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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

DIEGO ALZAGA, individually, and on behalf of other members of the general public similarly situated; Plaintiff, v. ELDER DELIVERS LLC, a California limited liability company; and DOES 1 through 100, inclusive; Defendants.	Case No.: CVRI2202088 Assigned for All Purposes to: Honorable Harold W. Hopp Department 1 **CLASS ACTION** **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: 657067226707**] *[filed concurrently with Memorandum of Points and Authorities; Declarations of Douglas Han, Julie Green, Paul Zimmer, Marcus Myers, and Tim Johnson; [Proposed] Order; and Compliance Chart]* Hearing Date: October 9, 2024 Hearing Time: 8:30 a.m. Hearing Place: Department 1 Complaint Filed: May 24, 2022 FAC Filed: April 18, 2023 Trial Date: None Set

TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE on October 9, 2024 at 8:30 a.m., or as soon thereafter as this matter may be heard, at Department 1, located at 4050 Main Street, Riverside, California 92501, Plaintiffs Diego Alzaga and Antonio Aviles ("Plaintiffs"), on behalf of themselves and all persons similarly situated, will and hereby does move this Court pursuant to Code of Civil Procedure section 382 and California Rule of Court 3.769 for an order:

(1) Preliminarily approving the class action settlement reached between Plaintiffs and Defendant Elder Delivers LLC ("Defendant"), including granting preliminary approval of the following Class: "all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the period from May 24, 2018 to March 16, 2023" ("Class," "Class Members," and "Class Period"). "Class Members" shall not include any person who submits a timely and valid Request for Exclusion Form;

(2) Approving the form of notice of class action settlement and procedure for notice to the Class; and

(3) Setting the Final Approval Hearing.

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

Pursuant to the Joint Stipulation and Settlement Agreement ("Settlement Agreement" or "Agreement"), filed concurrently herewith as **Exhibit 1** to the Declaration of Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement, Defendant does not oppose the preliminary approval of the settlement.

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Under the terms of the Agreement, the Parties agreed all claims brought on behalf of the Class shall be fully and finally resolved for the total sum of $140,000 (“Maximum Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the Maximum Settlement Amount after the following deductions are made (“Net Settlement Amount”) shall be available for distribution to Class Members who do not submit valid and timely Requests for Exclusion from the Settlement:

- up to $46,666.67 to Class Counsel as the attorneys’ fees;
- up to $16,000 to Class Counsel as the attorneys’ costs for reimbursement of attorneys’ costs and expenses incurred;
- up to $2,500 to each Plaintiff as Class Representative Enhancement Payments (totaling $5,000);
- up to $13,000 to CPT Group, Inc., the Settlement Administrator, as the Settlement Administration Costs; and
- $10,000 as the PAGA Payment, seventy-five percent (75%) of which ($7,500) will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%) of which ($2,500) will be distributed to all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the period from March 24, 2022 to March 16, 2023, on a pro rata basis, as their Individual PAGA Payments in accordance with the Settlement Agreement.

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

This Notice of Motion is based on this Notice, and the exhibits thereto (including the Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form), Memorandum of Points and Authorities, Declarations of Douglas Han, Julie Green, Paul Zimmer, Marcus Myers, and Tim Johnson, pleadings, records and files in the case, and such other oral and documentary evidence which may be submitted at or before the hearing.

