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

MANOLSA CHARLES, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

NOVASYTE, LLC; a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2022-00033748-CU-OE-CTL

Assigned for All Purposes to:
Honorable Katherine Bacal
Department C-69

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Lisa Mullins;
and [Proposed] Order filed concurrently
herewith]

Hearing Date: August 2, 2024
Hearing Time: 1:30 p.m.
Hearing Place: Department C-69

Complaint Filed: August 22, 2022
FAC Filed: February 27, 2023
SAC Filed: November 29, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 2, 2024 at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Katherine Bacal in Department C-69 of the San Diego County
3 Superior Court located at 330 West Broadway San Diego, California 92101, Plaintiff Manolsa
4 Charles (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Joint Stipulation of Class Action and PAGA Representative
7 Action Settlement and Release (“Settlement Agreement,” “Settlement,” or
8 “Agreement”), attached as **Exhibit 2** to the declaration of Douglas Han, including,
9 and not limited to, the means of allocation and distribution of funds;
- 10 • Conditionally certifying the Settlement Class for settlement purposes only;
- 11 • Preliminarily appointing Plaintiff as the class representative;
- 12 • Preliminarily appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court-approved Class Notice attached as **Exhibit A** to the
14 Settlement Agreement;
- 15 • Directing the mailing of the Class Notice with a postage-paid return envelope to
16 the Settlement Class;
- 17 • Preliminarily approving the proposed deadlines for the settlement administration
18 process;
- 19 • Approving ILYM Group, Inc. as the Settlement Administrator;
- 20 • Preliminarily approving the Service Enhancement to Plaintiff as the Class
21 Representative;
- 22 • Preliminarily approving the application for payment of reasonable attorneys’ fees
23 and costs to Class Counsel;
- 24 • Pending the Final Approval Hearing, enjoining Plaintiff and all Settlement Class
25 Members and anyone acting on behalf of any Settlement Class Member, until the
26 Settlement Class Member opts out, from further prosecution of the Action, filing or
27 taking any action directly or indirectly, to commence, prosecute, pursue, or
28 participate on a class action basis any action, claim or proceeding against Defendant

Novasyste, LLC (“Defendant”) in any forum in which any of the claims subject to the Settlement are asserted, or which in any way would prevent any such claims from being extinguished, or seeking certification of a class action that involves such claims; and

- 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 attorneys’ fees and costs, Service Enhancement, Settlement Administration Expenses, and approval of the allocation of the Private Attorney 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 Lisa Mullins; [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.

Dated: June 24, 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 non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiff on behalf of himself and all individuals who worked for
4 Defendant as non-exempt employees in California at any time between February 24, 2018 through
5 December 21, 2023 (“Settlement Class,” “Settlement Class Members,” and “Class Period”). At
6 the time of this filing, the number of Settlement Class Members is estimated to be six hundred
7 ninety-two (692), which was confirmed by Defendant. (Declaration of Douglas Han In Support of
8 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8, 9.)

9 **II. BACKGROUND**

10 On August 22, 2022, Plaintiff filed a wage-and-hour class action lawsuit against Defendant
11 in the Superior Court of California, County of San Diego, alleging eight (8) causes of action. (Han
12 Decl., *supra*, at ¶ 10.)

13 On February 27, 2023, Plaintiff filed a First Amended Complaint that updated the factual
14 allegations underlying the causes of action. (Han Decl., *supra*, at ¶ 11.)

15 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
16 mediation with the mediator Deborah C. Saxe on July 25, 2023 and September 21, 2023, resulting
17 in the settlement of this matter. (Han Decl., *supra*, at ¶ 12.)

18 In line with the Settlement, on November 1, 2023, Plaintiff provided written notice to the
19 California Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl.,
20 *supra*, at ¶ 13; Exhibit 3.)

21 On November 29, 2023, Plaintiff filed a Second Amended Complaint adjusting the “Class”
22 definition and adding a cause of action for violation of Labor Code section 2698, *et seq.* (PAGA).
23 (Han Decl., *supra*, at ¶ 14; Exhibit 4.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiff propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 16.) Defendant responded to the formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in an informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

Defendant produced several documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendant's production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Settlement Class. (*Ibid.*) Putative settlement class members were also located and interviewed to attain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based on the information provided by Defendant and interviews with putative settlement class members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to include non-discretionary bonuses in employees' regular rate of pay; (4) failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with an experienced mediator. (Han Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, the Parties reached a settlement, the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 27; Exhibits 2, 5.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 30.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

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1 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶
3 31.) Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation,
4 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
5 foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable
6 settlement and is in the best interests of the Settlement Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the claims and
9 defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 32.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
12 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
14 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
15 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
16 at ¶ 32; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
20 for the non-reversionary total sum of \$3,000,000 (“Gross Settlement Amount”) which includes:
21 (1) attorneys’ fees up to \$1,050,000 (35% of the Gross Settlement Amount); (2) attorneys’ costs
22 up to \$25,000; (3) Service Enhancement up to \$10,000; (4) Settlement Administration Expenses
23 up to \$15,000; and (5) PAGA Payment up to \$150,000. (Han Decl., *supra*, at ¶ 28.)

