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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JERMMIE MACKEY, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: 23STCV22384

Assigned for All Purposes to:
Honorable Lawrence P. Riff
Department 7

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed Class
Representative (Jermmie Mackey); Declaration
of Jodey Lawrence; Declaration of Citadelle
Priagula; and [Proposed] Order filed
concurrently herewith]

Hearing Date: December 10, 2024
Hearing Time: 10:00 a.m.
Hearing Place: Department 7

Complaint Filed: September 15, 2023
FAC Filed: December 5, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 10, 2024 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Lawrence P. Riff in Department 7 of the Los Angeles
3 County Superior Court located at 312 North Spring Street, Los Angeles, California 90012,
4 Plaintiff Jermmie Mackey (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Class Action and PAGA Settlement
7 Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action Settlement and Hearing
14 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
15 Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the deadlines for the notice and settlement administration process;
- 19 • Approving Phoenix Class Action Administration Solutions as the Administrator;
20 and
- 21 • Scheduling a hearing to consider whether to grant final approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant final
23 approval of the requests for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, Class Representative Service Payment, and
25 Administration Expenses Payment, and Private Attorneys General Act of 2004
26 (“PAGA”) Penalties.

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

6
7 Dated: October 29, 2024

JUSTICE LAW CORPORATION

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

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 settlement by Plaintiff on behalf of himself and all hourly-paid, non-exempt employees of
4 Defendant TownSteel, Inc. (“Defendant”) within the State of California at any time during the
5 period from September 15, 2019, through June 27, 2024 (“Class,” “Class Members,” and “Class
6 Period”). At this time, the number of Class Members is estimated to be one hundred seven (107),
7 which was confirmed by Defendant. (Declaration of Douglas Han In Support of Motion for
8 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7, 8.)

9 **II. BACKGROUND**

10 On September 15, 2023, Plaintiff provided written notice to the California Labor and
11 Workforce Development and Defendant. (Han Decl., *supra*, at ¶ 9; Exhibit 3.)

12 On September 15, 2023, Plaintiff filed a wage-and-hour class action lawsuit in the
13 Superior Court of California, County of Los Angeles, alleging eight (8) causes of action. (Han
14 Decl., *supra*, at ¶ 10.)

15 On December 5, 2023, Plaintiff filed a First Amended Complaint that added violation of
16 Labor Code section 2698 (PAGA). (Han Decl., *supra*, at ¶ 11; Exhibit 4.)

17 After engaging in discovery, investigations, and negotiations, on June 27, 2024, the Parties
18 remotely attended mediation with the mediator Mike Ludwig that resulted in the settlement of
19 this matter. (Han Decl., *supra*, at ¶ 12.)

20 **III. INVESTIGATION/ LITIGATION HISTORY**

21 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

22 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 14.)
23 Plaintiff propounded form interrogatories, special interrogatories, requests for admission, and
24 requests for production of documents. (*Ibid.*) The Parties met and conferred and agreed to engage
25 in an informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

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1 Prior to mediation, the Parties conducted investigation and discovery of the relevant facts
2 and law. (Han Decl., *supra*, at ¶ 15.) Defendant produced several documents relating to its
3 policies, practices, and procedures. (*Ibid.*) Defendant also assembled and produced, and Plaintiff
4 reviewed, a random sampling of time and pay records, information relating to the size and scope
5 of the Class. (*Ibid.*) Putative class members were also located and interviewed to attain a better
6 understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

7 Based upon the information provided by Defendant and interviews with putative class
8 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
9 with legally mandated rest and meal breaks; (2) failed to pay employees for all hours worked; (3)
10 failed to factor non-discretionary bonuses into employees’ regular rate of pay; (4) failed to
11 reimburse employees for necessary business expenses; (5) issued noncompliant wage statements;
12 and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-24.)

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

14 **i. Parties Attended Mediation Which Led to the Settlement Agreement**

15 The Parties remotely attended mediation with an experienced wage-and-hour mediator.
16 (Han Decl., *supra*, at ¶ 25.) During the mediation, the Parties discussed the risks of continued
17 litigation, likelihood of certification, and merits of the claims and defenses versus the benefits of
18 settlement. (*Ibid.*) Under the auspices of the mediator, the Parties negotiated a settlement, the
19 terms of which were memorialized in the Settlement Agreement. (*Id.* at ¶ 25; Exhibits 2, 5.)

