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

SUMMER HUBER, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

EVOLVE DENTAL TECHNOLOGIES,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 30-2023-01354711-CU-OE-CXC

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

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**

[Reservation ID: 74337113]

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Sean Hartranft;
Declaration of Crystal Lopez; and [Proposed]
Order filed concurrently herewith]

Hearing Date: November 8, 2024
Hearing Time: 10:00 a.m.
Hearing Place: Department CX-105

Complaint Filed: October 9, 2023
FAC Filed: February 6, 2024
SAC Filed: May 21, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 8, 2024 at 10:00 a.m. or as soon as the
2 matter may be heard, before the Honorable Randall J. Sherman in Department CX-105 of the
3 Orange County Superior Court located at 751 West Santa Ana Boulevard, Santa Ana, California
4 92701, Plaintiff Summer Huber (“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 Joint Stipulation of Class Action and PAGA
7 Settlement (“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 proposed Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
14 attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class
15 Action Settlement and Settlement Agreement;
- 16 • Approving the proposed Request for Exclusion Form (“Exclusion Form”) attached
17 as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class Action
18 Settlement and Settlement Agreement;
- 19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
21 to the proposed Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving Apex Class Action Administration as the Settlement Administrator;
25 and

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

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

Dated: July 12, 2024

JUSTICE LAW CORPORATION

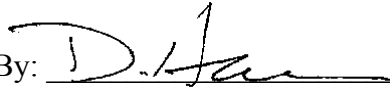
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a fixed total non-reversionary proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of herself and all current and former
4 hourly-paid or non-exempt employees of Defendant Evolve Dental Technologies, Inc.
5 (“Defendant”) within the State of California at any time during the period from October 9, 2019
6 through August 6, 2024 or the date of preliminary approval, whichever date is earlier (“Class”
7 and “Class Period”). At the time of this filing, the number of Class Members confirmed by
8 Defendant is estimated to be forty-five (45). (Declaration of Douglas Han In Support of Motion
9 For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7, 8.)

10 **II. BACKGROUND**

11 On October 9, 2023, Plaintiff, a former employee of Defendant, provided written notice
12 to the California Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han
13 Decl., *supra*, at ¶ 9; Exhibits 3, 4.)

14 On October 9, 2023, Plaintiff filed a wage-and-hour class action lawsuit in the Superior
15 Court of California, County of Orange, alleging eight (8) causes of action. (Han Decl., *supra*, at
16 ¶ 10.)

17 On February 6, 2024, Plaintiff filed a First Amended Complaint that added a cause of
18 action for violation of Labor Code section 2698 (PAGA). (Han Decl., *supra*, at ¶ 11; Exhibit 5.)

19 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
20 mediation with the mediator Jeffrey P. Fuchsman on May 6, 2024, ultimately resulting in the
21 Parties reaching a tentative settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 12.)

22 In line with the settlement, on May 21, 2024, Plaintiff filed a Second Amended Complaint
23 that adjusted the “class” and “aggrieved employees” definitions. (Han Decl., *supra*, at ¶ 13;
24 Exhibit 6.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Plaintiff propounded form interrogatories, special interrogatories, requests for admission,
4 and requests for production of documents. (Han Decl., *supra*, at ¶ 15.) Defendant responded to
5 the formal discovery requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in
6 an informal exchange of information and eventually remotely attended mediation. (*Ibid.*)

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

12 Based upon the information provided and interviews with putative class members,
13 Plaintiff contends – and Defendant denies – that Defendant: (1) failed to provide employees with
14 legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) had
15 in place an illegal policy and practice of rounding; (4) failed to reimburse employees for necessary
16 business expenses; (5) issued noncompliant wage statements; and (6) is liable for waiting time
17 penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

19 **i. The Parties Attended Mediation Which Led to the Settlement**

20 The Parties remotely attended mediation with the mediator. (Han Decl., *supra*, at ¶ 26.)
21 During the mediation, the Parties discussed the risks of continued litigation, likelihood of
22 certification, and merits of the claims and defenses versus the benefits of settlement. (*Ibid.*) Under
23 the auspices of the mediator via a mediator’s proposal, the Parties managed to negotiate a
24 settlement, the terms of which were memorialized in the Agreement. (*Id.* at ¶ 26; Exhibits 2, 7.)

