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

RAPHEAL LEE, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

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

Defendants.

Case No.: CVRI2305592

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

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR AN ORDER (1) PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING
NOTICE OF CLASS ACTION
SETTLEMENT; AND (3) SETTING
HEARING FOR FINAL APPROVAL**

[Filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Julie Green; Declaration of
Anne Osborn; [Proposed] Order; and
Compliance Chart]

Reservation ID: 253207633271

Hearing on Motion for Preliminary Approval:

Hearing Date: September 26, 2024

Hearing Time: 8:30 a.m.

Hearing Place: Department 1

Complaint Filed: October 19, 2023

FAC Filed: July 1, 2024

Trial Date: None Set

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

2 PLEASE TAKE NOTICE on September 26, 2024 at 8:30 a.m., or as soon thereafter
3 as this matter may be heard, at Department 1, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiffs Rapheal Lee and Cayla Bracy (“Plaintiffs”), on behalf of
5 themselves and all persons similarly situated, will and hereby does move this Court pursuant
6 to Code of Civil Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Plaintiffs and Defendant Aquamor, LLC (“Defendant”), including granting
9 preliminary approval of the following Class: “all individuals who worked
10 for Defendant as hourly-paid, non-exempt employees in the State of
11 California at any time between October 19, 2019 and May 22, 2024”
12 (“Class,” “Class Members,” and “Class Period”). “Class Members” shall not
13 include anyone who submits a timely and valid Request for Exclusion Form;
14 (2) Approving the form of notice of class action settlement and procedure for
15 notice to the Class; and
16 (3) Setting the Final Approval Hearing.

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

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

24 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
25 of the Class shall be fully and finally resolved for the total sum of \$800,000 (“Maximum
26 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
27 Maximum Settlement Amount after the following deductions are made (“Net Settlement
28

Amount”) shall be available for distribution to Class Members who do not submit timely and valid Requests for Exclusion Form:

- up to \$280,000 to Class Counsel as the attorneys’ fees;
- up to \$25,000 to Class Counsel as the attorneys’ costs for reimbursement of attorneys’ costs and expenses incurred;
- up to \$10,000 to each Plaintiff (totaling \$20,000) as Class Representative Enhancement Payments;
- up to \$20,000 to CPT Group, Inc., the Settlement Administrator, as the Settlement Administration Costs; and
- \$50,000 as the PAGA Payment, seventy-five percent (75%) of which (\$37,500) will be paid to the California Labor and Workforce Development Agency and twenty-five percent (25%) of which (\$12,500) will be distributed to all individuals who worked for Defendant as hourly-paid, non-exempt employees in the State of California at any time between October 19, 2022 and May 22, 2024, on a pro rata basis, as their Individual PAGA Payments in accordance with the Settlement Agreement.

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

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

6
7 Dated: August 6, 2024

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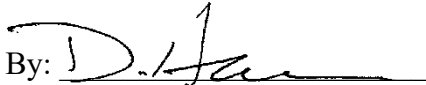
8 By: 
9 Douglas Han
10 *Attorneys for Plaintiffs*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Rapheal Lee and Cayla Bracy (“Plaintiffs,” “Plaintiff Lee,” and “Plaintiff
4 Bracy”) filed a wage-and-hour class action lawsuit and representative action against Defendant
5 Aquamor, LLC (“Defendant”) (collectively, referred to herein as the “Parties”) in the Superior
6 Court of California, County of Riverside, Case Number CVRI2305592 (“Action”).

7 The proposed settlement reflected in the Joint Stipulation and Settlement Agreement
8 (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the best
9 interests of the Class. Plaintiffs, with the consent of Defendant, move this Court for an order:

10 (1) granting preliminary approval of the proposed class action settlement, as embodied in the
11 Agreement; (2) approving the Notice of Class Action Settlement, Objection Form, and Request
12 for Exclusion Form (collectively, known as the “Notice Packet”) to be sent to Class Members;
13 (3) approving the notification schedule as set forth in the Agreement and Proposed Order; and
14 (4) setting a hearing for final approval of the class action settlement.

15 **II. STATUS OF THE LITIGATION**

16 **A. Procedural History**

17 On October 19, 2023, Plaintiff Lee filed a wage-and-hour class action lawsuit in the
18 Superior Court of California, County of Riverside, alleging eight (8) causes of action.
19 (Declaration of Douglas Han In Support of Motion For Preliminary Approval of Class Action
20 Settlement (“Han Decl.”), ¶ 12.)

21 After engaging in discovery, investigations, and negotiation, the Parties remotely
22 attended mediation with the mediator Lisa Klerman on May 22, 2024 but were unable to reach
23 a settlement at the time. (Han Decl., *supra*, at ¶ 13.)