20 **ii. The Settlement Was Reached as a Result of Arm’s-length Negotiations**

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

25 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
26 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
27 29.) Plaintiff and Class Counsel considered the uncertainty and risk of further litigation, potential
28 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the foregoing,

Plaintiff and Class Counsel believe that the Settlement is a fair, adequate, and reasonable settlement, and is in the Class Members' best interests. (Han Decl., *supra*, at ¶ 29.)

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 before reaching the Settlement and engaged in sufficient investigation, research, and discovery to support the Settlement. (Han Decl., *supra*, at ¶ 30.) The Settlement was possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class. (*Ibid.*) This case has reached the stage where the Parties understand “the strength of the case; the reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best possible recovery” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 30; *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 the Court’s approval) this matter be settled and compromised for the non-reversionary total sum of \$550,000 (“Gross Settlement Amount”), which includes: (1) Class Counsel Fees Payment not to exceed \$192,500 (35% of the Gross Settlement Amount); (2) Class Counsel Litigation Expenses Payment not to exceed \$20,000; (3) Class Representative Service Payment not to exceed \$10,000; (4) Administration Expenses Payment not to exceed \$10,000; and (5) PAGA Penalties not to exceed \$25,000. (Han Decl., *supra*, at ¶ 26; Exhibit 6.)

ii. Calculation of Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$292,500 (“Net Settlement Amount”) will be distributed to the Participating Class Members – with an *average* gross Individual Class Payment of \$2,733.65. (Han Decl., *supra*, at ¶ 27.)

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1 The Administrator will calculate and pay Individual Class Payments using the formula set
2 forth in the Agreement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § C(2)(d).) Individual
3 Class Payments will be allocated twenty percent (20%) to the settlement of wage claims and
4 eighty percent (80%) to the settlement of claims for interest and penalties. (*Id.* at § C(2)(i).)

5 The Administrator will also calculate and pay Individual PAGA Payments using the
6 formula set forth in the Settlement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § C(2)(e)(i).)
7 Individual PAGA Payments will be allocated one hundred percent (100%) to the settlement of
8 interest and penalties. (*Id.* at § C(2)(e)(ii).)

9 **iii. Notice to the Class**

10 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
11 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
12 ¶ 25; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
13 Class Data, the Administrator will send the Class Notice with a translation to all Class Members
14 identified in the Class Data via first-class USPS mail. (*Id.* at § G(4)(c).)

15 **iv. Distribution of Funds**

16 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
17 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §§ D(2), D(3).)
18 Uncashed settlement checks will be canceled and transmitted to the California Controller's
19 Unclaimed Property Fund. (*Id.* at §§ D(3)(a), D(3)(c).)

20 **v. Release of Claims**

21 Effective on the date when Defendant fully funds the Gross Settlement Amount and funds
22 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments or the
23 Effective Date, whichever is later, all Participating Class Members, on behalf of themselves and
24 their former and present representatives, agents, attorneys, heirs, administrators, successors, and
25 assigns, release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 25;
26 Exhibit 2, *supra*, at § E(2).)

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Effective on the date when Defendant fully funds the Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments or the Effective Date, whichever is later, all Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § E(3).)

Effective on the date when Defendant fully funds the Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments or the Effective Date, whichever is later, Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge the Released Parties from all claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § E(1).) Furthermore, Plaintiff knowingly and voluntarily waives any and all rights or benefits he may have under the terms of Civil Code section 1542. (*Id.* at § E(1)(a).)

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 contained in the operative complaints. 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

The Parties’ counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; 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.

(Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel’s experience guided their determination to endorse the Settlement.¹ (*Ibid.*)

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.

...

(c) 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 in whether the 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)

¹ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice has been provided to the Class 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. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 186 Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case
2 for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot*
3 *Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 130; see also *Munoz v. BCI Coca-Cola Bottling*
4 *Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

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

14 **i. The Settlement Amount of \$550,000 Is Fair and Reasonable**

15 The Settlement was only possible following significant investigation and evaluation of the
16 relevant policies and procedures and the data produced for the putative class, as referenced in
17 Section III above, which permitted Class Counsel to engage in a comprehensive analysis of
18 liability and potential damages. (Han Decl., *supra*, at ¶ 30.)