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

2 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶
3 29.) Though cordial and professional, the settlement negotiations have always been adversarial
4 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive
5 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

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

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

13 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
14 of the claims and defenses and engaged in sufficient investigation, research, and discovery. (Han
15 Decl., *supra*, at ¶ 31.) The Settlement Agreement was only possible following significant
16 investigation and evaluation of the relevant policies and procedures in place and the data
17 produced. (*Ibid.*) This information permitted Class Counsel to engage in a comprehensive
18 analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where the
19 Parties understand “the strength of the case; the reasonableness of the settlement in light of the
20 attendant risks of litigation, and in light of the best possible recovery” sufficient to support the
21 Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 31; *Boyd v. Bechtel*
22 *Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

24 **i. Deductions from the Settlement**

25 The Parties agreed (subject to and contingent upon the Court’s approval) this case be
26 settled and compromised for a fixed total non-revisionary amount of \$300,000 (“Gross Settlement
27 Amount”), which includes: (1) Attorney Fee Award of up to \$100,000 (1/3 of the Gross
28 Settlement Amount); (2) Cost Award of up to \$15,000; (3) Class Representative Enhancement

1 Payment of up to \$10,000; (4) Administration Costs of up to \$7,500; and (5) PAGA Payment of
2 \$30,000. (Han Decl., *supra*, at ¶ 27.)

3 **ii. Calculation of the Individual Settlement Shares**

4 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
5 \$137,500 (“Net Settlement Amount”) will be distributed to Participating Class Members,
6 resulting in a gross *average* Individual Settlement Share of \$3,055.56. (Han Decl., *supra*, at ¶ 28.)

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

11 **iii. The Allocation of 20% to Wages and 80% to Penalties and Interest Is**
12 **Justified Under the Claims of this Action**

13 Individual Settlement Shares will be apportioned as follows: (1) twenty percent (20%) as
14 wages; and (2) eighty percent (80%) as penalties and interest. (Han Decl., *supra*, at ¶ 26; Exhibit
15 2, *supra*, at § III(G)(2).)

16 The allocation of wages, penalties, and interest indicated above was based on the realistic
17 exposure that Plaintiff could expect to receive for meal and rest break premiums, unpaid wages,
18 and underpaid wages. (Han Decl., *supra*, at ¶ 50.) Plaintiff added the realistic exposure for rest
19 break premiums and meal break premiums (\$18,548.13 + \$33,530.49 = \$52,078.62). (*Ibid.*)
20 Plaintiff then added the \$52,078.62 to the low end realistic exposure for unpaid wages due to off-
21 the-clock work and underpaid wages due to rounding (\$52,078.62 + \$17,372.55 + \$1,443.13 =
22 \$70,894.30). (*Ibid.*) The realistic exposure of \$70,894.30 that Plaintiff can expect to receive if she
23 were to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-
24 clock work, and underpaid wages due to rounding represents about twenty-two percent (21.94%)
25 of the low end total realistic exposure and PAGA penalties ($\$70,894.30 \div \$323,113.65 = 0.21941$
26 $\times 100 = 21.94\%$). (*Ibid.*) Because this represents about twenty percent (20%) of wages, it is
27 appropriate to apportion twenty percent (20%) of the Individual Settlement Share as wages and
28

eighty percent (80%) of the Individual Settlement Share as penalties and interest pursuant to the Settlement Agreement. (Han Decl., *supra*, at ¶ 50.)

iv. Notice to the Class

Within twenty (20) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class Data. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § III(J)(2)(a).) Afterwards, the Settlement Administrator will conduct a National Change of Address Database search for all Class Members to obtain the most up-to-date address information. (*Ibid.*)