Dated: September 12, 2024

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

DIEGO ALZAGA, individually, and on behalf of other members of the general public similarly situated; Plaintiff, v. ELDER DELIVERS LLC, a California limited liability company; and DOES 1 through 100, inclusive; Defendants.	Case No.: CVRI2202088 Assigned for All Purposes to: Honorable Harold W. Hopp Department 1 **<u>CLASS ACTION</u>** **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF 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: 657067226707**] *[filed concurrently with Notice of Motion; Declarations of Douglas Han, Julie Green, Paul Zimmer, Marcus Myers, and Tim Johnson; [Proposed] Order; and Compliance Chart]* Hearing Date: October 9, 2024 Hearing Time: 8:30 a.m. Hearing Place: Department 1 Complaint Filed: May 24, 2022 FAC Filed: April 18, 2023 Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Diego Alzaga and Antonio Aviles ("Plaintiffs," "Plaintiff Alzaga," and "Plaintiff Aviles") filed a wage-and-hour class action lawsuit and representative action against Defendant Elder Delivers LLC ("Defendant") (collectively, the "Parties") in the Superior Court of California, County of Riverside, Case Number CVRI2202088 ("Action").

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

II. STATUS OF THE LITIGATION

A. Procedural History

On May 24, 2022, Plaintiff Alzaga filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Riverside, alleging eight (8) causes of action. (Declaration of Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement ("Han Decl."), ¶ 12.)

After engaging in discovery, investigations, and negotiations, on March 16, 2023, the Parties remotely attended mediation with the mediator Lisa Klerman, resulting in the settlement of this matter via a mediator's proposal. (Han Decl., *supra*, at ¶ 13.)

In line with the settlement, on March 24, 2023, Plaintiff Aviles provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant. (Han Decl., *supra*, at ¶ 14.) Afterwards, on April 18, 2023, Plaintiff Alzaga filed a First Amended Complaint that: (1) adjusted the Class definition; (2) added Plaintiff Aviles as a named plaintiff; and (3) added the following cause of action: violation of Labor Code section 2698 (Private

Attorneys General Act of 2004 (“PAGA”)). (Han Decl., *supra*, at ¶ 14.)

B. Investigation and Discovery

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 15.) After conducting an initial investigation, Class Counsel determined the claims were suited for class and representative action adjudication. (*Ibid.*)

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

- conducting discovery and meeting and conferring with Defendant’s counsel several times throughout this litigation, which produced the following:
    - Personnel records;
    - Policy documents, employee handbooks, and California employe handbook addendums, including meal break waiver agreements;
    - A twenty percent (20%) sampling class list that included putative class members’ job title descriptions, hire, rehire, and termination dates, and position statuses; and
    - A sampling of putative class members’ time and pay records within Microsoft Excel Worksheets (*i.e.*, clock ins, clock outs, hours worked, period beginning and end dates, pay dates, amounts earned);
- reviewing and analyzing the sampling of time and payroll records, twenty percent (20%) sampling class list, personnel records, policy documents, employee handbooks, and California employe handbook addendums, including meal break waiver agreements;
- researching the applicable law and potential defenses;
- locating and interviewing several putative class members;
- constructing damage models based on interpretations of the law;
- discussing Defendant’s current financial condition and the recent financial hardships it has been experiencing; 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 six hundred twenty-three (623) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel's investigation also revealed there are approximately two hundred fifty-six (256) 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 March 16, 2023, the Parties remotely participated in full day mediation with a mediator. (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. (*Ibid.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han's declaration. Defendant agreed to pay $140,000 ("Maximum Settlement Amount") on a non-reversionary basis to settle and release all claims asserted in the operative complaints on behalf of the proposed Class. (Han Decl., *supra*, at ¶ 21.) The Settlement Agreement defines the Class as "all current and former hourly-paid or non-exempt employees of Defendant within the State of California at any time during the period from May 24, 2018 to March 16, 2023" ("Class," "Class Members," and "Class Period"). (*Ibid.*) "Class Members" shall not include any person who submits a timely and valid Request for Exclusion Form. (*Ibid.*) The amount remaining in Maximum Settlement Amount after the following deductions shall be distributed to Class Members who do not opt out ("Net Settlement Amount"):

- up to one-third (1/3) of the Maximum Settlement Amount to Class Counsel as the attorneys' fees ($46,666.67);
- up to $16,000 to Class Counsel as the attorneys' costs for the reimbursement of actual costs and expenses incurred;
- up to $2,500 to each Plaintiff as the Class Representative Enhancement Payments (totaling $5,000);
- up to $13,000 as the Settlement Administration Costs to the Settlement Administrator, CPT Group, Inc. ("CPT Group"); and
- up to $10,000 as the PAGA Payment, seventy-five percent (75%) of which ($7,500) will be paid to the LWDA and twenty-five percent (25%) of which ($2,500) will be paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment even if they submit valid and timely Request for Exclusion Form ("PAGA Payment" and "Individual PAGA Payment"). (Han Decl., *supra*, at ¶ 21.)

