

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
SHELBY MINER (SBN 318338)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ANDREA LOPEZ, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

OLIVET INTERNATIONAL, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CVRI2303759

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**

[Filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Lisa Mullins, and Douglas
Leach; [Proposed] Order; and Compliance
Chart]

Reservation ID: 972745796085

Hearing Date: November 7, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: July 21, 2023
FAC Filed: October 19, 2023
Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE on November 7, 2024, at 8:30 a.m., or as soon thereafter as
3 this matter may be heard, at Department 1, located at 4050 Main Street, Riverside, California
4 92501, Plaintiff Andrea Lopez (“Plaintiff”), on behalf of herself and all persons similarly situated,
5 will and hereby does move this Court pursuant to Code of Civil Procedure section 382 and
6 California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Plaintiff and Defendant Olivet International, Inc. (“Defendant”), including granting
9 preliminary approval of the following Class: “all individuals who worked for
10 Defendant as hourly-paid, non-exempt employees (whether hired directly or
11 through a staffing agency) in the State of California at any time from July 21, 2019
12 through October 4, 2024” (“Class,” “Class Members,” and “Class Period”). “Class
13 Members” shall not include any person who submits a timely and valid Request for
14 Exclusion Form;
15 (2) Approving the form of notice of class action settlement and procedure for
16 notice to the Class; and
17 (3) Setting the Final Approval Hearing.

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

21 Pursuant to the Joint Stipulation and Settlement Agreement (“Settlement Agreement” or
22 “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of Douglas Han In
23 Support of Motion For Preliminary Approval of Class Action Settlement, Defendant does not
24 oppose the preliminary approval of the settlement.
25

26 ///

27 ///

28 ///

1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf of the
2 Class shall be fully and finally resolved for the total sum of \$875,000 (“Maximum Settlement
3 Amount”) to be paid on a non-reversionary basis. The amount remaining of the Maximum
4 Settlement Amount after the following deductions are made (“Net Settlement Amount”) shall be
5 available for distribution to Class Members who do not submit timely and valid Requests for
6 Exclusion Form:

- 7 • up to \$306,250 to Class Counsel as the attorneys’ fees;
- 8 • up to \$30,000 to Class Counsel as the attorneys’ costs for reimbursement of attorneys’
9 costs and expenses incurred;
- 10 • up to \$10,000 to Plaintiff as Class Representative Enhancement Payment;
- 11 • up to \$20,000 to ILYM Group, Inc., the Settlement Administrator, as the Settlement
12 Administration Costs; and
- 13 • \$50,000 as the PAGA Payment, seventy-five percent (75%) of which (\$37,500) will
14 be paid to the California Labor and Workforce Development Agency and twenty-five
15 percent (25%) of which (\$12,500) will be distributed to all individuals who worked
16 for Defendant as hourly-paid, non-exempt employees (whether hired directly or
17 through a staffing agency) in the State of California at any time from May 16, 2022,
18 through October 4, 2024, on a pro rata basis, as their Individual PAGA Payments in
19 accordance with the Settlement Agreement.

20 This Notice of Motion is based on the fact this is a fair and reasonable settlement that
21 benefits the Class and was the product of informed, non-collusive negotiations by the Parties who
22 were represented by experienced and able counsel. (*Dunk v. Ford Motor Co.* (1996) 48 Cal. App.
23 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44.) The Agreement meets
24 the legal standard for preliminary approval and is in the best interests of the Class. The proposed
25 form of notice explains the Agreement terms in a clear and straightforward manner. The proposed
26 procedures for notice provide the best practical notice to the Class. Finally, Class Members will
27 have an opportunity to participate in, object to, and/or opt-out of the Agreement.

1 This Notice of Motion is based on this Notice, and the exhibits thereto (including the Notice
2 of Class Action Settlement, Objection Form, and Request for Exclusion Form), Memorandum of
3 Points and Authorities, Declaration of Douglas Han, Declaration of Lisa Mullins, Declaration of
4 Douglas Leach, pleadings, records and files in the case, and such other oral and documentary
5 evidence which may be submitted at or before the hearing.

6
7 Dated: October 3, 2024

JUSTICE LAW CORPORATION

8
9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
SHELBY MINER (SBN 318338)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

ANDREA LOPEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

OLIVET INTERNATIONAL, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CVRI2303759

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

CLASS ACTION

**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**

[Filed concurrently with Notice of Motion;
Declarations of Douglas Han, Lisa Mullins,
and Douglas Leach; [Proposed] Order; and
Compliance Chart]

Reservation ID: 972745796085

Hearing Date: November 7, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: July 21, 2023
FAC Filed: October 19, 2023
Trial Date: None Set

TABLE OF CONTENTS

I.	INTRODUCTION.....	8
II.	STATUS OF THE LITIGATION	8
A.	Procedural History.....	8
B.	Investigation and Discovery.....	9
C.	Settlement Efforts.....	9
III.	SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS	10
A.	Number of Class Members.....	10
B.	Attorney’s Estimate of the Recovery by the Average Class Member if the Settlement Agreement Were Approved	11
C.	Discovery Exchanged.....	11
D.	Other Pending Litigation.....	11
E.	Defendant’s Counsel’s Declaration.....	11
F.	Settlement Administrator	11
G.	Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds	12
H.	Release by Class Members is Limited	12
I.	The Proposed Notice Packet Provides Adequate Notice to the Class Members.....	13
J.	Settlement Does Not Require Any Class Members to Submit Claim Forms.....	13
K.	Settlement Does Not Provide Any Reversion to Defendant	13
L.	Employer’s Share of Payroll Taxes and the Allocation of Settlement Payments	13
M.	Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form	14
IV.	CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE.....	14
A.	There Is A Numerous and Ascertainable Class.....	14

