the maximum realistic exposure at trial, which is a reasonable settlement. (Han Decl., *supra*, at ¶ 55.)

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

d. Conditional Certification of the Class Is Appropriate

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

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

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

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

9 This case involves approximately 10,628 Class Members, meaning the Class is sufficiently
10 numerous. (Han Decl., *supra*, at ¶ 57; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
11 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is
12 sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
25 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
26 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts
27 determine whether the elements necessary to establish liability are susceptible to common proof,
28 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*

1 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
2 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*
3 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
4 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
5 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
6 certified class of dancers on state law claims].)

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

10 **2. Plaintiff's Claims Are Typical of the Class Claims**

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

13 Plaintiff is a former employee of Defendant and alleges he and Class Members were employed
14 by the same company and injured by the common policies and practices related to the claims
15 described above. (Han Decl., *supra*, at ¶ 59.) Plaintiff seeks relief for these claims and derivative
16 claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment practices
17 and are based on the same legal theories applicable to the Class. (*Ibid.*)

18 **3. Plaintiff Is Adequate to Represent the Class**

19 Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 60.)
20 Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation,
21 understands the fiduciary obligations, and actively participated in the prosecution of this case.
22 (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with
23 a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff also has no
24 interest averse to the interests of the other Class Members. (*Ibid.*)

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A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends 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, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

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

f. Notice to the Class Complies with California Rules of Court, Rule 3.769(f)

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

If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

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

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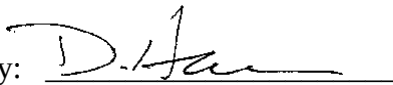
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1 **V. CONCLUSION**

2 Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class
3 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
4 should be conditionally certified for settlement purposes, and Class Notice should be approved.
5

6 Dated: January 26, 2024

JUSTICE LAW CORPORATION

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8 By: 
9 Douglas Han
10 Attorneys for Plaintiff
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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, California 91103 and my electronic service address is manderson@justicelawcorp.com.

On January 26, 2024, I served the foregoing document described as

PLAINTIFF'S 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: **Moreno v. Southern California Discount Tire Co., Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-910456-22**
Court Case No.: 37-2022-00050608-CU-OE-CTL
San Diego 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 January 26, 2024, at Pasadena, California.



Mariah Anderson