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

MOISES NAVA, DEVIN VESTER, and
EVAN HARDING, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiffs,

v.

COUNTYWIDE MECHANICAL SYSTEMS,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 37-2021-00049164-CU-OE-CTL

Assigned for All Purposes to:
Honorable Ronald F. Frazier
Department C-65

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); and [Proposed] Order filed
concurrently herewith]

Hearing Date: April 7, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department C-65

Complaint Filed: November 19, 2021
FAC Filed: January 17, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 7, 2023 at 8:30 a.m., or as soon as the matter may
2 be heard, before the Honorable Ronald F. Frazier in Department C-65 of the San Diego County
3 Superior Court (Hall of Justice) located at 330 W Broadway San Diego, California 92101,
4 Plaintiffs Moises Nava, Devin Vester, and Evan Harding (“Plaintiffs,” “Plaintiff Nava,” “Plaintiff
5 Vester,” and “Plaintiff Harding”) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Joint Stipulation and Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Notice of Class Action Settlement (“Class Notice”) attached as
15 **Exhibit A** to the 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 Phoenix Class Action Administration Solutions as the Settlement
20 Administrator; and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Attorney Fee Award, Cost Award, Class
24 Representative Enhancement Payments, and Administration Costs, and approval of
25 the allocation of the Private Attorney General Act of 2004 (“PAGA”) Payment.

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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.

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6 Dated: February 28, 2023

JUSTICE LAW CORPORATION

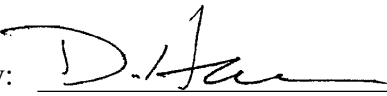
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8 By: 
9 Douglas Han
10 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,000,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 hourly-paid or non-exempt employees of Defendant Countywide Mechanical Systems, Inc.
5 (“Defendant”) within the State of California at any time during the time period from November
6 17, 2017 to November 25, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of
7 this filing, the number of Class Members is estimated to be seven hundred fifty-four (754), which
8 was confirmed by Defendant. (Declaration of Douglas Han In Support of Plaintiffs’ Motion for
9 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On November 19, 2021, Plaintiff Nava and Plaintiff Vester filed a wage-and-hour class
12 action lawsuit in the Superior Court of California, County of San Diego, alleging eight (8) causes
13 of action. (Han Decl., *supra*, at ¶ 10.)

14 On December 22, 2021, this matter was removed to the United States District Court,
15 Southern District of California. (Han Decl., *supra*, at ¶ 11.) On January 12, 2022, this matter was
16 remanded back to state court via a stipulation to remand. (*Ibid.*)

17 On September 16, 2022, Plaintiff Harding provided written notice to the Labor and
18 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 12; Exhibit 3.)

19 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
20 mediation with the mediator Mark S. Rudy on September 20, 2022, resulting in a settlement via a
21 mediator’s proposal. (Han Decl., *supra*, at ¶ 13.)

22 In line with the settlement, on January 17, 2023, the Parties filed a First Amended
23 Complaint that added Plaintiff Harding as a plaintiff and added a cause of action for violation of
24 Labor Code section 2698, *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

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III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions

Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of documents. (Han Decl., *supra*, at ¶ 16.) Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of information and then eventually attend mediation. (*Ibid.*)

Prior to the mediation, Defendant produced documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Several putative class members were interviewed to attain a better understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

Based on the information provided by Defendant and interviews with putative class members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to include non-discretionary bonuses in employees' regular rate of pay for purposes of overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with the mediator Mark S. Rudy on September 20, 2022. (Han Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, the Parties reached a settlement, the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 27; Exhibits 2, 5.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
3 *supra*, at ¶ 41.) Plaintiffs and Class Counsel considered the uncertainty and risk of further
4 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
5 on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
6 reasonable settlement and is in the best interests of the Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the Parties' claims
9 and defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 42.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices. (*Ibid.*) This case has reached
12 the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their
13 cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han Decl.,
14 *supra*, at ¶ 42; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

16 **i. Deductions from the Settlement**

17 The Parties agreed (subject to the Court's approval) this action be settled and compromised
18 for the non-reversionary total sum of \$2,000,000 ("Gross Settlement Amount") which includes:
19 (1) Attorney Fee Award not to exceed \$700,000; (2) Cost Award not to exceed \$25,000; (3) Class
20 Representative Enhancement Payments totaling \$30,000; (4) Administration Costs not to exceed
21 \$15,000; and (5) PAGA Payment not to exceed \$100,000. (Han Decl., *supra*, at ¶ 28.)