19 This investigation and evaluation informed the central theories of liability predicated on
20 the alleged: (1) failure to properly pay overtime wages; (2) failure to provide compliant meal and
21 rest breaks and pay premium wages; (3) failure to pay minimum wages; (4) failure to timely pay
22 wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses;
23 (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200. (Han
24 Decl., *supra*, at ¶ 31.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 32.)

25 While Plaintiff believes that the case is suitable for certification, uncertainties with respect
26 to certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court
27 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
28 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*

Stores, Inc. have reached different conclusions.³ (Han Decl., *supra*, at ¶ 33.) These factors led to discounting the calculations of potential damages.

ii. The PAGA Penalties of \$25,000 Is Reasonable

The provisions of the Labor Code triggering PAGA penalties include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 44.) Defendant asserts that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains that 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 ¶ 44; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$5,300** (53 employees x \$100 penalty for initial violation) on the low end and **\$31,800** (53 employees x \$100 penalty for initial violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 45-47.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 48.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$25,000 to PAGA civil penalties was reasonable given that Defendant is paying an additional \$525,000 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.*)

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

Considering the defenses, supporting evidence, and position that the case is not suitable for class treatment, the Settlement 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 **\$1,453,668.09** on the low end and **\$1,641,144.39** on the high end. (Han Decl., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$261,128.93	65%	60%	\$36,558.05
Meal Break Premiums	\$369,421.14	55%	50%	\$83,119.76
Overtime/Minimum Wage: Off-the-Clock Work	\$374,952.60 to \$562,428.90	50%	50%	\$93,738.15 to \$140,607.23
Regular Rate	\$1,541.82	25%	45%	\$636.00
Unreimbursed Business Expenses	\$66,600	25%	65%	\$17,482.50
Wage Statement Penalty	\$145,750	35%	35%	\$61,579.38
Waiting Time Penalty	\$234,273.60	35%	35%	\$98,980.60
MAXIMUM TOTAL EXPOSURE	\$1,453,668.09 to \$1,641,144.39⁵			\$392,094.44 to \$438,963.52⁶

Based on this analysis, the realistic recovery for this case is **\$392,094.44** on the low end and **\$438,963.52** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about thirty-three percent (33.51%) of the maximum potential exposure and around one hundred twenty-five percent (125.30%) of the maximum realistic exposure. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “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.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v.*

⁵ (Han Decl., *supra*, at ¶¶ 34-43.)

⁶ (*Id.* at ¶¶ 50-56.)

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

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

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

12 The Class is ascertainable and numerous as to make it impracticable to join all Class
13 Members, and there are common questions of law and fact that predominate over any individual
14 questions. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends that, as a former hourly-paid, non-exempt
15 employee of Defendant, his claims are typical of the claims of the Class, and Class Counsel will
16 fairly and adequately protect the Class’s interests. (*Ibid.*) Plaintiff assert that prosecution of
17 separate actions by the Class would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

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1 This case involves approximately one hundred seven (107) Class Members, meaning the
2 Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 59.)

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

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

13 **1. Common Issues Predominate**

14 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
15 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
16 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690.) In other words, courts
17 determine whether the elements necessary to establish liability are susceptible to common proof,
18 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*
19 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
20 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*
21 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
22 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
23 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
24 certified class of dancers on state law claims].)

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

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1 current employees, Plaintiff believes that the fear of retaliation further supports the superiority of
2 class-wide relief as this fear often discourages current employees from seeking legal redress.

3 **e. The Settlement Is Fair, Reasonable, and Adequate**

4 In deciding whether to approve a proposed class action settlement under Code of Civil
5 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
6 reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action
7 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
8 after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel
9 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
10 percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present herein.

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

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

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

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

20 **V. CONCLUSION**

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

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26 Dated: October 29, 2024

JUSTICE LAW CORPORATION

27 By: 
28 Douglas Han
Attorneys for Plaintiff

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