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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

LANZELL SMITH, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

AMERICAN CAMPUS COMMUNITIES SERVICES, INC., a Delaware corporation; and DOES 1 through 100, inclusive;

Defendants.

Case No.: 34-2020-00280934

Honorable Shama H. Mesiwala
Department 53

CLASS ACTION

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

[Reservation ID: 2577696]

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

Hearing Date: August 19, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Department 53

Complaint Filed: June 18, 2020
Jury Trial: None Set

PLEASE TAKE NOTICE that on August 19, 2021 at 1:30 p.m., or as soon as the matter may be heard before the Honorable Shama H. Mesiwala in Department 53 of the Sacramento County Superior Court – Law and Motion Department 53, located at 813 6th Street, Sacramento, California 95814, Plaintiffs Lanzell Smith and Rande McCormick ("Plaintiffs," "Plaintiff Smith," and "Plaintiff McCormick") will and hereby move for an order:

- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Parties' Joint Stipulation and Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), attached as **"EXHIBIT 2"** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds, and the allocations for penalties under the California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, and the Administration Costs;
- Conditionally certifying the proposed Class for settlement purposes only;
- Appointing Plaintiffs as the Class Representatives;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the proposed Notice of Class Action Settlement ("Class Notice") attached as "**Exhibit A**" to the Settlement Agreement;
- Approving the Election Not To Participate or Opt-out Form ("Exclusion Form") attached as "**Exhibit B**" to the Settlement Agreement;
- Directing the mailing of the proposed Class Notice with a postage-paid return envelope to the proposed Class;
- Approving the proposed deadlines for the notice and Settlement Administration process;
- Approving CPT Group, Inc. ("CPT Group") as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

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

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: July 26, 2021

JUSTICE LAW CORPORATION

By: D Han

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Haig Hogdanian
Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a non-reversionary $2,000,000 proposed wage and hour class action settlement by Plaintiffs on behalf of themselves and all current and former non-exempt employees of American Campus Communities Services, Inc. ("Defendant") in California during the Class Period ("Class"). The Class Period is the time period from June 18, 2016, through August 6, 2021, or the date of Preliminary Approval, whichever date is earlier ("Class Period"). At the time of this filing, the number of Class Members estimated by Plaintiffs' analysis provided by Defendants is seven hundred thirty-one (731).

It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Defendant's potential liability exposure, this proposed settlement of $2,000,000 – with an average settlement share amount estimated at $1,463.06[1] – is well within the "ballpark" of reasonableness.

As the following sections show, Class Counsel is convinced that the proposed Settlement is in the best interests of the Class based on the negotiations and a detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Defendant, particularly, the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed Settlement.

II. BACKGROUND

Since 1993, Defendant has been the nation's leading provider of academically oriented student communities. (Declaration of Douglas Han ("Han Dec.") at ¶ 9.) Specifically, Defendant is the nation's largest developer, owner, and manager of high-quality student housing communities. (*Ibid.*) This case involves all current and former non-exempt employees of Defendant in California during the time period from June 18, 2016, through August 6, 2021, or the date of Preliminary Approval, whichever date is earlier. (*Ibid.*) Plaintiffs allege that at all

[1] $1,069,500 (Net Settlement Amount) / 731 (Class Members) = $1,463.06.

times during the Class Period, Defendant's non-exempt employees work and/or worked on an hourly basis. (Declaration of Douglas Han ("Han Dec.") at ¶ 9.)

Plaintiff Smith, a former employee of Defendant, filed a wage-and-hour class action complaint against Defendant on June 18, 2020 in the Superior Court of California, County of Sacramento ("Smith Action" or "Class Action"). (Han Dec., *supra*, at ¶ 10.) The Smith Action was brought on behalf of all current and former California-based (*i.e.,* currently "residing" in California with the intent to remain in California indefinitely) hourly-paid or non-exempt employees of Defendant within the State of California at any time during the relevant period. (*Ibid.*) The Smith Action alleged the following eight (8) causes of action: (1) violation of California Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections 226.7 and 512(a) (unpaid meal break premiums); (3) violation of Labor Code section 226.7 (unpaid rest break premiums); (4) violation of Labor Code section 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid); (6) violation of Labor Code section 226(a) (non-compliant wage statements); (7) violation of Labor Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of California Business & Professions Code section 17200, *et seq*. (*Ibid.*)