1	B.	There Is A Well-Defined Community of Interest	15
2	C.	The Plaintiff’s Claims Are Typical	16
3	D.	Adequacy of Class Counsel and Class Representative	16
4	E.	Predominance and Superiority	17
5	V.	THE TWO-STEP APPROVAL PROCESS	17
6	VI.	THE SETTLEMENT IS FAIR AND ADEQUATE	18
7	A.	The Strength of Plaintiff’s Case	19
8	B.	The Risks Associated with the Merits.....	19
9	C.	The Risks Associated with Paystub Violations and Waiting Time Penalties	20
10	D.	The Risks Associated with the PAGA Penalties	21
11	E.	The Amount Offered in Settlement.....	23
12	VII.	THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND	
13		REASONABLE	24
14	VIII.	THE STIPULATED AWARD OF ATTORNEYS’ FEES AND COSTS IS	
15		REASONABLE AND SHOULD BE APPROVED	25
16	A.	Fee Splitting Agreement.....	26
17	IX.	ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY	
18		APPROVAL.....	27

TABLE OF AUTHORITIES

	Cases	Page(s)
	<i>In re Activision Securities Litigation</i>	
	(1989) 723 F.Supp. 1373	25, 26
	<i>In re Ampicillin Antitrust Litigation</i>	
	(D. D.C. 1981) 526 F.Supp.494.....	26
	<i>Brinker Restaurant Corporation v. Superior Court</i>	
	(2012) 53 Cal.4th 1004	19, 21, 22
	<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc</i>	
	(1987) 191 Cal.App.3d 1341	15, 16
	<i>Carrington v. Starbucks Corp</i>	
	(2018) 30 Cal.App.5th 504	22
	<i>Class Plaintiffs v. City Of Seattle</i>	
	(1992) 955 F.2d 1268	18
	<i>Classen v. Weller</i>	
	(1983) 145 Cal.App.3d 27	16
	<i>Daar v. Yellow Cab Company</i>	
	(1967) 67 Cal.2d 695	14
	<i>Hammon v. Barry</i>	
	(D.D.C. 1990) 752 F.Supp. 1087.....	18
	<i>Hopson v. Hanesbrands Inc</i>	
	(N.D. Cal. Apr. 3, 2009, No. 08-00844) 2009 U.S. Dist. LEXIS 33900	22
	<i>Kullar v. Foot Locker Retail, Inc</i>	
	(2008) 168 Cal.App.4th 116.....	18
	<i>Linder v. Thrifty Oil Co.,</i>	
	(2000) 23 Cal.4th 429.....	14, 18

///

Cases	Page(s)
<i>In re NASDAQ Market-Makers Antitrust Litigation</i>	
(SDNY 1997) 172 F.R.D. 119.....	15
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576.....	22
<i>In re Pacific Enterprises Securities Litigation</i>	
(9th Cir. 1994) 47 F.3d 373.....	25, 26
<i>Parker v. City of Los Angeles</i>	
(1974) 44 Cal.App.3d 556.....	26
<i>Priddy v. Edelman</i>	
(6th Cir. 1989) 883 F.2d 438.....	18
<i>Prince v. CLS Transp., Inc</i>	
(2004) 118 Cal.App.4th 1320.....	14
<i>Reyes v. Board of Supervisors of San Diego County</i>	
(1987) 196 Cal.App.3d 1263.....	14
<i>Richmond v. Dart Industries, Inc.</i>	
(1981) 29 Cal.3d 462.....	14
<i>Rodriguez v. West Publ. Corp</i>	
(C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767	18
<i>Rosack v. Volvo of America Corp</i>	
(1982) 131 Cal.App.3d 741.....	15
<i>Thurman v. Bayshore Transit Management, Inc</i>	
(2012) 203 Cal.App.4th 1112.....	21, 22
<i>Van Vranken v. Atlantic Richfield Co.</i>	
(N.D. Cal. 1995) 901 F.Supp.294	24
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800.....	14, 15

Cases	Page(s)
<i>Vincent v. Hughes Air West, Inc.</i>	
(9th Cir. 1977) 557 F.2d 759.....	25
<i>In re Wash. Pub. Power Supply Sys. Sec. Litigation</i>	
(9th Cir. 1994) 19 F.3d 129.....	25
<i>Wershba v. Apple Computer, Inc.</i>	
(2001) 91 Cal.App.4th 224.....	16
Statutes	
Business & Professions Code § 17200.....	15, 19
Labor Code § 201	21
Labor Code § 202	21
Labor Code § 203	21
Labor Code § 204.....	21
Labor Code § 210.....	21
Labor Code § 218.5.....	21
Labor Code § 221	21
Labor Code § 226.3.....	21
Labor Code § 226.7.....	21
Labor Code § 226(a)	21
Labor Code § 226(e)	20
Labor Code § 246.....	21
Labor Code § 432.5.....	21
Labor Code § 510.....	21
Labor Code § 512(a)	21
Labor Code § 551	21
Labor Code § 552.....	21
Labor Code § 558.....	21