24 On May 22, 2024, Plaintiff Bracy provided written notice to the California Labor and
25 Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 14.)

26 After continued negotiations with the assistance of the mediator, the Parties were able
27 to reach a tentative settlement on June 3, 2024. (Han Decl., *supra*, at ¶ 15.)
28

1 In line with the settlement, on July 1, 2024, Plaintiff Lee filed a First Amended
2 Complaint adjusting the “Class” definition, adding Plaintiff Bracy as a named plaintiff, adding
3 a cause of action for violation of Labor Code section 2698 (Private Attorneys General Act of
4 2004 (“PAGA”), and updating the factual allegations (“Action”). (Han Decl., *supra*, at ¶ 16.)

5 **B. Investigation and Discovery**

6 Before filing the lawsuit, Class Counsel investigated and researched the facts and
7 circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 17.)
8 After conducting an initial investigation, Class Counsel determined the claims were suited for
9 class and representative action adjudication. (*Ibid.*)

10 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
11 and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 18.) This included:

- 12 • conducting discovery and meeting and conferring with Defendant’s counsel
13 several times throughout this litigation, which produced the following:
 - 14 ○ Plaintiffs’ personnel records;
 - 15 ○ Defendant’s meal break waiver forms;
 - 16 ○ Defendant’s employee handbooks that took effect in December 2018,
17 February 2021, and October 2023;
 - 18 ○ PDF versions of redacted payroll record from 2019 to 2024 that included
19 earning types, departments, hours, rates, amounts paid, withholdings, pay
20 period dates, and payment dates; and
 - 21 ○ Microsoft Excel Worksheets of Time Card Reports and Punch Details from
22 2019 to 2024 that included dates, clock in and clock out times, locations,
23 departments, earnings, hours/units, and job titles.
 - 24 • reviewing and analyzing the Plaintiffs’ personnel records, meal break waiver
25 forms, employee handbooks, payroll records, and Time Card Reports and Punch
26 Details, and other documentation;
 - 27 • locating and interviewing putative class members;
- 28

- researching the applicable law and potential defenses;
- constructing damage models based on interpretations of the law; and
- reviewing information provided by Defendant. (Han Decl., *supra*, at ¶ 18.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant’s records. (Han Decl., *supra*, at ¶ 19.) Class Counsel’s investigation revealed there are about nine hundred ninety-seven (997) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel’s investigation also revealed there are approximately two hundred eighty (280) Eligible Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendant contested liability, amount of claimed damages, and propriety of class certification. (Han Decl., *supra*, at ¶ 20.) Given the high level of risk present for both sides, the Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

On May 22, 2024, the Parties remotely participated in a full day mediation. (Han Decl., *supra*, at ¶ 21.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel’s prior litigation experience, Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) The Parties had to make significant compromises in the interest of reaching a full and complete settlement of this Action. (*Ibid.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Defendant agreed to pay \$800,000 (“Maximum Settlement Amount”) on a non-reversionary basis to settle and release all claims asserted in the operative complaints on behalf of the proposed Class. (Han Decl., *supra*, at ¶ 23.) The Settlement Agreement defines the Class as “all individuals who worked for Defendant as hourly-paid, non-exempt employees in the State of California at any time between October 19, 2019 and May 22, 2024” (“Class,” “Class Members,” and “Class Period”). (*Ibid.*) “Class Members” shall not include any person who

1 submits a timely and valid Request for Exclusion Form. (*Ibid.*) The amount remaining in
2 Maximum Settlement Amount after the following deductions shall be distributed to Class
3 Members who do not opt out (“Net Settlement Amount”):

- 4 • up to thirty-five percent (35%) of the Maximum Settlement Amount to Class
5 Counsel as the attorneys’ fees (\$280,000);
- 6 • up to \$25,000 to Class Counsel as the attorneys’ costs for the reimbursement of
7 actual costs and expenses incurred;
- 8 • up to \$10,000 to each Plaintiff (totaling \$20,000) as the Class Representative
9 Enhancement Payments;
- 10 • up to \$20,000 as the Settlement Administration Costs to CPT Group, Inc. (“CPT
11 Group”), the Settlement Administrator; and
- 12 • up to \$50,000 as the PAGA Payment, seventy-five percent (75%) of which
13 (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which
14 (\$12,500) will be paid to Eligible Aggrieved Employees, on a pro rata basis, as
15 their Individual PAGA Payment even if they submit valid and timely Request
16 for Exclusion Form (“PAGA Payment” and “Individual PAGA Payment”).
17 (Han Decl., *supra*, at ¶ 23.)

18 The Net Settlement Amount (approximately \$405,000) will be distributed to the Class
19 Members. (Han Decl., *supra*, at ¶ 24.)