22 **ii. Calculating Settlement Payments**

23 After all Court-approved deductions, it is estimated \$1,130,000 ("Net Settlement
24 Amount") will be distributed to all Class Members who do not submit valid and timely requests to
25 exclude themselves from the Settlement ("Participating Class Members") – with a gross *average*
26 Individual Settlement Share estimated at \$1,498.67. (Han Decl., *supra*, at ¶ 29.)

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1 Participating Class Member will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 30.)
3 Individual Settlement Shares will be apportioned ten percent (10%) as wages and ninety percent
4 (90%) as interest, penalties, and reimbursement. (*Ibid.*)

5 The portion of PAGA Payment that will be paid to each Eligible Aggrieved Employee shall
6 be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶
7 31.) Individual PAGA Payments will be allocated one hundred percent (100%) penalties. (*Ibid.*)

8 **iii. Notice to the Class**

9 Within fifteen (15) business days after entry of the Preliminary Approval Order, Defendant
10 shall deliver to the Class Data to the Settlement Administrator. (Han Decl., *supra*, at ¶ 32.) Within
11 fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement
12 Administrator, the Settlement Administrator will mail the Class Notice to all identified Class
13 Members via first-class regular U.S. Mail. (*Ibid.*)

14 **iv. Distribution of Funds**

15 The Settlement will be funded pursuant to the timeline and manner set forth in the
16 Settlement. (Han Decl., *supra*, at ¶ 33.) Uncashed settlement checks will be paid to the *cy pres*
17 recipient Voices for Children. (*Ibid.*) Voices for Children satisfies the legislature's purpose and
18 goal under Code of Civil Procedure section 384. (*Id.* at ¶ 35.) The Parties are also not affiliated
19 with and do not have any financial interest in Voices for Children. (*Ibid.*)

20 **v. Release of Claims**

21 As of the Effective Final Settlement Date, in exchange for the consideration set forth in the
22 Agreement, Plaintiffs and Participating Class Members release the Released Parties from the
23 Released Claims for the Class Period. (Han Decl., *supra*, at ¶ 36.)

24 As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved
25 Employee, including Plaintiffs, individually and on behalf of their heirs, executors, administrators,
26 representatives, attorneys, successors, and assigns are voluntarily and knowingly barred from
27 bringing any action for the PAGA Released Claims during the PAGA Period. (Han Decl., *supra*,
28 at ¶ 37.) The release of the PAGA Released Claims is effective regardless of whether the Eligible

Aggrieved Employee submits a request for exclusion. (Han Decl., *supra*, at ¶ 37.)

As of the Effective Final Settlement Date and in exchange for the Class Representative Enhancement Payments to Plaintiffs, in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs if this matter had not successfully resolved, Plaintiffs provide a general release of claims for themselves and their spouses, heirs, successors, and assigns. (Han Decl., *supra*, at ¶ 38.) Plaintiffs' Release of Claims also includes a waiver of Civil Code section 1542. (*Ibid.*)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

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

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

1 **IV. ARGUMENT**

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

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

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

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

14 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
15 the normal perils of litigation as well as the additional uncertainties inherent in complex class
16 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
17 *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 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
24 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see
25 also *Munoz*, at p. 409.)

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28 ² The California Supreme Court has also authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

10 **i. The Settlement Amount of \$2,000,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data Defendant produced for the
13 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
14 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 42.)

15 The claims are predicated on the purported: (1) failure to properly calculate and pay
16 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
17 pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage
18 statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation
19 of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 43.) Defendant
20 vehemently denies the theories of liability. (*Id.* at ¶ 44.)

21 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 45.) As the California Supreme Court
23 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
24 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
25 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
26 (*Ibid.*) Thus, the calculations for potential damages were discounted.

27 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
28 of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Payment of \$100,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510,
4 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Han Decl., *supra*, at ¶ 54.)
5 Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties are
6 not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a strong
7 argument it would be unjust to award maximum PAGA penalties given the law’s current unsettled
8 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 54; *Thurman v. Bayshore Transit Mgmt.*
9 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued
10 without stacking and limited to the initial violation, the PAGA penalties would be limited to
11 approximately **\$33,500** (335 employees x \$100 penalty for initial violation) on the low end and
12 around **\$201,000** (335 employees x \$100 penalty for initial violation x 6 theories of recovery) on
13 the high end. (Han Decl., *supra*, at ¶¶ 55-57.)