1	Statutes	Page(s)
2	Labor Code § 1174(d)	21
3	Labor Code § 1194.....	21
4	Labor Code § 1197.....	21
5	Labor Code § 1197.1	21
6	Labor Code § 1198.....	21
7	Labor Code § 2699.3.....	21
8	Labor Code § 2699 (e)(2).....	21
9	Labor Code § 2800.....	21
10	Labor Code § 2802.....	21
11	Private Attorneys General Act of 2004 (“PAGA”).....	<i>passim</i>
12	Other Authorities	
13	<i>Manual for Complex Litigation</i> (3rd ed.) § 30.41	17
14	<i>Newberg on Class Actions</i> (4th ed. 2002) § 11.26	17
15	<i>Newberg on Class Actions</i> §11.47.....	24
16	<i>Newberg on Class Actions</i> §11.51.....	18
17	<i>Newberg on Class Actions</i> § 12.1.....	24
18	<i>Newberg on Class Actions</i> §§ 14-10:14-11.....	26
19	<i>Newberg on Class Actions</i> at § 14.03.....	26
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Andrea Lopez (“Plaintiff”) filed a wage-and-hour class action lawsuit and
4 representative action against Defendant Olivet International, Inc. (“Defendant”) (collectively,
5 referred to herein as the “Parties”) in the Superior Court of California, County of Riverside,
6 Case Number CVRI2303759 (“Action”).

7 The proposed settlement reflected in the Joint Stipulation and Settlement Agreement
8 (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the best
9 interests of the Class. Plaintiff, with the consent of Defendant, moves this Court for an order:
10 (1) granting preliminary approval of the proposed class action settlement, as embodied in the
11 Agreement; (2) approving the Notice of Class Action Settlement, Objection Form, and Request
12 for Exclusion Form (collectively, known as the “Notice Packet”) to be sent to Class Members;
13 (3) approving the notification schedule as set forth in the Agreement and Proposed Order; and
14 (4) setting a hearing for final approval of the class action settlement.

15 **II. STATUS OF THE LITIGATION**

16 **A. Procedural History**

17 On May 16, 2023, Plaintiff provided written notice to the California Labor and
18 Workforce Development Agency (“LWDA”) and Defendant. (Declaration of Douglas Han In
19 Support of Motion For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶ 13.)

20 On July 21, 2023, Plaintiff filed a wage-and-hour class action lawsuit in the Superior
21 Court of California, County of Riverside, alleging nine (9) causes of action. (Han Decl., *supra*,
22 at ¶ 14.)

23 On July 21, 2023, Plaintiff provided amended written notice to the LWDA and
24 Defendant. (Han Decl., *supra*, at ¶ 15.) On October 19, 2023, Plaintiff filed a First Amended
25 Complaint incorporating reference of the amended written notice sent to the LWDA and
26 Defendant. (*Id.* at ¶ 16.)

27 After engaging in discovery, investigations, and negotiation, on May 15, 2024, the
28 Parties remotely attended mediation with the mediator David Rotman, eventually reaching a
settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 17.).

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 ¶ 18.) 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 ¶ 19.) This included:

- conducting discovery and meeting and conferring with Defendant's counsel several times throughout this litigation;
- reviewing and analyzing personnel records, Defendant's Employee Handbook, policy documents, short meal break inquiry forms, Microsoft Excel Worksheets containing employees' time and pay information, and other documentation;
- locating and interviewing putative class members;
- researching the applicable law and potential defenses;
- constructing damage models based on interpretations of the law; and
- reviewing information provided by Defendant. (Han Decl., *supra*, at ¶ 19.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant's records. (Han Decl., *supra*, at ¶ 20.) Class Counsel's investigation revealed there are about 1,312 Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel's investigation also revealed there are approximately eight hundred forty-one (841) Eligible Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendant contested liability, amount of claimed damages, and propriety of class certification. (Han Decl., *supra*, at ¶ 21.) 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 May 15, 2024, the Parties remotely participated in a full day mediation. (Han Decl., *supra*, at ¶ 22.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) The Parties had to make significant compromises in the interest of reaching a

1 full and complete settlement of this Action. (Han Decl., *supra*, at ¶ 22.)

2 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

3 Defendant agreed to pay \$875,000 (“Maximum Settlement Amount”) on a non-
4 reversionary basis to settle and release all claims asserted in the operative complaints on behalf
5 of the Class. (Han Decl., *supra*, at ¶ 23.) The Settlement Agreement defines the Class as “all
6 individuals who worked for Defendant as hourly-paid, non-exempt employees (whether hired
7 directly or through a staffing agency) in the State of California at any time from July 21, 2019
8 through October 4, 2024” (“Class,” “Class Members,” and “Class Period”). (*Ibid.*) “Class
9 Members” shall not include any person who submits a timely and valid Request for Exclusion
10 Form. (*Ibid.*) The amount remaining in Maximum Settlement Amount after the following
11 deductions shall be distributed to Class Members (“Net Settlement Amount”):

- 12 • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class
13 Counsel as the attorneys’ fees (\$306,250);
- 14 • up to \$30,000 to Class Counsel as the attorneys’ costs for the reimbursement of
15 actual costs and expenses incurred;
- 16 • up to \$10,000 to Plaintiff as the Class Representative Enhancement Payment;
- 17 • up to \$20,000 as the Settlement Administration Costs to ILYM Group, Inc.
18 (“ILYM Group”), the Settlement Administrator; and
- 19 • up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
20 (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which
21 (\$12,500) will be paid to Eligible Aggrieved Employees, on a pro rata basis, as
22 their Individual PAGA Payment even if they submit valid and timely Request
23 for Exclusion Form (“PAGA Payment” and “Individual PAGA Payment”). (Han
24 Decl., *supra*, at ¶ 24.)