20 **A. Number of Class Members**

21 There are around nine hundred ninety-seven (997) Class Members and two hundred
22 eighty (280) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 19, 90(a).)

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

25 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
26 Settlement Payment will be about \$406.22. (Han Decl., *supra*, at ¶ 24.) Individual Settlement
27 Payments will be calculated and apportioned from the Net Settlement Amount using the
28

1 formula set forth in the Agreement. (*Id.* at ¶ 25.) Individual PAGA Payments will be calculated
2 and apportioned from the twenty-five percent (25%) of the PAGA Payment using the formula
3 set forth in the Agreement. (*Ibid.*)

4 **C. Discovery Exchanged**

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

7 **D. Other Pending Litigation**

8 After making reasonable inquiries (*e.g.*, PAGA search, Trellis), Class Counsel have
9 determined there are no class, representative, or other collective actions in any other court in
10 this or any other jurisdiction that asserts claims similar to those in this Action on behalf of a
11 class or group of individuals some or all of whom would also be members of the Class defined
12 in this Action. (Han Decl., *supra*, at ¶ 22.)

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

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

15 **F. Settlement Administrator**

16 The Settlement Agreement provides for up to \$20,000 to be paid to the Settlement
17 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 86.) The fee was
18 calculated through a projected estimate from the following categories: (1) Case Setup; (2)
19 Direct Mail Notification; (3) Process Returned Undeliverable Mail; (4) Opt-Out Processing; (5)
20 Class Member Support; (6) SSN Verification; (7) Distribution Services; (8) Tax Reporting &
21 Settlement Conclusion; and (9) SCO Escheatment Processing. (*Ibid.*)

22 Class Counsel obtained bids from CPT Group, Phoenix Class Action Administration
23 Solutions (“Phoenix”), and ILYM Group, Inc. (“ILYM Group”). (Han Decl., *supra*, at ¶ 87.)
24 CPT Group had the most competitive (lowest) bid of \$16,000 when compared to the bid from
25 Phoenix (\$16,950) and ILYM Group (\$16,950). (*Ibid.*)

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

2 Class Members will receive checks for their Individual Settlement Payments and
3 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 88.) Any check not cashed within one
4 hundred eighty (180) calendar days will be void and shall be distributed by the Settlement
5 Administrator to the State Controller’s Unclaimed Property Fund. (*Ibid.*)

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

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

9 [A]ll causes of action and factual or legal theories stated in the operative
10 complaints and those based solely upon the facts alleged in the operative
11 complaints. This includes all of the following claims for relief: (a) failure
12 to pay all regular wages, minimum wages, overtime wages, and sick leave
13 due; (b) failure to provide proper meal and rest breaks and to properly
14 provide premium pay in lieu thereof; (c) failure to provide complete,
15 accurate, or properly formatted wage statements and payroll records; (d)
16 failure to reimburse necessary business expenditures; (e) failure to pay
17 waiting time penalties; (f) failure to timely pay wages during employment
18 and after employment; (g) engaging in unfair business practices that could
19 have been premised on the claims, causes of action or legal theories of
20 relief described above or any of the claims, causes of action or legal
theories of relief pleaded in the operative complaints; (h) all claims under
PAGA, which shall only bind Plaintiffs and State of California, that were
described in Plaintiff Bracy’s notice letter sent to the LWDA and only to
the extent these claims were alleged in the operative complaints; and (i) all
damages, penalties, interest, and other amounts recoverable under said
claims, causes of action or legal theories of relief. The period of the
Released Claims shall extend to the limits of the Class Period (“Released
Claims”).

21 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 27.)

22 Pursuant to the terms set forth in the Settlement Agreement, Released Parties include
23 Defendant together with each of its former, present, and future officers, directors, employees,
24 agents, and Infinium Staffing, Inc. (“Released Parties”). (Han Decl., *supra*, at ¶ 2; Exhibit 1,
25 *supra*, at ¶ 28.)

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1 **I. The Proposed Notice Packet Provides Adequate Notice to the Class Members**

2 Within twenty-one (21) calendar days of entry of the Court’s Order Granting
3 Preliminary Approval, Defendant will provide the Class List to the Settlement Administrator.
4 (Han Decl., *supra*, at ¶ 75.) Within ten (10) calendar days after the Settlement Administrator
5 receives the Class List, the Settlement Administrator will mail a Notice Packet to all Class
6 Members via regular First-Class U.S. Mail. (*Ibid.*)

7 The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims
8 involved, material terms of the Agreement, Class Members’ options thereunder, and how Class
9 Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 76.) The
10 Notice Packet also provides for a specific procedure to seek exclusion from the Class and for
11 lodging objections to the Agreement. (*Ibid.*)

12 **J. Settlement Does Not Require Any Class Members to Submit Claim Forms**

13 Class Members are not required to submit claim forms to receive their share of the
14 Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 14.)

