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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DANIELLE CHEVERTON, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

STITCH & FEATHER, INC., a California corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2022-01260526-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

CLASS ACTION

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

[Reservation ID: 74041642]

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

Hearing Date:	September 8, 2023
Hearing Time:	10:00 a.m.
Hearing Place:	Department CX-105

Complaint Filed:	May 17, 2022
FAC Filed:	May 5, 2023
Trial Date:	None Set

PLEASE TAKE NOTICE that on September 8, 2023 at 10:00 a.m. or as soon as the matter may be heard, before the Honorable Randall J. Sherman in Department CX-105 of the Orange County Superior Court (Civil Complex Center) located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Danielle Cheverton ("Plaintiff") will and hereby does move for an order:

- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Parties' Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement," "Settlement," or "Agreement"), attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds;
- Conditionally certifying the proposed Class for settlement purposes only;
- Appointing Plaintiff as the class representative;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice") attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Settlement Agreement;
- Approving the proposed Request for Exclusion Form ("Exclusion Form") attached as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Settlement Agreement;
- Directing the mailing of the proposed Class Notice and Exclusion Form (collectively, known as the "Notice Packet") with a postage-paid return envelope to the proposed Class;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, Administration Costs, and Private Attorneys General Act of 2004 ("PAGA") Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration of the Proposed Settlement Administrator (Jodey Lawrence); [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: June 22, 2023

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a fixed total non-reversionary $375,000 proposed wage-and-hour class action settlement by Plaintiff on behalf of herself and all current and former hourly-paid employees and non-exempt employees of Defendant Stitch & Feather, Inc. ("Defendant") within the State of California at any time during the period from November 19, 2017, through June 2, 2023 ("Class," "Class Members," and "Class Period"). At the time of this filing, the number of Class Members confirmed by Defendant is estimated to be four hundred thirteen (413). (Declaration of Douglas Han In Support of Plaintiff's Motion For Preliminary Approval of Class Action Settlement ("Han Decl."), ¶¶ 8-9.)

It is requested that this Court grant Preliminary Approval because when analyzing the strengths and vulnerabilities of the class claims alongside the potential liability exposure, this Settlement is well within the range of reasonableness. Plaintiff and Class Counsel are convinced the Settlement is in the best interests of the Class Members based on the negotiations and a detailed knowledge of the issues present in this matter.

II. BACKGROUND

On May 17, 2022, Plaintiff, a former employee of Defendant, filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Orange, alleging eight (8) causes of action. (Han Decl., *supra*, at ¶ 10.)

On April 3, 2023, the Parties attended mediation with the mediator Steve Serratore, a well-respected mediator experienced in wage-and-hour class actions. (Han Decl., *supra*, at ¶ 11.) Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

In line with the settlement, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant on April 12, 2023. (Han Decl., *supra*, at ¶ 12; Exhibit 3.)

On May 5, 2023, Plaintiff filed a First Amended Complaint that adjusted the class definition and added a cause of action for violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act of 2004 ("PAGA"). (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiff propounded form interrogatories, special interrogatories, requests for admission, and requests for production. (Han Decl., *supra*, at ¶ 15.) Defendant also propounded form interrogatories, special interrogatories, and requests for production. (*Ibid.*) After responding to discovery, the Parties met and conferred and agreed to engage in an informal exchange of information and attend mediation. (*Ibid.*)

Prior to mediation, Defendant produced several documents relating to its wage-and-hour policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) Plaintiff also reviewed time and pay records and information relating to the size and scope of the Class. (*Ibid.*) Putative class members were also interviewed to obtain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based upon the information provided by Defendant and interviews with putative class members, Plaintiff contends – and Defendant denies – that 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 factor non-discretionary bonuses into employees' regular rate of pay; (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 remotely attended mediation with the mediator Steve Serratore on April 3, 2023. (Han Decl., *supra*, at ¶ 26.) During the mediation, the Parties discussed the risks of continued litigation, likelihood of certification, and merits of the claims and defenses versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties managed to negotiate a settlement, the terms of which were memorialized in the Settlement Agreement the Parties seek Preliminary Approval of. (*Id.* at ¶ 26; Exhibits 2, 5.)