25 The Net Settlement Amount (approximately \$458,750) will be distributed to the Class
26 Members. (Han Decl., *supra*, at ¶ 25.)

26 **A. Number of Class Members**

27 There are around 1,312 Class Members and eight hundred forty-one (841) Eligible
28 Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 20, 89(a).)

1 **B. Attorney’s Estimate of the Recovery by the Average Class Member if the**
2 **Settlement Agreement Were Approved**

3 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
4 Settlement Payment will be about \$349.66. (Han Decl., *supra*, at ¶ 25.) Individual Settlement
5 Payments will be calculated and apportioned from the Net Settlement Amount based on the
6 number of Workweeks a Class Member worked during the Class Period as an hourly-paid or
7 non-exempt employee in California. (*Id.* at ¶ 26.) Individual PAGA Payments will be
8 calculated and apportioned from the twenty-five percent (25%) of the PAGA Payment based
9 on the number of Workweeks an Eligible Aggrieved Employee worked during the PAGA
10 Period as an hourly-paid or non-exempt employee in California. (*Ibid.*)

11 **C. Discovery Exchanged**

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

14 **D. Other Pending Litigation**

15 After making reasonable inquiries (*e.g.*, PAGA search, Case Portal), Class Counsel
16 have determined there are no class, representative, or other collective actions in any other court
17 in this or any other jurisdiction that asserts claims similar to those in this Action on behalf of a
18 class or group of individuals some or all of whom would also be members of the Class defined
19 in this Action. (Han Decl., *supra*, at ¶ 23.)

20 **E. Defendant’s Counsel’s Declaration**

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

22 **F. Settlement Administrator**

23 The Settlement Agreement provides for up to \$20,000 to be paid to the Settlement
24 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 85.) The fee was
25 calculated through a projected estimate from the following categories: (a) case setup; (b)
26 projecting management; (c) notification/mailing; (d) distribution; and (e) conclusion. (*Ibid.*)

27 ///

28 ///

1 Class Counsel obtained bids from IYM Group, Phoenix Class Action Administration
2 Solutions (“Phoenix”), and CPT Group, Inc. (“CPT Group”). (Han Decl., *supra*, at ¶ 86.)
3 ILYM Group had the most competitive (lowest) bid of \$13,950 when compared to the bid from
4 Phoenix (\$15,500) and CPT Group (\$17,000). (*Ibid.*)

5 The Settlement Administrator has extensive experience in administering employment
6 class action settlements.

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

8 Class Members will receive checks for their Individual Settlement Payments and
9 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 87.) Any check not cashed within one
10 hundred eighty (180) calendar days will be void and shall be distributed by the Settlement
11 Administrator to the State Controller’s Unclaimed Property Fund. (*Ibid.*)

12 **H. Release by Class Members is Limited**

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

15 [A]ll causes of action and factual or legal theories stated in the operative
16 complaints and those based solely upon the facts alleged in the operative
17 complaints. This includes all of the following claims: (a) failure to pay all
18 regular wages, minimum wages, and overtime wages; (b) failure to
19 provide proper meal and rest breaks and to properly provide premium pay
20 in lieu thereof; (c) failure to provide complete, accurate, or properly
21 formatted wage statements and payroll records; (d) failure to reimburse
22 necessary business expenditures; (e) failure to pay waiting time penalties;
23 (f) failure to timely pay wages during employment and after employment;
24 (g) engaging in unfair business practices that could have been premised on
25 the claims, causes of action or legal theories of relief described above or
26 any of the claims, causes of action or legal theories of relief pleaded in the
27 operative complaints; (h) all claims under PAGA, which shall only bind
28 Plaintiff and State of California, that were described in Plaintiff’s 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 ¶ 27.)

///

///

Pursuant to the terms set forth in the Settlement Agreement, Released Parties include Defendant together with its officers, directors, employees, and agents (“Released Parties”). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 28.)

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 ¶ 74.) Within ten (10) calendar days after the Settlement Administrator receives the Class List, the Settlement Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail. (*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 ¶ 14.)

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 ¶ 15(b).)

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

All Individual Settlement Payments will be allocated twenty percent (20%) as wages and eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 57.) All Individual PAGA Payments will be allocated as one hundred percent (100%) penalties. (*Id.* at ¶ 58.)

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 ¶ 15(a).)

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

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

6 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

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

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

19 **A. There Is A Numerous and Ascertainable Class**

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

25 Plaintiff contends the requirement of numerosity is met. The documents and
26 information exchanged reflect a Class of approximately 1,312 Class Members. (Han Decl.,
27 *supra*, at ¶ 89(a).) The Class Members were identified by Defendant’s payroll and personnel
28 records. (*Id.* at ¶ 89(b).)