15 **K. Settlement Does Not Provide Any Reversion to Defendant**

16 Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert
17 to Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(b).)

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

19 All Individual Settlement Payments will be allocated as follows: (1) twenty percent
20 (20%) as wages; and (2) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶
21 2; Exhibit 1, *supra*, at ¶ 57.) All Individual PAGA Payments will be allocated as one hundred
22 percent (100%) penalties. (*Id.* at ¶ 58.)

23 Defendant shall pay the employer’s share of applicable payroll taxes due on the portion
24 of Individual Settlement Payments allocated to wages separately and in addition to the
25 Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 15(a).)

26 ///

27 ///

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

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

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

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

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

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

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

25 Plaintiffs contend, and Defendant does not dispute, the requirement of numerosity is
26 met. The documents and information exchanged reflect a Class of approximately nine hundred
27 ninety-seven (997) Class Members. (Han Decl., *supra*, at ¶ 90(a).) The Class Members were
28

1 identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 90(b).)

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

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

6 [D]oes not depend upon an identical recovery, and the fact that
7 each member of the class must prove his separate claim to a
8 portion of any recovery by the class is only one factor to be
9 considered ... The mere fact that separate transactions are involved
10 does not of itself preclude a finding of the requisite community of
11 interest so long as every member of the alleged class would not be
required to litigate numerous and substantial questions to
determine his individual right to recover subsequent to the
rendering of any class judgment which determined in plaintiffs’
favor whatever questions were common to the class.

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

13 Plaintiffs contend, and Defendant does not dispute, common issues of fact and law
14 predominate as to each of the claims alleged. Because Plaintiffs allege a single scheme, “the
15 relevant proof [does] not vary among class members” and “clearly presents a common question
16 fundamental to all class members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation*
17 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
18 (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-
19 wide causation, class-wide injury, and class-wide damages when a common course of action
20 has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 1350.) This inference
21 “eliminates the need for each class member to prove individually the consequences of the
22 defendants’ actions to him or her.” (*Id.* at p. 1351 (quoting *Rosack v. Volvo of America Corp*
23 (1982) 131 Cal.App.3d 741, 753 [emphasis added])).)

24 This Action involves, *inter alia*, a determination about the alleged: (1) failure to
25 provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
26 business expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate
27 overtime wages; (5) failure to pay final wages when required; (6) failure to provide accurate
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wage statements; and (7) largely derivative claims under the Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶ 90(e).) Plaintiffs contend these practices affected Class Members in the same way. (*Ibid.*) While Defendant maintained otherwise, these issues will not be decided based on facts peculiar to each Class Member but based on facts common to the Class. Finally, these issues of liability can be determined on a class-wide basis.

C. The Plaintiffs' Claims Are Typical

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

Plaintiffs contend, and Defendant does not dispute, the claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 90(c).) Plaintiffs were employed by Defendant during the Class Period and subject to the allegedly unlawful meal and rest break policies and practices. (*Ibid.*) The central issues of this litigation (whether Defendant failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages, etc.), which would arise if this were an individual action brought by Plaintiffs, apply to the other Class Members. (*Ibid.*) The answer to these questions would determine Defendant's liability to the Class. (*Ibid.*)

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1 **D. Adequacy of Class Counsel and Class Representatives**

2 Class Counsel are experienced in class actions, have represented their clients zealously,
3 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 90(d); Exhibit 2.) Plaintiffs’
4 interests are aligned with those of the Class Members, suffered the same injuries as the Class
5 Members, and have no conflicts of interest. (*Id.* at ¶ 90(d).)

6 **E. Predominance and Superiority**

7 Individual issues do not predominate over those common to the Class. (Han Decl.,
8 *supra*, at ¶ 90(f).) Furthermore, the class action mechanism is superior to individualized actions
9 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 90(g).)

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

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

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

25 Preliminary approval by the court is a conditional finding that the settlement appears to
26 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
27 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
28 settlement proposal may vary. The court may find the settlement proposal contains some merit,
is within the range of reasonableness required for a settlement offer, or is presumptively valid
subject only to any objections that may be raised at a final hearing.” (4 Alba Conte & Herbert

1 B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).)

2 The procedures for the Parties' submission of a proposed settlement for preliminary
3 approval by the court also are discussed in Newberg on Class Actions:

4 When the parties to an action reach a monetary settlement, they will
5 usually prepare and execute a joint stipulation of settlement, which is
6 submitted to the court for preliminary approval. The stipulation should
7 set forth the central terms of the agreement, including but not limited to,
8 the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause, Newberg on Class
Actions. (§ 11.24.)