The Net Settlement Amount (approximately $49,333.33) will be distributed to the Class Members. (Han Decl., *supra*, at ¶ 22.)

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

A. Number of Class Members

There are around six hundred twenty-three (623) Class Members and two hundred fifty-six (256) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 17, 90(a).)

B. Attorney's Estimate of the Recovery by the Average Class Member if the Settlement Agreement Were Approved

If the Agreement is approved, it is estimated the gross *average* Individual Settlement Payment will be about $79.19. (Han Decl., *supra*, at ¶ 22.) Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Workweeks a Class Member worked during the Class Period as an hourly-paid or non-exempt employee in California. (*Id.* at ¶ 23.) Individual PAGA Payments will be calculated and apportioned from the twenty-five percent (25%) of the PAGA Payment based on the number of PAGA Pay Periods an Eligible Aggrieved Employee worked during the PAGA Period as an hourly-paid or non-exempt employee in California. (Han Decl., *supra*, at ¶ 23.)

C. Discovery Exchanged

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

D. Other Pending Litigation

After conducting reasonably diligent research and inquiries, Class Counsel are unaware of any class, representative, or other collective action in any other court in this or any other jurisdiction that asserts claims like those asserted in this Action on behalf of a class or group of individuals some or all of whom would also be members of the class defined in this Action. (Han Decl., *supra*, at ¶ 20.)

E. Defendant's Counsel's Declaration

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

F. Settlement Administrator

The Settlement Agreement provides for up to $13,000 to be paid to the Settlement Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 86.)

Class Counsel obtained bids from CPT Group, Phoenix Class Action Administration Solutions ("Phoenix"), and ILYM Group, Inc. ("ILYM Group") for the administration of this Action. (Han Decl., *supra*, at ¶ 87.) CPT Group and Phoenix had the most competitive (lowest) bids of $11,250 when compared to the bid from ILYM Group that was $14,440. (*Ibid.*) The Parties selected CPT Group to serve as the Settlement Administrator. (*Ibid.*)

CPT Group has extensive experience in administering employment class action settlements. (Declaration of Julie Green, ¶¶ 6-8; Exhibits A, B.)

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

Class Members will receive checks for their Individual Settlement Payments and Individual PAGA Payments. (Han Decl., *supra*, at ¶ 88.) Checks will remain negotiable for one hundred eighty (180) calendar days. (*Ibid.*) The funds from the uncashed checks representing Individual Settlement Payments shall be distributed by the Settlement Administrator to the State Controller's Unclaimed Property Fund while funds from the uncashed checks representing Individual PAGA Payments shall be distributed by the Settlement Administrator to the LWDA. (*Ibid.*)

H. Release by Class Members is Limited

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

> [A]ll causes of action and factual or legal theories stated in the operative complaints and those based solely upon the facts, circumstances, or primary rights that were alleged in the operative complaints. This includes all of the following claims for relief: (a) failure to pay all regular wages, minimum wages, overtime wages, and sick leave due; (b) failure to provide proper meal and rest breaks and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate, or properly formatted wage statements and payroll records; (d) 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 relief described above or any of the claims, causes of action or legal theories of relief pleaded in the operative complaints; (h) all claims under PAGA, which shall only bind Plaintiffs and the State of California, that were described in the notice letter sent to the LWDA and only to the extent these claims were alleged in the operative 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").