1 **B. There Is A Well-Defined Community of Interest**

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

5 [D]oes not depend upon an identical recovery, and the fact that
6 each member of the class must prove his separate claim to a
7 portion of any recovery by the class is only one factor to be
8 considered ... The mere fact that separate transactions are involved
9 does not of itself preclude a finding of the requisite community of
10 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.

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

12 Plaintiff contends common issues of fact and law predominate as to each of the claims
13 alleged. Because Plaintiff alleges a single scheme, “the relevant proof [does] not vary among
14 class members” and “clearly presents a common question fundamental to all class members.”
15 (*In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing
16 *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518).)
17 California courts show “no hesitancy” in inferring class-wide causation, class-wide injury, and
18 class-wide damages when a common course of action has been shown. (*B.W.I. Custom Kitchen*
19 (1987) 191 Cal.App.3d 1341, 1350.) This inference ““eliminates the need for each class
20 member to prove individually the consequences of the defendants’ actions to him or her.”” (*Id.*
21 at p. 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal.App.3d 741, 753
22 [emphasis added])).)

23 This Action involves, *inter alia*, a determination about the alleged: (1) failure to
24 provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
25 business expenses; (3) failure to pay minimum wages; (4) failure to pay overtime wages; (5)
26 failure to pay final wages when required; (6) failure to provide accurate wage statements; and
27 (7) largely derivative claims under the Business & Professions Code and PAGA. (Han Decl.,
28

1 *supra*, at ¶ 89(e).) Plaintiff contends these practices affected Class Members in the same way.
2 (*Ibid.*) Plaintiff contends these issues will not be decided based on facts peculiar to each Class
3 Member but based on facts common to the Class. Finally, these issues of liability can be
4 determined on a class-wide basis.

5 **C. The Plaintiff's Claims Are Typical**

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

17 Plaintiff contends the claims are typical of Class Members' claims because they arose
18 from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶
19 89(c).) Plaintiff was employed by Defendant during the Class Period and subject to the
20 allegedly unlawful meal and rest break policies and practices. (*Ibid.*) The central issues of this
21 litigation (whether Defendant failed to pay all wages, failed to provide meal and breaks, failed
22 to pay premium wages, etc.), which would arise if this were an individual action brought by
23 Plaintiff, apply to the other Class Members. (*Ibid.*)

24 **D. Adequacy of Class Counsel and Class Representative**

25 Class Counsel are experienced in class actions, have represented their clients zealously,
26 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 89(d); Exhibit 2.) Plaintiff's
27 interests are aligned with those of the Class Members, suffered the same injuries as the Class
28 Members, and have no conflicts of interest. (*Id.* at ¶ 89(d).)

1 **E. Predominance and Superiority**

2 Individual issues do not predominate over those common to the Class. (Han Decl.,
3 *supra*, at ¶ 89(f).) Furthermore, the class action mechanism is superior to individualized actions
4 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 89(g).)

5 **V. THE TWO-STEP APPROVAL PROCESS**

6 Any settlement of class litigation must be reviewed and approved by the Court. This is
7 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review
8 after notice has been distributed to the class members for their comment or objections. The
9 Manual for Complex Litigation (Third) states:

10 “Approval of class action settlements involves a two-step process. First,
11 counsel submits the proposed terms of settlement and the court makes a
12 preliminary fairness evaluation. If the preliminary evaluation of the
13 proposed settlement does not disclose grounds to doubt its fairness or
14 other obvious deficiencies, such as unduly preferential treatment of class
15 representatives or of segments of the class, or excessive compensation for
16 attorneys, and appears to fall within the range of possible approval, the
17 court should direct that notice ... be given to the class members of a
18 formal fairness hearing, at which arguments and evidence may be
19 presented in support of and in opposition to the settlement.” (§ 30.41.)

20 Preliminary approval by the court is a conditional finding that the settlement appears to
21 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
22 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
23 settlement proposal may vary. The court may find the settlement proposal contains some merit,
24 is within the range of reasonableness required for a settlement offer, or is presumptively valid
25 subject only to any objections that may be raised at a final hearing.” (4 Alba Conte & Herbert
26 B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

27 The procedures for the Parties’ submission of a proposed settlement for preliminary
28 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*.

1 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

2 As a matter of public policy, the courts both encourage the use of the class action
3 device and favor settlement over continued litigation. (See e.g. *Linder v. Thrifty Oil Co.*, *supra*,
4 23 Cal.4th at p. 434 (“Courts have long acknowledged the importance of class actions as a
5 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
6 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
7 where complex class action litigation is concerned.”).)

8 The courts presume the absence of fraud or collusion in the negotiation of a settlement
9 unless evidence to the contrary is offered. There is a presumption the negotiations were
10 conducted in good faith. (*Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
11 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24, 25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
12 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when
13 settlement was reached by experienced counsel familiar with the litigation. (*Rodriguez*, at p.
14 24; *Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087.)

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

22 The Agreement satisfies these factors. Class Counsel conducted extensive discoveries
23 before entering meaningful settlement negotiations, including a detailed analysis of the policies
24 and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 18, 19.) This
25 discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and
26 risks associated with litigation. (*Id.* at ¶ 22.) Class Counsel are also experienced in the handling
27 of wage-and-hour class actions and support the Settlement. (*Id.* at ¶¶ 3-11; Exhibit 2.)