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

10 As a matter of public policy, the courts both encourage the use of the class action
11 device and favor settlement over continued litigation. (See e.g. *Linder v. Thrifty Oil Co.*, *supra*,
12 23 Cal.4th at p. 434 ("Courts have long acknowledged the importance of class actions as a
13 means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle*
14 (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly
15 where complex class action litigation is concerned.").)

16 The courts presume the absence of fraud or collusion in the negotiation of a settlement
17 unless evidence to the contrary is offered. There is a presumption the negotiations were
18 conducted in good faith. (*Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
19 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24, 25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
20 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when
21 settlement was reached by experienced counsel familiar with the litigation. (*Rodriguez*, at p.
22 24; *Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087.)

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

The Agreement satisfies these factors. Class Counsel conducted extensive discoveries before entering meaningful settlement negotiations, including a detailed analysis of the policies and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 17, 18.) This discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and risks associated with litigation. (*Id.* at ¶ 21.) Class Counsel are also experienced in the handling of wage-and-hour class actions and support the Settlement. (*Id.* at ¶¶ 3-10; Exhibit 2.)

A. The Strength of Plaintiffs' Case.

The claims in this action include: (1) failure to provide meal and rest breaks; (2) failure to pay minimum wages; (3) failure to pay and properly calculate overtime wages, sick leave, and premium wages; (4) failure to pay final wages when due; (5) failure to provide accurate wage statements; (6) failure to reimburse necessary business expenses; and (7) related claims for violations of the Business & Professions Code and for penalties under PAGA. (Han Decl., *supra*, at ¶ 29.)

Class Counsel felt confident the claims would be certified given the policies and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 30-68.)

B. The Risks Associated with the Merits.

Plaintiffs contend that Defendant's meal break policies were not *Brinker*-compliant and that Defendant would assign regularly weekly quotas and heavy workloads. (Han Decl., *supra*, at ¶¶ 31, 34, 35.) This was purportedly made worse by Defendant expecting employees to cut their meal and rest breaks short to don and doff their uniforms and permitted supervisors to deter employees from taking their breaks. (*Ibid.*) Defendant countered that it always maintained compliant meal and rest break policies during the relevant time period, rarely, if ever, assigned employees heavy workloads, and expected supervisors to remind employees to take their breaks. (*Id.* at ¶¶ 32, 36.) By extension, Defendant may even produce evidence to demonstrate that employees were advised of their right to take additional meal and rest breaks,

1 but most employees did not work the requisite hours to qualify for additional breaks. (*Ibid.*)
2 Finally, Defendant contended that Class Counsel will have to gather declarations from putative
3 class members to prove the existence of improper, uniform policies and practices. (*Ibid.*)

4 As the consideration concerning meal and rest breaks would likely depress the damages
5 ultimately awarded, Class Counsel applied significant and appropriate discounts to the meal
6 and rest break claims. (Han Decl., *supra*, at ¶¶ 33, 37.) If Defendant's counterarguments are
7 proven true and prevail in trial, the likely outcome of these claims, particularly rest breaks,
8 would be no recovery for the Class Members.

9 Plaintiffs also allege that Defendant failed to pay and properly calculate all applicable
10 wages owed, including minimum wages, overtime wages, sick leave, and premium wages.
11 (Han Decl., *supra*, at ¶¶ 38, 41.) Defendant purportedly maintained stringent attendance
12 policies and generally discouraged overtime work, thereby pressuring employees to work
13 additional hours off-the-clock. (*Ibid.*) Defendant also supposedly permitted supervisors to
14 instruct employees begin working before clocking in and continue working after clocking out.
15 (*Ibid.*) This was apparently made worse by Defendant paying employees non-discretionary
16 bonuses but failing to factor them into employees' regular rate of pay. (*Ibid.*) Defendant
17 countered that these claims are not suitable for class treatment. (*Id.* at ¶¶ 39, 41.) Defendant
18 argued that it expressly prohibited off-the-clock work, generally approved overtime requests,
19 and did not permit supervisors to speak to employees about work-related matters off-the-clock.
20 (*Ibid.*) Defendant contended that any payment of bonuses was completely discretionary,
21 meaning the bonuses did not need to be factored into employees' regular rate of pay. (*Ibid.*)
22 Defendant also asserted that any unrecorded hours would likely be subject to individual
23 inquiries and unlikely to be certified. (*Ibid.*) Given the difficulty in certifying this claim, Class
24 Counsel applied a discount to damages. (*Id.* at ¶¶ 40, 42.) If Defendant's counterarguments
25 held true, the outcome of this claim would be little to no recovery for employees.