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 36.)

The Released Parties include Defendant together with its current and former officers, directors, employees, managing agents, owners, business partners, contracting partners, and clients ("Released Parties"). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 37.)

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

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

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

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

Class Members are not required to submit claim forms to receive their share of the Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 16.)

K. Settlement Does Not Provide Any Reversion to Defendant

Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert to Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 19(b).)

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

All Individual Settlement Payments will be allocated as follows: (a) twenty percent (20%) as wages; and (b) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 49(d).) All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. (*Id.* at ¶ 50(c).)

Defendant shall pay the employer's share of applicable payroll taxes due on the portion of Individual Settlement Payments allocated to wages separately and in addition to the Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 19(a).)

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

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

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage-and-hour actions as class actions. (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462.) Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, at pp. 473-475.) The decision to certify a class is a procedural one, and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

To certify a settlement class, the Court must find the two (2) primary requirements for maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab Company* (1967) 67 Cal.2d 695, 704.) The criteria are met herein.

A. There Is A Numerous and Ascertainable Class

Ascertainability is determined by examining class definition, class size, and means to identify class members. (*Vasquez v. Superior Court, supra,* 4 Cal.3d at pp. 821-822; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class members are “ascertainable” where they may be readily identified without unreasonable expense or time.

Plaintiffs contend, and Defendant does not dispute, the requirement of numerosity is met. The documents and information exchanged reflect a Class of approximately six hundred twenty-three (623) Class Members. (Han Decl., *supra*, at ¶ 90(a).) The Class Members were identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 90(b).)

B. There Is A Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. (*Vasquez v. Superior Court*, *supra*, 4 Cal.3d at p. 811.) The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of 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.

(*Vasquez v. Superior Court*, *supra*, 4 Cal.3d. at p. 809.)

Plaintiffs contend, and Defendant does not dispute, common issues of fact and law predominate as to each of the claims alleged. Because Plaintiffs alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." (*In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 1350.) This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" (*Id.* at p. 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal.App.3d 741, 753 [emphasis added]).)

This Action involves, *inter alia*, a determination about Defendant's alleged: (1) failure to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse business expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate overtime wages and sick leave; (5) failure to pay final wages when required; (6) failure to provide accurate wage statements; and (7) largely derivative claims under the Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶ 90(e).) Plaintiffs contend these practices affected Class

Members in the same way. (*Ibid.*) While Defendant maintained otherwise, these issues will not be decided based on facts peculiar to each Class Member but based on facts common to the Class. Finally, these issues of liability can be determined on a class-wide basis.

C. The Plaintiffs' Claims Are Typical

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

Plaintiffs contend, and Defendant does not dispute, the claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 90(c).) Plaintiffs were employed by Defendant during the 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 Plaintiffs, apply to the other Class Members. (*Ibid.*) Consequently, the answer to these questions would determine Defendant's liability to the Class. (*Ibid.*)

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D. Adequacy of Class Counsel and Class Representatives

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, Plaintiffs' interests are aligned with those of the Class Members, 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 court is a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." (4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).)

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

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

VI. THE SETTLEMENT IS FAIR AND ADEQUATE

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

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

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

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The Agreement satisfies these factors. Class Counsel conducted extensive discoveries before entering meaningful settlement negotiations, including a detailed analysis of the policies and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 15-16.) This discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and the risks associated with ongoing litigation. (*Id.* at ¶ 19.) The Parties also discussed Defendant's current financial condition and the financial hardships it has been experiencing in recent years. (*Ibid.*) In addition, Class Counsel are experienced in the handling of wage-and-hour class actions and support the Settlement. (*Id.* at ¶¶ 3-10; Exhibit 2.)