On July 31, 2020, Defendant removed the Smith Action to the United States District Court, Eastern District of California. (Han Dec., *supra*, at ¶ 11.) Plaintiff Smith filed a Motion to Remand on August 31, 2020, Defendant opposed the motion, and Plaintiff Smith replied. (*Ibid.*) The Smith Action was remanded back to the Superior Court of California, County of Sacramento, on June 30, 2021. (*Ibid.*)

On May 28, 2020, Plaintiff McCormick, also a former employee of Defendant, provided written notice to the Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code he contends were violated and the theories supporting his contention. (Han Dec., *supra*, at ¶ 12.) The sixty-five (65) day notice period expired on or about August 1, 2020, and the LWDA did not take any action to investigate or prosecute this matter. (*Ibid.*)

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On August 3, 2020, Plaintiff McCormick filed his PAGA representative action against Defendant in the Superior Court of California, County of San Diego ("McCormick Action"). (Han Dec., *supra*, at ¶ 13.) The matter was brought on behalf of all current or former hourly-paid or non-exempt employees (whether hired directly or through a staffing agency or labor contractor) of Defendant who worked for Defendant at any time during the period from May 28, 2019 to the present. (*Ibid.*) Plaintiff McCormick alleged that Defendant: (1) failed to pay minimum and overtime wages; (2) failed to provide meal and rest breaks; (3) failed to timely pay wages during employment; (4) failed to timely pay wages upon termination; (5) failed to provide complete and accurate wage statements; and (6) failed to reimburse all business expenses. (*Ibid.*)

The Parties attended mediation on Plaintiffs' claims on April 29, 2021. (Han Dec., *supra*, at ¶ 14.) Under the auspices of the mediator Lynn S. Frank, the Parties were eventually able to reach an agreement on the settlement of the action via a mediator's proposal. (*Ibid.*)

In July 2021, in line with the settlement reached between the Parties at mediation, Plaintiff Smith filed a First Amended Complaint ("FAC") of the Smith Action in the Superior Court of California, County of Sacramento, on behalf of themselves and all current and former California-based (*i.e.*, currently "residing" in California with the intent to remain in California indefinitely) non-exempt employees of Defendant within the State of California at any time during the relevant period. (Han Dec., *supra*, at ¶ 15.) The FAC added Plaintiff McCormick as an additional Plaintiff and added a PAGA cause of action. (*Ibid.*)

Defendant generally and specifically denies all liability or wrongdoing of any sort regarding any of the claims alleged, makes no concessions or admissions of liability of any sort, and contends that for any purpose other than settlement, the Class Action is not appropriate for class treatment. (Han Dec., *supra*, at ¶ 16.) Furthermore, Defendant asserts several defenses to the claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct in the Class Action. (*Ibid.*)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Prior to the Parties' mediation held on April 29, 2021, the Parties conducted significant investigation and discovery of the facts and law both before and after the initial Class Action was filed. (Han Dec., *supra*, at ¶ 17.) Prior to mediation, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying Class Members for all hours worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. (*Ibid.*) Plaintiffs and Defendant also interviewed several of Class Members, and others, who worked for Defendant throughout the Class Period. (*Ibid.*)

The Parties agree that the above-described investigation and evaluation, as well as the information exchanged during the settlement negotiations, are more than sufficient to assess the merits of the respective Parties' positions and to compromise the issues on a fair and equitable basis. (Han Dec., *supra*, at ¶ 18.)

Based upon the Parties' discovery, and interviews Plaintiffs' counsel had with non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant failed to provide employees legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶¶ 19-20.) Specifically, Defendant allegedly had in place improper, uniform policies and practices that forced employees to skip, cut short, or take late meal and rest breaks. (*Ibid*.)

Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate employees for all hours worked. (Han Dec., *supra*, at ¶ 21.) Specifically, Defendants policies and practices forced employees to work off-the-clock for no compensation, downplay their overtime hours, and not be compensated for being on-call. (*Ibid*.) Plaintiffs also contend that Defendant failed to incorporate non-discretionary bonuses and incentives into employees' regular rates for overtime compensation purposes. (Han Dec., *supra*, at ¶ 22.)