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

2 To establish liability for wage statement violations and waiting time penalties, Plaintiffs
3 would first have to establish liability for the underlying claims. But Defendant argued that the
4 claim for further Labor Code section 226(e) penalties would depend on the underlying rest
5 break, meal break, and wage claims, meaning it would be subject to the same defenses listed
6 above. (Han Decl., *supra*, at ¶ 45.) Defendant added that the above-mentioned violations did
7 not occur every pay period and that section 226(e) penalties are not automatic. (*Ibid.*)
8 Defendant concluded that employees need to show they suffered injury because of its
9 noncompliance and that such noncompliance was knowing and intentional. (*Ibid.*)

10 Defendant also countered that the claim for Labor Code section 203 penalties is
11 dependent on the underlying meal and rest break and wage claims, meaning it would be subject
12 to the same defenses listed and described above. (Han Decl., *supra*, at ¶¶ 49, 50.) As discussed
13 above, Plaintiffs allege that Defendant failed to pay for all hours worked and premiums for
14 noncompliant meal and rest breaks. (*Id.* at ¶¶ 31, 34, 35, 38, 41.) Plaintiffs also contend that the
15 Class Members are entitled to minimum wages, overtime wages, and premium wages, which
16 were allegedly not paid at the time of their termination or resignation. (*Id.* at ¶¶ 47, 48.)
17 Defendant countered that it provided employees with reasonable opportunities to take breaks,
18 asked employees to confirm the accuracy of their time records, and had good-faith defenses
19 under *Brinker* and its progeny. (*Id.* at ¶¶ 50, 51.)

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

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

5 The provisions of the Labor Code potentially triggering PAGA penalties include
6 sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
7 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 56.)
8 Defendant asserted, regardless of the results of the underlying causes of action, PAGA
9 penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained that it had a
10 strong argument it would be unjust to award maximum PAGA penalties given the law’s
11 unsettled state. (Han Decl., *supra*, at ¶ 56; See *Thurman v. Bayshore Transit Management, Inc.*
12 (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).) Without
13 stacking and limited to the initial violation, PAGA penalties would be **\$28,000** (280 employees
14 x \$100 initial violation) on the low end and **\$196,000** (280 employees x \$100 initial violation x
15 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 57-60.)

16 Plaintiffs recognized the risks any PAGA award could be reduced. (Han Decl., *supra*, at
17 ¶ 61.) The maximum penalties for each pay period are not justified, and it was arguable the
18 Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000 to
19 PAGA civil penalties was reasonable based on a rate of **\$6.59** per pay period [$\$50,000 \div 7,583$
20 pay periods in the PAGA Period] given that Defendant is paying an additional \$750,000 in the
21 class settlement.¹ (*Ibid.*) If PAGA penalties are negotiated in good faith and “there is no
22 indication that [the] amount was the result of self-interest at the expense of other Class
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24
25
26 ¹ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
27 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
28 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

Members,” such amounts are considered reasonable.² (*Ibid.*)

Finally, Class Counsel are confident they would successfully prove Defendant’s alleged wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 62.) Plaintiffs allege that Defendant intentionally failed to maintain *Brinker*-compliant meal break policies during the relevant time period and regularly assigned weekly quotas and heavy workloads. (*Ibid.*) Defendant purportedly knew that supervisors were pressuring employees to forgo taking compliant meal and rest breaks to prioritize completing their tasks. (*Ibid.*) Defendant also supposedly knew that employees were cutting their meal and rest breaks short to don and doff their uniforms. (*Ibid.*) Defendant apparently knowingly and intentionally failed to pay employees premium wages. (Han Decl., *supra*, at ¶ 62.) Defendant allegedly intentionally maintained stringent attendance policies and generally discouraged overtime work. (*Ibid.*) Defendant also purportedly knew that employees were being instructed by supervisors to continue working after clocking out to complete any unfinished tasks. (*Ibid.*) Finally, Defendant apparently intentionally paid employees non-discretionary bonuses but knowingly failed to factor such payments into employees’ regular rate of pay. (*Ibid.*)

E. The Risk of Maintaining Class Action Status Through Trial.

In class actions, decertification is always a possibility. There is always a risk a trial of this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class actions, decertification is a real risk Class Counsel must consider.

F. The Amount Offered in Settlement.

There is no doubt the Agreement is the result of vigorous, adversarial, non-collusive, and arm’s-length negotiations. To determine the approximate potential damages owed to each

² (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims.”).)

Class Member, Class Counsel analyzed a sampling of time and pay records. Using this information, Class Counsel estimated the full value of the case if Plaintiffs prevailed at trial.