28 ///

1 **A. The Strength of Plaintiff’s Case.**

2 The claims in this action include: (1) failure to provide meal and rest breaks; (2) failure
3 to pay minimum wages; (3) failure to pay overtime wages; (4) failure to pay final wages when
4 due; (5) failure to provide accurate wage statements; (6) failure to reimburse necessary
5 business expenses; and (7) related claims for violations of the Business & Professions Code
6 and for penalties under PAGA. (Han Decl., *supra*, at ¶ 30.)

7 Class Counsel felt confident the claims would be certified given the policies and
8 practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 29-67.)

9 **B. The Risks Associated with the Merits.**

10 Plaintiff contends that Defendant’s meal and rest break policies were not Brinker-
11 compliant and code-compliant and that supervisors regularly forgot to release employees to
12 take their breaks. (Han Decl., *supra*, at ¶¶ 32, 35, 36.) This was purportedly made worse by
13 employees feeling pressured to forgo taking compliant meal and rest breaks to meet their daily
14 quota and to avoid causing delays. (*Ibid.*) This issue with noncompliant meal and rest breaks
15 supposedly extended to supervisors not authorizing and permitting employees to take
16 additional breaks even if they worked the requisite hours. (*Ibid.*) Defendant countered that it
17 always maintained compliant meal and rest break policies during the relevant time period,
18 expected supervisors to prioritize ensuring employees took their breaks, and did permit
19 supervisors to interfere with employees’ breaks. (*Id.* at ¶¶ 33, 37.) By extension, Defendant
20 may even produce evidence to demonstrate that employees were advised of their right to take
21 additional meal and rest breaks, but most employees did not work the requisite hours to qualify
22 for additional breaks. (*Ibid.*) Defendant also asserted that supervisors were expressly prohibited
23 from attempting to conceal any instances of noncompliant meal breaks. (*Ibid.*) Finally,
24 Defendant contended that Class Counsel will have to gather declarations from putative class
25 members to prove the existence of improper, uniform policies and practices. (*Ibid.*)

26 ///

27 ///

28 ///

1 As the consideration concerning meal and rest breaks would likely depress the damages
2 ultimately awarded, Class Counsel applied significant and appropriate discounts to the meal
3 and rest break claims. (Han Decl., *supra*, at ¶¶ 34, 38.) If Defendant’s counterarguments are
4 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
5 would be no recovery for the Class Members.

6 Plaintiff also alleges that Defendant failed to pay and properly calculate all applicable
7 wages owed, including minimum wages and overtime wages. (Han Decl., *supra*, at ¶ 39.)
8 Defendant purportedly expected employees to don and doff their personal protective equipment
9 (“PPE”) off-the-clock and did not have in place enough timeclocks for employees to use
10 without the formation of a line. (*Ibid.*) Employees also supposedly felt pressured to work
11 additional hours off-the-clock to meet their daily quotas without recording unauthorized
12 overtime hours. (*Ibid.*) Defendant countered that these claims are not suitable for class
13 treatment. (*Id.* at ¶ 40.) Defendant argued that it expressly prohibited off-the-clock work,
14 always required employees to don their PPEs during their shifts, and was never made aware of
15 employees working off-the-clock (which it denies). (*Ibid.*) Defendant even asserted that it
16 rarely, if ever penalized employees for recording unauthorized overtime hours. (*Ibid.*)
17 Defendant also contended that any unrecorded hours would likely be subject to individual
18 inquiries and unlikely to be certified. (*Ibid.*) Given the difficulty in certifying this claim, Class
19 Counsel applied a discount to damages. (*Id.* at ¶ 41.) If Defendant’s counterarguments held
20 true, the outcome of this claim would be little to no recovery for employees.

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

22 To establish liability for wage statement violations and waiting time penalties, Plaintiff
23 would first have to establish liability for the underlying claims. (Han Decl., *supra*, at ¶¶ 42, 43,
24 46, 47.) Defendant argued that the claim for Labor Code section 226(e) penalties would depend
25 on the rest break, meal break, and wage claims, meaning it would be subject to the same
26 defenses. (*Id.* at ¶ 44.) Defendant added that the above-mentioned violations did not occur
27 every pay period and that section 226(e) penalties are not automatic. (*Ibid.*) Defendant
28 concluded that employees need to show they suffered injury because of its noncompliance and

1 that such noncompliance was knowing and intentional. (Han Decl., *supra*, at ¶ 44.)

2 Defendant countered that the claim for Labor Code section 203 penalties is dependent
3 on the meal and rest break and wage claims, meaning it would be subject to the same defenses.
4 (Han Decl., *supra*, at ¶¶ 48, 49.) As discussed above, Plaintiff alleges that Defendant failed to
5 pay for all hours worked and premiums for noncompliant meal and rest breaks. (*Id.* at ¶¶ 32,
6 35, 36, 39.) Plaintiff also contends that the Class Members are entitled to minimum wages,
7 overtime wages, and premium wages, which were allegedly not paid at the time of their
8 termination or resignation. (*Id.* at ¶¶ 46, 47.) Defendant countered that it provided employees
9 with reasonable opportunities to take breaks, asked employees to confirm the accuracy of their
10 time records, and had good-faith defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 48, 49.)