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

v. Distribution of Funds

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

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

vi. Release of Claims

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

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1 As of the Effective Date and upon the fulfillment of Defendant's payment obligations set
2 forth in the Settlement Agreement, the LWDA, and any other representative, proxy, or agent
3 thereof, including Plaintiff and Eligible Aggrieved Employees, will be bound by a release of all
4 claims and causes of action falling under the PAGA Released Claims occurring during the PAGA
5 Period. The PAGA Released Claims is effective regardless of whether the Eligible Aggrieved
6 Employee submits a valid and timely Exclusion Form. (Han Decl., *supra*, at ¶ 26; Exhibit 2,
7 *supra*, at §§ I(DD), III(L).)

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

18 Regarding class action releases, “[A] court may release not only those claims alleged in
19 the complaint and before the court, but also claims which ‘could have been alleged by reason of
20 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
21 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in
22 this case are acceptable because they are limited to the scope of the allegations in the operative
23 complaints. Moreover, the released claims are ““based on *the identical factual predicate* as that
24 underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do
25 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

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1 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

2 Counsel for both Parties are particularly experienced in wage-and-hour employment law
3 and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted
4 numerous cases on behalf of employees for Labor Code violations and are experienced and
5 qualified to evaluate the class claims, advantages, and disadvantages of settlement versus trial,
6 and viability of the defenses. (*Ibid.*) Class Counsel’s experience guided their determination to
7 endorse the Settlement.¹ (*Ibid.*)

8 **IV. ARGUMENT**

9 **a. Class Action Settlements Are Subject to Court Review**

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

- 14 (a) A settlement or compromise of an entire class action, or a cause of action in a class
15 action, or as to a party, requires the approval of the court after hearing.
16 ...
17 (c) Any party to a settlement agreement may serve and file a written notice of motion
18 for preliminary approval of the settlement. The settlement agreement and proposed
19 notice to class members must be filed with the motion, and the proposed order
20 must be lodged with the motion.

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

25 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
26 number of objectors – is not determinable until the Notice Packet has been provided to the Class
27 Members, and they have had an opportunity to respond. This information will be provided to the
28 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, the Parties Federal Rule 23 and federal case law in addition to California law.

1 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

2 Understanding the amount in controversy is an important factor if settlement “of the class
3 members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks
4 of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129;
5 see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.)
6 The most important factor is ““the strength of the case for plaintiffs on the merits, balanced
7 against the amount offered in settlement.”” (*Kullar*, at p. 130; see also *Munoz*, at p. 409.)

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

17 **i. The Settlement Amount of \$300,000 Is Fair and Reasonable**

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

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

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

7 **ii. The PAGA Payment of \$30,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
9 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7,
10 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han
11 Decl., *supra*, at ¶ 43.) Defendant asserted, regardless of the results of the underlying causes of
12 action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant
13 maintained it had a strong argument it would be unjust to award maximum PAGA penalties given
14 the law's unsettled state. (Han Decl., *supra*, at ¶ 43; *Thurman v. Bayshore Transit Mgmt.* (2012)
15 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Without stacking and
16 limited to the initial violation, the PAGA penalties would be limited to **\$2,600** (26 employees x
17 \$100 initial violation) on the low end and **\$15,600** (26 employees x \$100 initial violation x 6
18 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 44-47.)

19 Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
20 at ¶ 48.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*)
21 The maximum penalties for each pay period are likely not justified, and it was arguable the Court
22 would award the maximum penalties. (*Ibid.*) Thus, allocating \$30,000 to PAGA civil penalties
23 was reasonable given that Defendant is paying an additional \$270,000 in the class settlement.

24
25 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguiar 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].)