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$5,039,445.13** on the low end and **\$5,609,505.27** on the high end. (Han Decl., *supra*, at ¶ 64.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$451,815.95	70%	60%	\$54,217.91
Meal Break Premiums	\$136,405.10	60%	50%	\$27,281.02
Overtime/Minimum Wage: Off-the-Clock	\$757,372.44 to \$1,327,432.58	50%	50%	\$189,343.11 to \$331,858.15
Regular Rates	\$9,175.64	30%	50%	\$3,211.47
Unreimbursed Business Expenses	\$264,660	30%	70%	\$55,578.60
Wage Statement Penalty	\$742,000	70%	70%	\$66,780
Waiting Time Penalty	\$2,678,016	70%	70%	\$241,021.44
MAXIMUM TOTAL EXPOSURE	\$5,039,445.13 to \$5,609,505.27			\$637,433.55 to \$779,948.59

Based on this analysis, the total estimated realistic exposure for this case would be approximately **\$637,433.55** on the low end and **\$779,948.59** on the high end. (Han Decl., *supra*, at ¶ 65.) The Maximum Settlement Amount is about fourteen percent (14.26%) of the high end total potential exposure at trial and around one hundred two percent (102.57%) of the high end total realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure that Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 66.) Plaintiffs added the realistic exposure for rest break premiums and meal break premiums (\$54,217.91 + \$27,281.02 = \$81,498.93). (*Ibid.*) Plaintiffs then added the \$81,498.93 to the low end realistic exposure for unpaid wages due to off-the-clock work and underpaid overtime wages, sick leave, and premium wages (\$81,498.93 + \$189,343.11 + \$3,211.47 = \$274,053.51). (*Ibid.*) The realistic exposure of \$274,053.51 that

1 Plaintiffs can expect to receive if they were to prevail at trial for meal and rest break premiums,
2 low end unpaid wages due to off-the-clock work, and underpaid overtime wages, sick leave,
3 and sick leave represents about nineteen percent (19.67%) of the low end total realistic
4 exposure and PAGA penalties ($\$274,053.51 \div \$1,393,433.55 = 0.19667 \times 100 = 19.67\%$).
5 (*Ibid.*) Because this represents about twenty percent (20%) of wages, it is appropriate to
6 allocate twenty percent (20%) as wages and eighty percent (80%) as interest and penalties
7 pursuant to the Settlement Agreement. (Han Decl., *supra*, at ¶ 66.)

8 Class Members have been represented by experienced counsel with many years of
9 experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)
10 Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶
11 17-21.) This included, among other things: (1) interviewing Plaintiffs at length on repeated
12 occasions; (2) drafting pleadings, conducting discovery, and meeting and conferring with
13 Defendant's counsel; (3) reviewing and analyzing the Plaintiffs' personnel records, meal break
14 waiver forms, employee handbooks, payroll records, and Time Card Reports and Punch
15 Details, and other documentation; (4) researching the law; (5) locating and interviewing
16 putative class members; (6) preparing for and attending mediation; and (7) negotiating and
17 finalizing the Settlement Agreement. (Han Decl., *supra*, *passim*.)

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

22 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR** 23 **AND REASONABLE**

24 It is appropriate to provide a relatively modest additional incentive payment to the class
25 representative. (See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
26 901 F.Supp. 294.)

27 Plaintiffs are entitled to reasonable service payments for their efforts in this matter.
28

(Han Decl., *supra*, at ¶ 81.) Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

By suing Defendant, Plaintiffs increased the risk of retaliation by future employers. (Han Decl., *supra*, at ¶ 82.) The lawsuit has cost Defendant resources, and such conduct will not be lost on prospective employers. (*Ibid.*) This risk of losing employment opportunities is real in the information age that contains quick background checks. (*Ibid.*)

Plaintiffs did not allow fears of the potential repercussions of being class representatives to deter them from acting for the benefit of Class Members. (Han Decl., *supra*, at ¶ 83.) Plaintiffs have been intimately involved in this case since its inception and have devoted a substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

Plaintiffs spent hours with Class Counsel detailing their knowledge of Defendant's practices. (Han Decl., *supra*, at ¶ 84.) Plaintiffs diligently, adequately, and fairly represented Class Members and did not place their interests above the Class Members. (*Ibid.*) The Parties agree that Plaintiffs are entitled to the Class Representative Enhancement Payments for their time and effort in this matter. (*Ibid.*)

Class Counsel believe the Class Representative Enhancement Payments of \$10,000 to each Plaintiff (totaling \$20,000) are fair and reasonable. (Han Decl., *supra*, at ¶ 85.)

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

Under the Agreement, Class Counsel request, without opposition from Defendant, an award of Attorneys' Fees and Costs consisting of: (1) up to \$280,000 as the attorneys' fees; and (2) up to \$25,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 78.) The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation on a contingent basis. (*Id.* at ¶¶ 78, 79.)

California courts look to the federal courts on class action approvals. The Ninth Circuit recognized an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*

1 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
2 approach is to “spread litigation costs proportionally among all the beneficiaries so that the
3 active beneficiary does not bear the entire burden alone.” (*Ibid.*) Courts have discretion to
4 choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
5 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295, 1296.)

