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

SANTOS APARICIO and ANDRES AVINA,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiffs,

v.

CAMERON WELDING SUPPLY, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CIVSB2202694

Assigned for All Purposes to:
Honorable David Cohn
Department S-26

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); Declarations of Proposed
Class Representatives (Santos Aparicio,
Andres Avina, and Jean Hyung Choi); and
[Proposed] Order filed concurrently herewith]

Hearing Date: July 20, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department S-26

Complaint Filed: February 10, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 20, 2023 at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable David Cohn in Department S-26 of the San Bernardino County
3 Superior Court (San Bernardino Justice Center) located at 247 West Third Street, San Bernardino,
4 California 92415, Plaintiffs Santos Aparicio, Andres Avina, and Jean Hyung Choi (“Plaintiffs”,
5 “Plaintiff Aparicio”, “Plaintiff Avina”, and “Plaintiff Choi”) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 3** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the Class Representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Notice of Class Action Settlement and Hearing Date for Final Court
15 Approval (“Class Notice”) attached as **Exhibit A** to the Agreement;
- 16 • Directing the mailing of the Class Notice via first-class USPS mail;
- 17 • Approving the proposed deadlines for the settlement administration process;
- 18 • Approving CPT Group, Inc. as the Administrator; and
- 19 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
20 Agreement, at which time the Court will also consider whether to grant Final
21 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
22 Litigation Expenses Payment, Class Representative Service Payments, and
23 Administration Expenses Payment, and approval of the allocation of the Private
24 Attorney General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declarations of Proposed Class
3 Representatives (Santos Aparicio, Andres Avina, and Jean Hyung Choi); [Proposed] Order filed
4 concurrently with this motion; pleadings and other records on file with the Court in this matter;
5 and such documentary evidence and oral argument as may be presented at the hearing.
6

7 Dated: May 30, 2023

JUSTICE LAW CORPORATION

8
9 By: 

Douglas Han

Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$431,000 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 Cameron Welding Supply (“Defendant”)
5 within the State of California at any time during the period from February 10, 2018, to April 12,
6 2023 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of
7 Class Members is estimated to be one hundred twenty-eight (128), the number of workweeks
8 within the Class Period is estimated to be 10,991, the number of Aggrieved Employees is estimated
9 to be sixty-four (64), and the number of pay periods within the PAGA Period is estimated to be
10 1,632. (Declaration of Douglas Han in Support of Plaintiffs’ Motion for Preliminary Approval of
11 Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

12 **II. BACKGROUND**

13 On February 10, 2022, Plaintiff Aparicio and Plaintiff Avina filed a wage-and-hour class
14 action lawsuit in Superior Court of California, County of San Bernardino, alleging eight (8) causes
15 of action. (Han Decl., *supra*, at ¶ 10.)

16 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
17 mediation with the mediator Lisa Klerman on January 12, 2023, resulting in the settlement of this
18 matter. (Han Decl., *supra*, at ¶ 11.)

19 In line with the settlement, Plaintiff Choi provided written notice to the Labor and
20 Workforce Development Agency (“LWDA”) and Defendant on March 10, 2023. (Han Decl.,
21 *supra*, at ¶ 12; Exhibit 4.)

22 The Parties also stipulated file a First Amended Complaint that added Plaintiff Choi as a
23 named plaintiff and added a cause of action for violation of Labor Code section 2698, *et seq.*
24 (PAGA). (Han Decl., *supra*, at ¶ 13; Exhibit 2.)

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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 ¶ 15.) Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of information and then eventually attended mediation. (*Ibid.*)

Prior to the mediation, Defendant produced documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) 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 also reviewed 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 and commissions in employees' regular rate of pay for purposes of overtime compensation, paid sick leave, and premium wage compensation; (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 ¶¶ 18-25.)

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 attended mediation with an experienced mediator on January 12, 2023. (Han Decl., *supra*, at ¶ 26.) Under the auspices of the mediator, the Parties reached a settlement, the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 26; Exhibits 3, 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 ¶ 37.) 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 ¶ 38.) Plaintiffs and Class Counsel also have considered the uncertainty and risks,
4 potential outcome, and difficulties and delays inherent in further litigation. (*Ibid.*) Based on the
5 foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable
6 settlement, and is in the best interests of Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the Parties' claims
9 and defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 39.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
12 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses
14 of their cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han
15 Decl., *supra*, at ¶ 39; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

17 **i. Deductions from the Settlement**

18 The Parties agreed (subject to the Court's approval) this action be settled and compromised
19 for the non-reversionary total sum of \$431,000 ("Gross Settlement Amount") which includes: (1)
20 Class Counsel Fees Payment not to exceed \$143,666.67; (2) Class Counsel Litigation Expenses
21 Payment not to exceed \$20,000; (3) Class Representative Service Payments totaling \$20,000; (4)
22 Administration Expenses Payment not to exceed \$20,000; and (5) PAGA Penalties not to exceed
23 \$20,000. (Han Decl., *supra*, at ¶ 27.)

24 **ii. Calculating Settlement Payments**

25 After all Court-approved deductions, it is estimated \$207,333.33 ("Net Settlement
26 Amount") will be distributed to all Class Members who did not submit valid and timely Requests
27 for Exclusion from the Settlement ("Participating Class Members") – with a gross *average*
28 Individual Class Payment estimated at \$1,619.79. (Han Decl., *supra*, at ¶ 28.)