24 **ii. Calculating Settlement Payments**

25 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
26 \$1,750,000 (“Net Settlement Amount”) will be paid to Class Members – with a gross *average*
27 Class Settlement Payment estimated at \$2,528.90. (Han Decl., *supra*, at ¶ 29.)

28 ///

1 The Class Members will receive a proportionate share of the Net Settlement Amount using
2 the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at
3 ¶¶ 58(f), 82.) Class Settlement Payments will be allocated fifty percent (50%) as unpaid wages and
4 fifty percent (50%) as non-wage recovery, including interest and penalties. (*Id.* at ¶ 71.)

5 The portion of the PAGA Payment that is to be paid to each PAGA Members shall be
6 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27;
7 Exhibit 2, *supra*, at ¶¶ 58(e), 82.) PAGA Members' portion of the PAGA Payment will be allocated
8 as one hundred percent (100%) penalties. (*Id.* at ¶ 71.)

9 **iii. Notice to the Settlement Class**

10 Within thirty (30) calendar days after the Preliminary Approval Date, Defendant will
11 deliver the settlement class member data to the Settlement Administrator. (Han Decl., *supra*, at ¶
12 27; Exhibit 2, *supra*, at ¶¶ 77, 107, 113.) Within thirty (30) calendar days after receiving the
13 settlement class member data, the Settlement Administrator will send the Class Notice to all
14 Settlement Class Members identified in the settlement class member via first-class United States
15 Postal Service mail. (*Id.* at ¶¶ 79, 113.)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
18 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶¶ 90, 91, 113.)
19 Uncashed settlement checks will be canceled and transmitted to the Controller of the State of
20 California. (*Id.* at ¶¶ 92, 113.)

21 **v. Release of Claims**

22 Upon Defendant's transfer of the Gross Settlement Amount to the Settlement
23 Administrator and the funding of Defendant's share of applicable employer payroll taxes owed
24 thereon, each Class Member and Plaintiff shall be deemed to have fully, finally, and forever
25 released Novasyste Releasees from all Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit
26 2, *supra*, at ¶¶ 34, 64.)

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1 Upon Defendant's transfer of the Gross Settlement Amount to the Settlement
2 Administrator and the funding of Defendant's share of applicable employer payroll taxes owed
3 thereon, Plaintiff individually, and State of California, LWDA, and PAGA Members, through
4 Plaintiff acting as the proxy and agent for the State of California and LWDA and as a Private
5 Attorney General acting on behalf of all allegedly aggrieved current and former employees of
6 Defendant, will be deemed to have fully, finally, and forever released the Novasyste Releasees from
7 all Released PAGA Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at ¶¶ 35, 65.)

8 For and in accepting the consideration of the Service Enhancement awarded, Plaintiff will
9 further make a general release on behalf of himself and his heirs, executors, administrators,
10 representatives, successors and assigns of the Novasyste Releasees. (Han Decl., *supra*, at ¶ 27;
11 Exhibit 2, *supra*, at ¶¶ 97-103.) Plaintiff expressly waives and relinquishes any and all claims,
12 rights or benefits that he may have under Civil Code section 1542. (*Id.* at ¶ 100.)

13 With regards to class action releases, “[A] court may release not only those claims alleged
14 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
15 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
16 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in
17 this case are acceptable because they are limited to the claims, obligations, demands, rights, causes
18 of action, and liabilities that have been asserted or that could have been asserted in the operative
19 complaints and PAGA letter, and any amendments thereto, based on the facts, claims, and/or
20 allegations pled therein. The released claims are ““based on *the identical factual predicate* as that
21 underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do
22 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

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

24 The Parties' counsel are experienced in wage-and-hour employment law and class actions.
25 (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
26 of employees for Labor Code violations and are experienced and qualified to evaluate the class
27 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
28

1 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
2 their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.)

3 **IV. ARGUMENT**

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

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

9 (a) A settlement or compromise of an entire class action, or a cause of action in
10 a class action, or as to a party, requires the approval of the court after
hearing.

11 . . .

12 (c) Any party to a settlement agreement may serve and file a written notice of
13 motion for preliminary approval of the settlement. The settlement
agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

15 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
16 the normal perils of litigation as well as the additional uncertainties inherent in complex class
17 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.)

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

19 An understanding of the amount in controversy is an important factor in whether the
20 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
21 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
22 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186

23 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
24 the Class Notice has been provided to the Settlement Class, and they have had an opportunity to
25 respond. This information will be provided to the Court in conjunction with the Motion for Final
Approval of Class Action Settlement.

26 ² The California Supreme Court has authorized California’s trial courts to use Federal Rule
27 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
28 (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate,
the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

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

i. The Settlement Amount of \$3,000,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the data produced, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 32.)

The claims are predicated on the purported: (1) failure to properly calculate and pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium wages; (4) failure to pay sick leave at the correct rate; (5) failure to timely pay wages; (6) failure to timely pay wages upon separation; (7) failure to keep compliant or accurate payroll records; (8) failure to issue compliant wage statements; (9) failure to reimburse business expenses; (10) violation of PAGA; and (11) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 33.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 34.)