11 **D. The Risks Associated with the PAGA Penalties.**

12 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
13 penalties for Labor Code violations by way of a civil action. The PAGA provides a penalty
14 amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200
15 for each aggrieved employee per pay period for each subsequent violation. (Labor Code §
16 2699, subd. (e)(2).) If a civil penalty is provided in a specified amount by the Labor Code
17 section relating to the underlying alleged Labor Code violation, that amount shall apply. (*Ibid.*)
18 PAGA also gives the Court discretion to award any lesser amount than the maximum civil
19 penalty. (*Id.* [“[A] court may award a lesser amount than the maximum civil penalty amount
20 specified by this part if, based on the facts and circumstances of the particular case, to do
21 otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.”].)

22 The provisions of the Labor Code potentially triggering PAGA penalties include
23 sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
24 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 55.)
25 Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
26 penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained that it had a
27 strong argument that it would be unjust to award maximum PAGA penalties given the law’s
28 unsettled state. (Han Decl., *supra*, at ¶ 55; *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 **\$84,100** (841 employees x \$100 initial violation) on the low end and **\$504,600** (841 employees x \$100 initial violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 56-59.)

Plaintiff recognized the risks that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 60.) 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 \$50,000 to PAGA civil penalties was reasonable based on a rate of **\$6.73** per pay period [$\$50,000 \div 7,433$ pay periods in the PAGA Period] given that Defendant is paying an additional \$825,000 in the class settlement.¹ (*Ibid.*) If 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 considered reasonable.² (*Ibid.*)

Finally, Class Counsel are confident they would successfully prove Defendant’s alleged wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 61.) Plaintiff alleges that Defendant intentionally failed to maintain *Brinker*-compliant and code-compliant meal and rest break policies. (*Ibid.*) By extension, Defendant purportedly knew that supervisors were forgetting to release employees to take their meal and rest breaks and that employees felt pressured to forgo taking compliant breaks. (*Ibid.*) Defendant also supposedly knew that supervisors were trying to conceal instances of noncompliant meal breaks. (*Ibid.*) Defendant apparently knowingly and intentionally failed to pay employees premium wages for noncompliant meal and rest breaks. (*Ibid.*) Defendant allegedly intentionally required

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).)

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.”).)

employees to don and doff their PPEs off-the-clock and knew that there was a line of employees attempting to clock. (Han Decl., *supra*, at ¶ 61.) Defendant also purportedly knew that employees felt pressured to work additional hours off-the-clock. (*Ibid.*)

E. 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 Plaintiff 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 **\$2,458,970.98** on the low end and **\$2,700,330.98** on the high end. (Han Decl., *supra*, at ¶ 63.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$613,580.98	65%	55%	\$96,639
Meal Break Premiums	\$516,900	55%	50%	\$116,302.50
Overtime/Minimum Wage: Off-the-Clock	\$482,440 to \$723,800	50%	50%	\$120,610 to \$180,950
Unreimbursed Business Expenses	\$131,200	25%	65%	\$34,440
Wage Statement Penalty	\$714,850	65%	65%	\$87,569.13
Waiting Time Penalty	\$3,911.899.20	65%	65%	\$479,207.65
MAXIMUM TOTAL EXPOSURE	\$2,458,970.98 to \$2,700,330.98			\$934,768 to \$995,108

Based on this analysis, the total estimated realistic exposure for this case would be approximately **\$934,768** on the low end and **\$995,108** on the high end. (Han Decl., *supra*, at ¶ 64.) The Maximum Settlement Amount is about thirty-two percent (32.40%) of the high end total potential exposure at trial and around eighty-eight percent (87.93%) of the high end total realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

///

///

///

1 The allocation of wages, penalties, and interest indicated above was based on the
2 realistic exposure that Plaintiff could expect to receive for meal and rest break premiums and
3 unpaid wages. (Han Decl., *supra*, at ¶ 65.) Plaintiff added the realistic exposure for rest break
4 premiums and meal break premiums (\$96,639 + \$116,302.50 = \$212,941.50). (*Ibid.*) Plaintiff
5 then added the \$212,941.50 to the low end realistic exposure for unpaid wages due to off-the-
6 clock work (\$212,941.50 + \$120,610 = \$333,551.50). (*Ibid.*) The realistic exposure of
7 \$333,551.50 that Plaintiff can expect to receive if she were to prevail at trial for meal and rest
8 break premiums and low end unpaid wages due to off-the-clock work represents about nineteen
9 percent (19.72%) of the low end total realistic exposure and PAGA penalties (\$333,551.50 ÷
10 \$1,691,668 = 0.19717 x 100 = 19.72%). (*Ibid.*) Because this represents about twenty percent
11 (20%) of wages, it is appropriate to allocate twenty percent (20%) as wages and eighty percent
12 (80%) as interest and penalties pursuant to the Settlement Agreement. (*Ibid.*)

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

17 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND**
18 **REASONABLE**

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

21 Plaintiff is entitled to reasonable service payment for her efforts in this matter. (Han
22 Decl., *supra*, at ¶ 80.) Plaintiff spent significant time better apprising herself of his rights,
23 deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