A. The Strength of Plaintiffs' Case.

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

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

B. The Risks Associated with the Merits.

Plaintiffs contend Defendant's meal and rest break policies were not *Brinker*-compliant, employees were not permitted to take additional breaks, and a high volume of deliveries to complete and understaffing prevented employees from taking compliant breaks. (Han Decl., *supra*, at ¶¶ 29, 32, 33.) This was purportedly made worse by Defendant discouraging employees from taking their meal and rest breaks and regularly interrupting employees' breaks. (*Ibid.*) Defendant countered it always maintained compliant meal and rest break policies, rarely, if ever, assigned employees a high volume of deliveries to complete, and was not understaffed. (*Id.* at ¶¶ 30, 34.) In other words, employees were choosing to forgo taking compliant meal and rest breaks rather than being prevented from doing do. (*Ibid.*) By extension, Defendant may even produce evidence to demonstrate employees were advised of their right to take additional breaks, but most employees did not work the requisite hours to qualify for additional breaks. (Han Decl., *supra*, at ¶¶ 30, 34.) Finally, Defendant contended Class Counsel will have to gather declarations from putative class members to prove the existence of improper, uniform policies and practices. (*Ibid.*)

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

Plaintiffs also alleged Defendant failed to pay and properly calculate all applicable waged owed, including minimum wages, overtime wages, and sick leave. (Han Decl., *supra*, at ¶¶ 36, 39.) Defendant purportedly expected employees to retrieve and activate their work phones, don and doff their uniforms, attend meetings, and inspect their vans before clocking in and after clocking out. (*Ibid.*) This was supposedly made worse by Defendant paying employees non-discretionary bonuses but failing to factor them into employees' regular rate of pay for overtime compensation and sick leave pay purposes. (*Ibid.*) Defendant countered these claims are not suitable for class treatment. (*Id.* at ¶¶ 37, 39.) Instead, Defendant argued its policies expressly prohibited off-the-clock work, permitted employees to don and doff their uniforms on-the-clock, and had no knowledge of employees working off-the-clock. (*Ibid.*) In addition, Defendant contended any payment of bonuses was completely discretionary, meaning the bonuses did not need to be factored into employees' regular rates of pay. (*Ibid.*) Finally, Defendant asserted any unrecorded hours would likely be subject to individual inquiries and unlikely to be certified. (*Ibid.*) Given the difficulty in certifying this claim, Class Counsel applied a discount to damages. (*Id.* at ¶¶ 38, 40.) If Defendant's contentions held true, the outcome of this claim would be little to no recovery for employees.

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

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

Similarly, Defendant also countered the claim for section 203 penalties is dependent on the underlying meal and rest break and wage claims, meaning it would be subject to the same defenses listed and described above. (Han Decl., *supra*, at ¶¶ 47, 48.) With these penalties, there is always the risk the trier of fact would not have held Defendant's actions were done "willfully." A good faith belief in a legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiffs allege Defendant failed to pay for all hours worked and premiums for noncompliant meal and rest breaks. (Han Decl., *supra*, at ¶¶ 29, 32, 33, 36, 39.) By extension, Plaintiffs contend the Class Members are entitled to minimum wages, overtime wages, and premium wages, which were allegedly not paid at the time of their termination or resignation. (*Id.* at ¶¶ 45, 46.) Defendant counters that 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. (*Id.* 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. (Labor 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. (Labor Code § 2699, subd. (e)(2).) 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."]).)

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(l), 510, 512(a), 558, 1174(d), 1174.5, 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. (Han Decl., *supra*, at ¶ 54; See *Thurman v. Bayshore Transit Management, Inc.* (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 **$25,600** (256 employees x $100 initial violation) on the low end and **$179,200** (256 employees x $100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 55-58.)

Plaintiffs recognized the risks any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 59.) The maximum penalties for each pay period are not justified, and it was arguable the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating $10,000 to PAGA civil penalties was reasonable based on a rate of **$2.46** per pay period [$10,000 ÷ 4,060 pay periods within the PAGA Period] given that Defendant is paying an additional $130,000 in the class settlement.[1] (*Ibid.*) If PAGA penalties are negotiated in good faith and "there is no

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[1] (*Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of $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).)

indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are considered reasonable.[2] (Han Decl., *supra*, at ¶ 59.)