1 Participating Class Members will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29.)
3 Individual Class Payments will be apportioned twenty percent (20%) as wages and eighty percent
4 (80%) as interest and penalties. (*Ibid.*)

5 In addition, the portion of the PAGA Penalties that is paid to each Aggrieved Employee
6 shall be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*,
7 at ¶ 30.) Aggrieved Employees' portion of the PAGA Penalties will be allocated as one hundred
8 percent (100%) penalties. (*Ibid.*)

9 **iii. Notice to the Class**

10 Within fourteen (14) calendar days after entry of the Preliminary Approval Order,
11 Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 31.) Within
12 fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the
13 Administrator, the Administrator will mail the Court Approved Class Notice to all identified Class
14 Members via first-class USPS Mail. (*Ibid.*)

15 **iv. Distribution of Funds**

16 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
17 in the Settlement. (Han Decl., *supra*, at ¶ 32.) Uncashed settlement checks will be paid to the
18 California Controller's Unclaimed Property Fund. (*Ibid.*)

19 **v. Release of Claims**

20 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
21 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
22 Participating Class Members, on behalf of themselves and their former and present representatives,
23 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
24 the Released Class Claims. (Han Decl., *supra*, at ¶ 33.)

25 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
26 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
27 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
28 to release, on behalf of themselves and their former and present representatives, agents, attorneys,

heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 34.)

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*, at ¶ 35.) Plaintiffs' Release includes expressly waiving and relinquishing the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*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 scope 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.*)

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

10 **i. The Settlement Amount of \$431,000 Is Fair and Reasonable**

11 The Settlement was only possible following significant investigation and evaluation of the
12 relevant policies and practices, as well as the data produced, as referenced in Section III above,
13 permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages.
14 (Han Decl., *supra*, at ¶ 39.)

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 consistently pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue
18 compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA;
19 and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶
20 40.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 41.)

21 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 42.) 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
28 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Penalties of \$20,000 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, 218.5, 221, 226(a), 226.3, 226.7, 246(l), 510,
4 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶
5 51.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it
7 had a strong argument it would be unjust to award maximum PAGA penalties given the law’s
8 current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 51; *Thurman v.*
9 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
10 authority].) Defendant argued without stacking and limited to the initial violation, the PAGA
11 penalties would be limited to **\$6,400** (64 employees x \$100 penalty for initial violation) on the low
12 end and **\$44,800** (64 employees x \$100 penalty for initial violation x 7 theories of recovery) on
13 the high end. (Han Decl., *supra*, at ¶¶ 52-54)

14 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 55.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Allocating \$20,000 to PAGA civil penalties was reasonable given the fact Defendant is paying an
17 additional \$411,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good
18 faith and “there is no indication that [the] amount was the result of self-interest at the expense of
19 other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

20 Considering Defendant’s defenses, supporting evidence, and position that 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 **\$1,577,165.43** on the low end and around **\$1,707,518.69** on the high end. (Han Decl., *supra*, at ¶ 56.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$352,192.19	70%	60%	\$42,263.06
Meal Break Premiums	\$120,046.92	60%	50%	\$24,009.38
Overtime/Minimum Wage: Off-the-Clock Work	\$260,706.52 to \$391,059.78	50%	50%	\$65,176.63 to \$97,764.95
Overtime/Minimum Wage: Regular Rate	\$69,023	30%	40%	\$28,989.66
Unreimbursed Business Expenses	\$93,952	20%	70%	\$22,548.48
Wage Statement Penalty	\$163,200	40%	40%	\$58,752
Waiting Time Penalty	\$518,044.80	40%	40%	\$186,496.13
MAXIMUM TOTAL EXPOSURE	\$1,577,165.43 to \$1,707,518.69⁵			\$428,235.34 to \$460,823.66⁶

Thus, the realistic recovery for this case is **\$428,235.34** on the low end and **\$460,823.66** on the high end. (Han Decl., *supra*, at ¶ 64.) The Gross Settlement Amount is about twenty-five percent (25.24%) of the maximum potential exposure and around ninety-four percent (93.53%) of the maximum realistic exposure at trial. (*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 ¶¶ 43-50.)

⁶ (*Id.* at ¶¶ 57-63.)

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 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 ¶ 65.) 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 one hundred twenty-eight (128) Class Members,
27 meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 66; *Ghazaryan v. Diva*
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1 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as
2 190 current and former employees” is sufficiently numerous].)

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

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

13 **1. Common Issues Predominate**

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

25 Plaintiffs assert common issues of fact and law predominate as to each of the claims
26 alleged. (Han Decl., *supra*, at ¶ 67.) Plaintiffs contend all Class Members were subject to the same
27 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 employees of Defendant and allege they and Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 68.) Plaintiffs seek relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 69.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs have no interest averse to the interests of the other Class Members. (*Ibid.*)

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

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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.)

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

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

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

12 The Class Notice meets all these requirements. The Class Notice advises 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.

15 **V. CONCLUSION**

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

19 Dated: May 30, 2023

JUSTICE LAW CORPORATION

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21 By: 
22 Douglas Han
23 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 mluna@justicelawcorp.com

On May 30, 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:	Aparicio, et. al v. Cameron Welding Supply
LWDA/Court Case No.:	LWDA Case No.: CM- 941199-23
	Court Case No.: CIVSB2202694
	San Bernardino County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on May 30, 2023 at Pasadena, California.

Madison Luna