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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 ¶ 29.) Though cordial and professional, the settlement negotiations have always been adversarial and non- collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶ 30.) Plaintiff and Class Counsel have considered the uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel also conducted extensive settlement negotiations. (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the settlement set forth in the Agreement is a fair, adequate, and reasonable settlement, and is in the Class Members' best interests. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of the claims and defenses and engaged in sufficient investigation, research, and discovery to support the Settlement Agreement. (Han Decl., *supra*, at ¶ 31.) The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures in place and the data produced. (*Ibid.*) Collectively, this information permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (Han Decl., *supra*, at ¶ 31; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (subject to and contingent upon the Court's approval) this case be settled and compromised for a fixed total non-revisionary amount of $375,000 ("Gross Settlement Amount"), which includes: (1) Attorney Fee Award of up to $131,250 (35% of the Gross Settlement Amount); (2) Cost Award of up to $25,000; (3) Class Representative Enhancement

Payment of up to $10,000; (4) Administration Costs of up to $15,000; and (5) PAGA Payment of $20,000. (Han Decl., *supra*, at ¶ 27.)

ii. Calculation of the Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated $173,750 ("Net Settlement Amount") will be distributed to Participating Class Members, resulting in a gross *average* Individual Settlement Share of $420.70. (Han Decl., *supra*, at ¶ 28.)

Individual Settlement Shares will be calculated using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(G)(1).) Eligible Aggrieved Employees' portion of the PAGA Payment will be calculated using the formula set forth in the Settlement Agreement. (*Id.* at § III(H)(7)(g).)

iii. The Allocation of 10% to Wages, 45% as Penalties, and 45% as Interest Is Justified Under the Claims of this Action

Individual Settlement Shares will be apportioned ten percent (10%) as wages, forty-five percent (45%) as penalties, and forty-five percent (45%) as interest. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(G)(2).)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 49.) Plaintiff added the realistic exposure for rest break premiums and meal break premiums ($23,577.42 + $15,812.48 = $39,389.90). (*Ibid.*) Plaintiff then added the $39,389.90 to the low end realistic exposure for unpaid wages due to off-the-clock work and underpaid overtime wages and sick leave ($39,389.90 + $37,937.81 + $1,513.30 = $78,841.01). (*Ibid.*) The realistic exposure of $78,841.01 Plaintiff can expect to receive if she 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 ten percent (10.67%) of the low end total realistic exposure ($78,841.01 ÷ $738,676.93 = 0.1067 x 100 = 10.67%). (*Ibid.*) Because this represents ten percent (10%) of wages, Individual Settlement Shares being apportioned ten percent (10%) as wages, forty-five percent (45%) as penalties, and forty-five percent (45%) as interest pursuant to the Settlement Agreement is appropriate. (*Ibid.*)

iv. Notice to the Class

Within fourteen (14) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class Data. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(J)(2)(a).) Afterwards, the Settlement Administrator will conduct a National Change of Address Database search for all Class Members to obtain the most up-to-date address information. (*Ibid.*)

Within twenty-one (21) calendar days after receiving the Class Data, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail, using the most current mailing address information available. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(J)(2)(b).) Class Members are not required to submit a claim form to receive their Individual Settlement Shares. (*Id.* at § I(W).)

v. Distribution of Funds

The Settlement will be funded and distributed in the manner and schedule set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ III(H)(2), III(H)(3).)

Participating Class Members and Eligible Aggrieved Employees must cash or deposit their settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(H)(5).) Uncashed settlement checks will be paid to the California State Controller's Unclaimed Property Division. (*Ibid.*)

vi. Release of Claims

As of the Effective Date and upon fulfillment of Defendant's payment obligations under section III(H)(2) of the Agreement, all Participating Class Members will be bound by a release of all claims and causes of action falling under the definition of Released Claims occurring during the Class Period. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(K).)

As of the Effective Date and upon fulfillment of Defendant's payment obligations under section III(H)(2) of the Agreement, the LWDA, and any other representative, proxy, or agent thereof, including Plaintiff, are hereby voluntarily and knowingly barred as a matter of law from bringing any and all claims against the Released Parties seeking civil penalties under Labor Code section 2698, *et seq.* (PAGA), based on or arising out of the Labor Code violations alleged in

Plaintiff's notice letter to the LWDA and the Complaint occurring during the PAGA Period. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(L).)