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1 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled
3 in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always
4 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*
5 have reached different conclusions concerning certification of wage-and-hour claims.³ (Han Decl.,
6 *supra*, at ¶ 35.) Thus, the calculations for potential damage were discounted.

7 **ii. The PAGA Payment of \$150,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
9 Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510, 512(a), 558,
10 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 44.) Defendant
11 asserted, regardless of the results of the underlying causes of action, PAGA penalties are not
12 mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it had a strong
13 argument it would be unjust to award maximum PAGA penalties given the law's current unsettled
14 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 44; *Thurman v. Bayshore Transit Mgmt.*
15 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore,
16 Defendant argued without stacking and limited to the initial violation, the PAGA penalties would
17 be limited to about **\$43,500** (435 employees x \$100 penalty for initial violation) on the low end
18 and **\$304,500** (435 employees x \$100 penalty for initial violation x 7 theories of recovery) on the
19 high end. (Han Decl., *supra*, at ¶¶ 45-47.)

20 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at
21 ¶ 48.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
22 Allocating \$150,000 to PAGA civil penalties was reasonable given that Defendant is also paying
23 an additional \$2,850,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
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],
review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
27 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
28 [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].)

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 (Han Decl., *supra*, at ¶ 48.)

Considering the defenses, supporting evidence, and position that the case is not suitable for class treatment, the Settlement Agreement 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 **\$11,504,388.98** on the low end and around **\$12,701,298.98** on the high end. (Han Decl., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,832,144.89	70%	60%	\$219,857.39
Meal Break Premiums	\$2,228,363.28	60%	50%	\$445,672.66
Overtime/Minimum Wage: Off-the-Clock Work	\$2,393,820 to \$3,590,730	50%	50%	\$598,455 to \$897,682.50
Regular Rate	\$694,945.61	40%	50%	\$208,483.68
Unreimbursed Business Expenses	\$286,160	30%	70%	\$60,093.60
Wage Statement Penalty	\$1,740,000	40%	40%	\$626,400
Waiting Time Penalty	\$2,328,955.20	40%	40%	\$838,423.87
MAXIMUM TOTAL EXPOSURE	\$11,504,388.98 to \$12,701,298.98⁵			\$2,997,386.20 to \$3,296,613.70⁶

The realistic recovery for this case is about **\$2,997,386.20** on the low end and **\$3,296,613.70** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about twenty-three percent (23.62%) of the maximum potential exposure and around ninety-one percent (91.00%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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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.”)

⁵ (Han Decl., *supra*, at ¶¶ 36-43.)

⁶ (*Id.* at ¶¶ 50-56.)

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

12 **d. Conditional Certification of the Settlement Class Is Appropriate**

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

18 The Settlement Class is ascertainable and numerous as to make it impracticable to join all
19 Settlement Class Members, and there are common questions of law and fact that predominate over
20 any questions affecting any individual Settlement Class Member. (Han Decl., *supra*, at ¶ 58.)
21 Plaintiff contends his claims are typical of the claims of the Settlement Class, and Class Counsel
22 will fairly and adequately protect the interests of the Settlement Class. (*Ibid.*) Plaintiff asserts the
23 prosecution of separate actions by individual Settlement Class Members would create the risk of
24 inconsistent or varying adjudications. (*Ibid.*)

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1 **i. The Proposed Settlement Class Is Ascertainable and Sufficiently**
2 **Numerous**

3 “Ascertainability is required in order to give notice to putative class members as to whom
4 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
5 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
6 by describing a set of common characteristics sufficient to allow a member of that group to identify
7 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
8 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed settlement class must also be
9 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

10 This case involves approximately six hundred ninety-two (692) Settlement Class Members,
11 meaning the Settlement Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 59; *Ghazaryan v.*
12 *Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as
13 many as 190 current and former employees” is sufficiently numerous].)

14 **ii. Settlement Class Members Share a Well-defined Community of**
15 **Interest**

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

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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. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends all Settlement 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 he and the Settlement Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Settlement Class. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Settlement Class

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 62.) Plaintiff conducted himself diligently and responsibly in representing the Settlement Class in this litigation, understands the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them

with a complete understanding of the work experience and environment. (Han Decl., *supra*, at ¶ 62.) Plaintiff also has no interest averse to the interests of the Settlement Class. (*Ibid.*)

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

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

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

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

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

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

4 **V. CONCLUSION**

5 Plaintiff submits the Settlement is in the Settlement Class's best interests. Under the
6 applicable class action criteria and guidelines, the Settlement should be preliminarily approved by
7 the Court, Settlement Class should be conditionally certified for settlement purposes, and Class
8 Notice should be approved.

9
10 Dated: June 24, 2024

JUSTICE LAW CORPORATION

11 By: 
12 Douglas Han
13 *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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On June 24, 2024, I served the foregoing document described as

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

for the following case: **Charles v. Novasyte, LLC.**
LWDA/Court Case No.: **LWDA Case No.: CM-991115-23**
Court Case No.: 37-2022-00033748-CU-OE-CTL
San Diego 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 June 24, 2024, at Pasadena, California.



Mariah Anderson