Finally, Class Counsel are confident they would successfully prove Defendant's alleged wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 60.) Plaintiffs allege Defendant intentionally failed to maintain *Brinker*-compliant meal and rest break policies and knowingly frequently assigned employees a high volume of deliveries to complete each shift. (*Ibid.*) By extension, Defendant would discourage employees from taking their meal and rest breaks by intentionally interrupting employees' breaks and ordering employees to resume making their deliveries. (*Ibid.*) Plaintiffs also assert Defendant knowingly and intentionally failed to pay premium wages. (*Ibid.*) Next, Plaintiffs assert Defendant knew employees were expected to begin working before clocking in and continue working after clocking out per Defendant's expectations. (*Ibid.*) Finally, Plaintiffs contend Defendant intentionally paid employees bonuses that were non-discretionary in nature but knowingly failed to factor just payments into their regular rate of pay. (*Ibid.*) Plaintiffs allege Defendant knowingly and intentionally implemented its improper, uniform policies and practices, resulting in the alleged violations. (*Ibid.*)

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

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

[2] (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 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.").)

years for resolution in this matter. (Han Decl., *supra*, at ¶¶ 67-71.)

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

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

G. The Amount Offered in Settlement.

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

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **$3,415,455.27** on the low end and **$3,587,727.72** on the high end. (Han Decl., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	$231,846.51	65%	60%	$32,458.51
Meal Break Premiums	$23,711.77	50%	50%	$5,927.94
Overtime/Minimum Wage: Off-the-Clock	$344,344.35 to $516,616.80	50%	50%	$86,086.09 to $129,154.20
Regular Rates	$30,805.04	25%	35%	$15,017.46
Unreimbursed Business Expenses	$30,850	45%	80%	$3,393.50
Wage Statement Penalty	$396,800	75%	75%	$24,800
Waiting Time Penalty	$2,357,097.60	75%	75%	$147,318.60
MAXIMUM TOTAL EXPOSURE	**$3,415,455.27** to **$3,587,727.72**			**$315,002.10** to **$358,070.21**

Based on this analysis, the total estimated realistic exposure for this case would be approximately **$315,002.10** on the low end and **$358,070.21** on the high end. (Han Decl., *supra*, at ¶ 63.) The Maximum Settlement Amount is about four percent (3.90%) of the high end total potential exposure at trial and around thirty-nine percent (39.10%) of the high end total realistic exposure at trial. (Han Decl., *supra*, at ¶ 63.) This is a reasonable settlement when considering Defendant's present financial condition and the financial hardships it has been experiencing in recent years. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 64.) Plaintiffs added the realistic exposure for rest break premiums and meal break premiums ($32,458.51 + $5,927.94 = $38,386.45). Plaintiffs then added the $38,386.45 to the low end realistic exposure for unpaid wages due to off-the-clock work and underpaid overtime wages and sick leave ($38,386.45 + $86,086.09 + $15,017.46 = $139,490). (*Ibid.*) The realistic exposure of $139,490 Plaintiffs can expect to receive if they 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 nineteen percent (19.25%) of the low end total realistic exposure and PAGA penalties ($139,490 ÷ $724,602.10 = 0.19250 x 100 = 19.25%). (*Ibid.*) Because this represents about twenty percent (20%) of wages, it is appropriate to allocate twenty percent (20%) as wages and eighty percent (80%) as interest and penalties pursuant to the Settlement Agreement. (*Ibid.*)

Once Class Counsel determined the maximum potential damages, they established a fair and reasonable settlement for the Class after analyzing the likelihood of success on the merits. (Han Decl., *supra*, at ¶ 25.) After reviewing the facts and circumstances of this matter, Class Counsel concluded the Class had a reasonable likelihood of success on the core claims. (*Id.* at ¶¶ 62-71.) Defendant disputes this contention, denies all wrongdoing in this matter, and is confident it has strong legal and factual defenses to the claims. (*Id.* at ¶¶ 68, 70.) After considering the likelihood of success and the challenges faced with certification, Class Counsel determined the Agreement amount was fair and reasonable.