14 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 58.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Thus, allocating \$100,000 to PAGA civil penalties was reasonable given the fact Defendant is
17 paying an additional \$1,900,000 in the class settlement. (*Ibid.*) When PAGA penalties are
18 negotiated in good faith and “there is no indication that [the] amount was the result of self-interest
19 at the expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

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

22 _____
23 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
24 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
25 decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
26 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141
27 Cal.App.4th 1422 [affirming denial of certification].)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$12,837,338.75** on the low end and around **\$13,932,615.35** on the high end. (Han Decl., *supra*, at ¶ 59.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$2,060,374.45	70%	60%	\$247,244.93
Meal Break Premiums	\$648,484.20	60%	60%	\$103,757.47
Overtime/Minimum Wage: Off-the-Clock Work	\$2,190,000.03 to \$3,285,276.63	60%	50%	\$438,000.01 to \$657,055.33
Overtime/Minimum Wage: Regular Rate	\$772,335.67	30%	40%	\$324,380.98
Unreimbursed Business Expenses	\$1,702,450	20%	70%	\$408,588
Wage Statement Penalty	\$1,340,000	60%	60%	\$214,400
Waiting Time Penalty	\$4,123,694.40	60%	60%	\$659,791.10
MAXIMUM TOTAL EXPOSURE	\$12,837,338.75 to \$13,932,615.35⁵			\$2,396,162.49 to \$2,615,217.81⁶

Thus, the realistic recovery for this case is **\$2,396,162.49** on the low end and **\$2,615,217.81** on the high end. (Han Decl., *supra*, at ¶ 67.) The Gross Settlement Amount of \$2,000,000 is about fourteen percent (14.35%) of the maximum potential exposure and around seventy-six percent (76.48%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “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.” (*City of Detroit v. Grinnell Corporation* (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

⁵ (Han Decl., *supra*, at ¶¶ 46-53.)

⁶ (*Id.* at ¶¶ 60-66.)

1 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
2 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
3 speculative measure of what might have been achieved by the negotiators’.) Nevertheless, this
4 settlement is in line with the realistic exposure if Plaintiffs prevailed at trial and provides a
5 significant recovery for the Class Members.

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

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

12 The Class is ascertainable and numerous as to make it impracticable to join all Class
13 Members, and there are common questions of law and fact that predominate over any questions
14 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 68.) Plaintiffs contend the claims
15 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
16 interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual
17 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

19 “Ascertainability is required in order to give notice to putative class members as to whom
20 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
21 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
22 by describing a set of common characteristics sufficient to allow a member of that group to identify
23 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
24 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
25 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

26 This case involves approximately seven hundred fifty-four (754) Class Members, meaning
27 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 69; *Ghazaryan v. Diva Limousine, Ltd.*
28

(2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

1. Common Issues Predominate

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

Plaintiffs assert common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 70.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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

Plaintiffs are former employee of Defendant and alleges she and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 71.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 72.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs also have no interest averse to the interests of the other Class Members. (*Ibid.*)

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

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

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

1 settlement is presumed fair under the following circumstances: (1) parties reached settlement after
2 arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
3 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
4 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) All these elements
5 are present here.

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

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

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

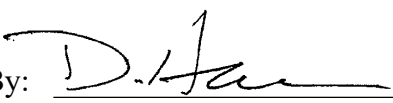
12 The Class Notice meets all these requirements. The Class Notice advises the Class Members
13 of their right to participate in the Settlement, how and when to object to or request exclusion from
14 the Settlement, and date, time, and location of the Final Approval Hearing. (See Han Decl., *supra*;
15 Exhibits A-B to Exhibit 2.)

16 **V. CONCLUSION**

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

20
21 Dated: February 28, 2023

JUSTICE LAW CORPORATION

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23 By: 
24 Douglas Han
25 Attorneys for Plaintiffs
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On February 28, 2023, I served the foregoing document described as

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

for the following case: **Nava, et al. v. Countywide Mechanical Systems, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 908274-22**
Court Case No.: 37-2021-00049164-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 February 28, 2023, at Pasadena, California.



Mariah Anderson