As of the Effective Date and upon fulfillment of Defendant's payment obligations under section III(H)(2) of the Agreement and in exchange for the Class Representative Enhancement Payment to Plaintiff in recognition of her work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs if this matter had not successfully resolved, Plaintiff provides a general release of all claims for herself and any spouse, heirs, successors, and assigns. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(M).) Plaintiff also stipulates and agrees, as of the Effective Date, Plaintiff shall be deemed to have knowingly expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Civil Code section 1542, or any other similar provision under federal or state law. (*Ibid.*)

Regarding 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

Counsel for both Parties are particularly 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, advantages, and disadvantages of settlement versus trial, and viability of the defenses. (*Ibid.*) Class Counsel's experience guided their determination to endorse the Settlement.[1] (*Ibid.*)

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[1] The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Notice Packet has been provided to the Class

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
>
> . . .
>
> (b) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor if settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor is "the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement." (*Kullar*, at p. 129; see also *Munoz*, at p. 409.)

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Members, 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.

[2] The California Supreme Court 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 Federal Rule 23 and federal case law in addition to California law.

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

i. The Settlement Amount of $375,000 Is Fair and Reasonable

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class, as referenced in Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 31.)

This investigation and evaluation informed the central theories of liability that are predicated on the alleged: (1) failure to properly calculate and pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq*. (Han Decl., *supra*, at ¶ 32.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 33.)

Although Plaintiff believes the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 34.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores,* *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.[3] (Han Decl., *supra*, at ¶ 34.) These factors led to discounting the calculations of the potential damages.

ii. The PAGA Payment of $20,000 Is Reasonable

The provisions of the Labor Code triggering PAGA penalties include, but are not limited to, 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 ¶ 43.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintain it had a strong argument it would be unjust to award maximum PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 43; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore, Defendant argued without stacking and limited to the initial violation, the PAGA penalties would be limited to about **$22,600** (226 employees x $100 penalty for initial violation) on the low end and around **$158,200** (226 employees x $100 penalty for initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 44-46.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 47.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating $20,000 to PAGA civil penalties was reasonable given that Defendant is also paying an additional $355,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are reasonable.[4] (*Ibid.*)

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

[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,

Considering Defendant's defenses, supporting evidence, and position that the case is not suitable for class treatment, the settlement amount is reasonable, adequate, and fair.

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 **$2,526,748.57** on the low end and **$2,647,248.57** on the high end. (Han Decl., *supra*, at ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	$269,456.26	75%	65%	$23,577.42
Meal Break Premiums	$100,396.70	65%	55%	$15,812.48
Overtime/Minimum Wage: Off-the-Clock Work	$240,875 to $361,375	65%	55%	$37,937.81 to $56,916.56
Overtime/Minimum Wage: Regular Rate	$4,233.01	35%	45%	$1,513.30
Unreimbursed Business Expenses	$121,170	35%	75%	$19,690.13
Wage Statement Penalty	$463,300	35%	45%	$165,629.75
Waiting Time Penalty	$1,327,317.60	35%	45%	$474,516.04
MAXIMUM TOTAL EXPOSURE	**$2,526,748.57** to **$2,647,248.57**[5]			**$738,676.93** to **$757,655.68**[6]

Based on this analysis, the realistic recovery is **$738,676.93** on the low end and **$757,655.68** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about fourteen percent (14.17%) of the maximum potential exposure and around forty-nine percent (49.49%) of the maximum realistic exposure at trial. (*Ibid.*)

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579, "[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims".)

[5] (Han Decl., *supra*, at ¶¶ 35-42.)

[6] (*Id.* at ¶¶ 49-56.)

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. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, "[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators".) Nevertheless, this settlement is in line with the realistic exposure if Plaintiff had prevailed at trial and provides significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends, as a former hourly-paid, non-exempt employee of Defendant, her claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*)

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i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately four hundred thirteen (413) Class Members, which is sufficiently numerous. (Han Decl., *supra*, at ¶ 59.) All Class Members can and will be identified by the Settlement Administrator through a review of employment records concerning all hourly-paid, non-exempt California employees of Defendant during the Class Period. (*Ibid.*)

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

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

1. Common Issues Predominate

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

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

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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

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.)

Plaintiff is a former employee of Defendant and alleges she and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 62.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of the work environment and requirements. (*Ibid.*) Furthermore, Plaintiff has no interest that is averse to the interests of the Class. (*Ibid.*)

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

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

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding 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.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

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

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

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

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V. CONCLUSION

Plaintiff submits the Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for purposes of settlement only, and Notice Packet should be approved.

Dated: June 22, 2023

JUSTICE LAW CORPORATION

By:________________________
Douglas Han
Attorneys for Plaintiff