Class Members have been represented by experienced counsel with many years of experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.) Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶ 15-19.) This included, among other things: (1) interviewing Plaintiffs at length on repeated occasions;

(2) drafting pleadings, conducting discovery, and meeting and conferring with Defendant's counsel; (3) reviewing and analyzing personnel records, policy documents, employee handbooks, Class list, and sampling of time and pay records; (4) researching the law; (5) interviewing putative class members; (6) preparing for and attending mediation; and (7) negotiating and finalizing the Settlement Agreement.

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

VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR AND REASONABLE

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

Plaintiffs are entitled to reasonable service payments for their efforts in this matter. (Han Decl., *supra*, at ¶ 81.) Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

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

But Plaintiffs did not allow fears of the potential repercussions of being class representatives to deter them from acting for the benefit of Class Members. (Han Decl., *supra*, at ¶ 83.) Plaintiffs have been intimately involved in this case since its inception and have devoted a substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

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Plaintiffs spent hours with Class Counsel detailing his knowledge of Defendant's practices. (Han Decl., *supra*, at ¶ 84.) Plaintiffs diligently, adequately, and fairly represented Class Members and did not place their interests above the Class Members. (*Ibid.*) The Class Representative Enhancement Payments are intended to recognize Plaintiffs' time and effort, and the amounts requested are fair and appropriate based on their contributions. (*Ibid*.)

Therefore, Class Counsel believe the Class Representative Enhancement Payments of $2,500 to each Plaintiff are fair and reasonable. (Han Decl., *supra*, at ¶ 85.)

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

Under the Agreement, Class Counsel request, without opposition from Defendant, an award of Attorneys' Fees and Costs consisting of: (1) up to $46,666.67 as the attorneys' fees; and (2) up to $16,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 78.) The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 78, 79.)

California courts look to the federal courts on class action approvals. The Ninth Circuit recognized an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air West, Inc*. (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Ibid.*) Courts have discretion to choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-1296.)

Courts have expressed frustration with the lodestar approach for deciding fee awards. The percentage approach can be preferable in certain situations because it: (1) aligns the interests of class counsel and absent class members; (2) encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378-1379.) The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-379 (approving attorneys' fee of 33 1/3% of settlement fund).)

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

The attorneys' fees request provided for in the Settlement Agreement is commensurate with judicial precedent. Both state and federal courts regularly approve fee awards equal to or greater than the percentage requested in this case. (See e.g. *In re Pacific Enterprises Securities Litigation*, *supra*, 47 F.3d at p. 379 (affirming an award equal to 33% of the common fund); *In re Activision Securities Litigation*, *supra*, 723 F.Supp. at p. 1375 (awarding plaintiffs' counsel 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of $7.3 million settlement fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of one-third (1/3) of recovery achieved).)

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

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

A. Fee Splitting Agreement

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

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

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

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

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 Lizette Rodriguez of Justice Law Corporation to serve as Class Counsel for settlement purposes;

6. Approve and appoint CPT Group 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 the Settlement Administrator in accordance with the manner set forth in the Settlement Agreement;

9. Order the Settlement Administrator to mail the Notice Packet to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: September 12, 2024

JUSTICE LAW CORPORATION

By: D. Han

Douglas Han
Attorneys for Plaintiffs

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 September 12, 2024, I served the foregoing document described as

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 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: **Alzaga, et al. v. Elder Delivers LLC**
LWDA/Court Case No.: **LWDA Case No.: CM- 944329-23**
Court Case No.: CVRI2202088
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 September 12, 2024, at Pasadena, California.

Mariah Anderson