6 Courts have expressed frustration with the lodestar approach to deciding fee awards.
7 The percentage approach can be preferable in certain situations because it: (1) aligns the
8 interests of class counsel and absent class members; (2) encourages efficient resolution of the
9 litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the
10 demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378,
11 1379.) The Ninth Circuit has used the percentage of the common fund approach to determine
12 the award of attorneys’ fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47
13 F.3d 373, 378, 379 (approving attorneys’ fee of 33 1/3% of settlement fund).)

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

21 The requested attorneys’ fees is commensurate with judicial precedent. Both state and
22 federal courts approve fee awards equal to or greater than the percentage requested in this case.
23 (See e.g. *In re Pacific Enterprises Securities Litigation*, *supra*, 47 F.3d at p. 379 (affirming an
24 award equal to 33% of the common fund); *In re Activision Securities Litigation*, *supra*, 723
25 F.Supp. at p. 1375 (awarding plaintiffs’ counsel 32.8% of the common fund created to settle
26 the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526 F.Supp. 494 (awarding
27 45% of \$7.3 million settlement fund); and *Parker v. City of Los Angeles* (1974) 44 Cal.App.3d
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556, 557-568 (affirming fee award to counsel of one-third (1/3) of recovery achieved).)

In similar lawsuits, courts approved attorney's fees consistent with or greater than the percentage requested herein. (See *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC 262247 (May 2005) (Honorable Anthony J. Mohr); *Moreno v. Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004) (Honorable Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange County Superior Court, Case No. 01CC00140 (Honorable Stephen J. Sundvold); *Kimbell v. Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359 (Sept. 2006) (Honorable Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*, Orange County Superior Court, Case No.02CC10201 (2006) (Honorable Ronald L. Bauer).)

Class Counsel have borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 78, 79.) The Court should also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the requested attorneys' fees award is reasonable.

A. Fee Splitting Agreement

Class Counsel are not splitting the costs associated with the settlement with any other individuals or firms. (Han Decl., *supra*, at ¶ 89.)

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

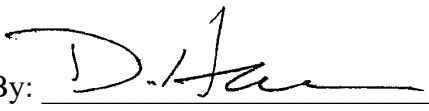
The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement attached to Douglas Han's Declaration as **Exhibit 1**;
2. Review and approve the Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form attached to the Proposed Order as **Exhibits A-C** respectively;
3. Consider and determine the proposed class action settlement as set forth in the

- 1 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 2 4. Conditionally certify the action as a class action for settlement purposes only and
- 3 preliminarily approving the proposed class action settlement and Settlement
- 4 Agreement;
- 5 5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and Talia Lux of
- 6 Justice Law Corporation to serve as Class Counsel for settlement purposes;
- 7 6. Approve and appoint CPT Group as the Settlement Administrator to handle the
- 8 notice procedures as set forth in the Settlement Agreement;
- 9 7. Approve the proposed allocation of funds to the claims made under PAGA;
- 10 8. Order Defendant to disclose the Class List to the Settlement Administrator in
- 11 accordance with the manner set forth in the Settlement Agreement;
- 12 9. Order the Settlement Administrator to mail the Notice Packet to Class Members;
- 13 10. Set a date for the Final Approval Hearing.
- 14

15 Dated: August 6, 2024

JUSTICE LAW CORPORATION

16 By: 
17 Douglas Han
18 Attorneys for Plaintiffs

Make a Reservation

LEE vs AQUAMOR, LLC

Case Number: CVRI2305592 Case Type: Civil Category: Unlimited Civil Other Employment
Date Filed: 2023-10-19 Location: Historic Court House - Department 1

Reservation

Case Name: LEE vs AQUAMOR, LLC	Case Number: CVRI2305592
Type: Motion for Preliminary Approval of Class Action Settlement	Status: RESERVED
Filing Party: RAPHEAL LEE (Plaintiff)	Location: Historic Court House - Department 1
Date/Time: 09/26/2024 8:30 AM	Number of Motions: 1
Reservation ID: 253207633271	Confirmation Code: CR-5ZWXZ4FFBUZ5AQFBU

Fees

Description	Fee	Qty	Amount
Motion for Preliminary Approval of Class Action Settlement	0.00	1	0.00
TOTAL			\$0.00

Payment

Amount: \$0.00	Type: NOFEE
Account Number: n/a	Authorization: n/a

 [Print Receipt](#)

 [Reserve Another Hearing](#)

 [View My Reservations](#)

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On August 6, 2024, I served the foregoing document described as

NOTICE OF MOTION AND MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL

for the following case: **Lee, et al. v. Aquamor, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-1029999-24**
Court Case No.: CVRI2305592
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 6, 2024, at Pasadena, California.



Jessica Torrez