24 By suing Defendant, Plaintiff increased the risk of retaliation by future employers. (Han
25 Decl., *supra*, at ¶ 81.) The lawsuit has cost Defendant resources, and such conduct will not be
26 lost on prospective employers. (*Ibid.*) This risk of losing employment opportunities is real in
27 the information age that contains quick background checks. (*Ibid.*)

28 ///

1 Plaintiff did not allow fears of the potential repercussions of being a class
2 representative to deter him from acting for the benefit of Class Members. (Han Decl., *supra*, at
3 ¶ 82.) Plaintiff has been intimately involved in this case since its inception and has devoted a
4 substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

5 Plaintiff spent hours with Class Counsel detailing her knowledge of Defendant's
6 practices. (Han Decl., *supra*, at ¶ 83.) Plaintiff diligently, adequately, and fairly represented
7 Class Members and did not place her interests above the Class Members. (*Ibid.*) The Parties
8 agree that Plaintiff is entitled to the Class Representative Enhancement Payment. (*Ibid.*)

9 Class Counsel believe the Class Representative Enhancement Payment of \$10,000 to
10 Plaintiff is fair and reasonable. (Han Decl., *supra*, at ¶ 84.)

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

13 Under the Agreement, Class Counsel request, without opposition from Defendant, an
14 award of Attorneys' Fees and Costs consisting of: (1) up to \$306,250 as the attorneys' fees;
15 and (2) up to \$30,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 77.) The requested fees are
16 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
17 consuming litigation on a contingent basis. (*Id.* at ¶¶ 77, 78.)

18 California courts look to the federal courts on class action approvals. The Ninth Circuit
19 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
20 percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*
21 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
22 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
23 active beneficiary does not bear the entire burden alone." (*Ibid.*)

24 Courts have discretion to choose either the percentage-of-the-fund method or the
25 lodestar method. (*In re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d
26 1291, 1295, 1296.) Courts have expressed frustration with the lodestar approach to deciding fee
27 awards. The percentage approach can be preferable in certain situations because it: (1) aligns
28 the interests of class counsel and absent class members; (2) encourages efficient resolution of

1 the litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the
2 demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378,
3 1379.) The Ninth Circuit has used the percentage of the common fund approach to determine
4 the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47
5 F.3d 373, 378, 379 (approving attorneys' fee of 33 1/3% of settlement fund).)

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

13 The requested attorneys' fees is commensurate with judicial precedent. Both state and
14 federal courts approve fee awards equal to or greater than the percentage requested in this case.
15 (See e.g. *In re Pacific Enterprises Securities Litigation*, *supra*, 47 F.3d at p. 379 (affirming an
16 award equal to 33% of the common fund); *In re Activision Securities Litigation*, *supra*, 723
17 F.Supp. at p. 1375 (awarding plaintiffs' counsel 32.8% of the common fund created to settle
18 the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding
19 45% of \$7.3 million settlement fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d
20 556, 557-568 (affirming fee award to counsel of one-third (1/3) of recovery achieved).)

21 Class Counsel have borne the entire risk and costs of litigation and will not receive any
22 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 77, 78.) The Court should
23 also consider the benefit obtained by Class Counsel on behalf of the Class.

24 **A. Fee Splitting Agreement**

25 Class Counsel are not splitting the costs associated with the settlement with any other
26 individuals or firms. (Han Decl., *supra*, at ¶ 88.)

27 ///

28 ///

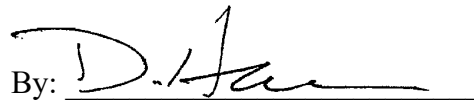
1 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
2 **APPROVAL**

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

- 5 1. Review and approve the Agreement attached to the Declaration of Douglas Han;
- 6 2. Review and approve the Notice of Class Action Settlement, Objection Form, and
7 Request for Exclusion Form attached to the Proposed Order;
- 8 3. Consider and determine the proposed class action settlement as set forth in the
9 Agreement preliminarily appears fair, reasonable, and adequate;
- 10 4. Conditionally certify the action as a class action for settlement purposes only and
11 preliminarily approving the proposed class action settlement and Agreement;
- 12 5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Shelby Miner of
13 Justice Law Corporation to serve as Class Counsel for settlement purposes;
- 14 6. Approve and appoint Phoenix as the Settlement Administrator to handle the notice
15 procedures as set forth in the Settlement Agreement;
- 16 7. Approve the proposed allocation of funds to the claims made under PAGA;
- 17 8. Order Defendant to disclose the Class List to the Settlement Administrator in
18 accordance with the manner set forth in the Settlement Agreement;
- 19 9. Order the Settlement Administrator to mail the Notice Packet to Class Members;
- 20 10. Set a date for the Final Approval Hearing.

21
22 Dated: October 3, 2024

JUSTICE LAW CORPORATION

23
24 By: 
25 Douglas Han
26 *Attorneys for Plaintiff*
27
28

**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 shanneyan@justicelawcorp.com

On October 3, 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: **Andrea Lopez v. Olivet International, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-955409-23**
Court Case No.: CVRI2303759
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

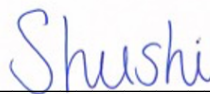
[X] BY ELECTRONIC SUBMISSION

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 October 3, 2024, at Pasadena, California.



Sophia Hanneyan