(Han Decl., *supra*, at ¶ 48.) 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 generally considered reasonable.⁴ (*Ibid.*)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$724,893.53** on the low end and **\$773,150.62** on the high end. (Han Decl., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$132,486.65	65%	60%	\$18,548.13
Meal Break Premiums	\$186,280.50	60%	55%	\$33,530.49
Overtime/Minimum Wage: Off-the-Clock Work	\$96,514.18 to \$144,771.27	60%	55%	\$17,372.55 to \$26,058.83
Rounding	\$4,440.40	35%	50%	\$1,443.13
Unreimbursed Business Expenses	\$38,715	20%	55%	\$13,937.40
Wage Statement Penalty	\$87,100	25%	25%	\$48,993.75
Waiting Time Penalty	\$179,356.80	25%	25%	\$100,888.20
MAXIMUM TOTAL EXPOSURE	\$724,893.53 to \$773,150.62⁵			\$234,713.65 to \$243,399.93⁶

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⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 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”).)

⁵ (Han Decl., *supra*, at ¶¶ 35-42.)

⁶ (*Id.* at ¶¶ 51-57.)

1 Based on this analysis, the realistic recovery is **\$234,713.65** on the low end and
2 **\$243,399.93** on the high end. (Han Decl., *supra*, at ¶ 58.) The Gross Settlement Amount is about
3 thirty-nine percent (38.80%) of the maximum potential exposure and above the maximum
4 realistic exposure, which is an excellent settlement. (*Ibid.*)

5 The only question at preliminary approval is whether the settlement is within the range of
6 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979)
7 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The
8 fact that a proposed settlement may only amount to a fraction of the potential recovery does not,
9 in and of itself, mean that the proposed settlement is grossly inadequate and should be
10 disapproved.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v.*
11 *Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of
12 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
13 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
14 measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is
15 in line with the realistic exposure if Plaintiff had prevailed at trial and provides significant
16 recovery for the Class Members.

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

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

23 The Class is ascertainable and numerous as to make it impracticable to join all Class
24 Members, and there are common questions of law and fact that predominate over any questions
25 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 59.) Plaintiff contends, as a former
26 hourly-paid, non-exempt employee of Defendant, her claims are typical of the claims of the Class,
27 and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff
28 also asserts the prosecution of separate actions by individual Class Members would create the risk

of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (Han Decl., *supra*, at ¶ 59.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves about forty-five (45) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 60.) All Class Members can and will be identified by the Settlement Administrator through a review of employment records concerning all hourly-paid, non-exempt California employees of Defendant during the Class Period. (*Ibid.*)

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

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

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1. Common Issues Predominate

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

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 61.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiff is a former employee of Defendant and alleges she and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 62.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 63.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to

1 provide Class Counsel with a complete understanding of the work environment and requirements.
2 (Han Decl., *supra*, at ¶ 63.) Plaintiff has no interest adverse to the interests of the Class. (*Ibid.*)

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

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

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

13 In deciding to approve a proposed class action settlement under Code of Civil Procedure
14 section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk*
15 *v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is
16 presumed fair under the following: (1) parties reached settlement after arm’s-length negotiations;
17 (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently;
18 (3) counsel is experienced in similar litigation; and (4) percentage of objectors is small. (*Id.* at p.
19 1802.) All these elements are present here.

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

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

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

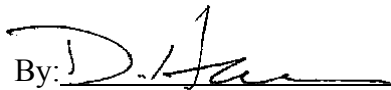
26 The Notice Packet meets all these requirements. The Notice Packet advises the Class
27 Members of their right to participate in the Settlement, how and when to object to or request
28 exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

1 **V. CONCLUSION**

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

6
7 Dated: July 12, 2024

JUSTICE LAW CORPORATION

8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*

**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, California 91103 and my electronic service address is hdonnelly@justicelawcorp.com.

On July 12, 2024, I served the foregoing document described as

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

for the following case: **Huber v. Evolve Dental Technologies, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM- 986612-23**
Court Case No.: 30-2023-01354711-CU-OE-CXC
Orange 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 July 12, 2024, at Pasadena, California.


Heather Donnelly