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Next, Plaintiffs allege – and Defendant denies – that Defendant failed to reimburse employees for necessary business-related expenses incurred. (Han Dec., *supra*, at ¶ 23.) For instance, Defendant did not reimburse employees for using their personal cell phones and personal vehicles for business-related purposes. (*Ibid.*)

Finally, Plaintiffs contend – and Defendant denies – that Defendant is liable for waiting time penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 24-25.)

Defendant denies Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 26.) Among other things, Defendant denies Plaintiffs' meal and rest break contentions, on the grounds that it provided breaks within compliant times and that non-exempt employees were given discretion as to when to take their breaks. (*Ibid.*) Defendant also contends that both its meal and rest break policies complied with California law and that non-exempt employees were allowed to use their breaks for their own purposes. (*Ibid.*) Moreover, Defendant counters that its policies were never intended to discourage or deter employees from taking duty-free meal and rest breaks nor did it regularly assign heavy workloads that pressured noncompliant breaks. (*Ibid.*) Defendant further contends that whether non-exempt employees took meal and rest breaks during compliant time frames and were relieved of all duties are questions that could only be resolved by resorting to individualized inquiries to each non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*) Defendant also asserts that it paid its employees for all times worked, including overtime, minimum, and premium wages. (*Ibid.*) Defendant counters that its policies or practices rarely, if ever, forced employees work additional hours off-the-clock without asking for compensation. Defendant also adds that it properly compensated employees for being on-call. (*Ibid.*) Further, Defendant contends that Plaintiffs' claims regarding off-the-clock work and unpaid overtime are trivial as only a small number of employees worked off-the-clock. (*Ibid.*) Moreover, Defendant contends it did factor non-discretionary bonuses and incentives into eligible employees' regular rates for overtime purposes. (*Ibid.*) Defendant also asserts that it reimbursed employees for all business expenses, including using their personal cell phones and personal vehicles. (*Ibid.*) Finally, Defendant argues that its failure to comply with California labor laws was an honest mistake made in good

faith. (Han Dec., *supra*, at ¶ 26.) Therefore, Defendant's conduct could not be deemed "willful" under Labor Code section 203. (*Ibid.*)

As demonstrated above, the Parties took staunchly conflicting positions concerning Defendant's policies and procedures and their effect on hourly-paid and non-exempt employees.

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

i. The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement

The Parties agreed to go to mediation with experienced wage and hour mediator, Lynn S. Frank. (Han Dec., *supra*, at ¶ 27.) The mediation took place on April 29, 2021. (*Ibid.*) During the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the Parties were able to reach an agreement on a settlement of the Class Action pursuant to a mediator's proposal, the terms of which were memorialized in a Settlement Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 27.; Exhibit 2.)

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

The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec., *supra*, at ¶ 44.) Though cordial and professional, the settlement negotiations have been, always, adversarial, and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties conducted extensive arm's length settlement negotiations until an agreement was reached by all Parties via a mediator's proposal. (*Ibid.*)

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Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification and trial and through any possible appeals. (Han Dec., *supra*, at ¶ 45.) Plaintiffs and Class Counsel have also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including formal mediation on April 29, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (Han Dec., *supra*, at ¶ 46.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court's approval) that this action be settled and compromised for the non-reversionary total sum of $2,000,000 ("Gross Settlement Amount") which includes, subject to Court approval: (a) Attorney Fee Award in an amount not to exceed thirty-eight percent (38%) of the Gross Settlement Amount or $760,000 to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement and securing Court approval; (b)

Cost Award for actual litigation costs not to exceed $25,000[2]; (c) Class Representative Enhancement Payment in the amount of $10,000 to each Class Representative in recognition of Plaintiffs' work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved; (d) Administration Costs to CPT Group, the Settlement Administrator that is currently estimated to be $13,000, but not to exceed $15,000; and (e) PAGA Payment of $150,000, seventy-five percent (75%) of which ($112,500) shall be paid to the LWDA and twenty-five percent (25%) of which ($37,500) shall be part of the Net Settlement Amount distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all current and former non-exempt employees who worked for Defendant within the State of California between May 28, 2019, through August 6, 2021, or Preliminary Approval Date, whichever date is earlier ("Eligible Aggrieved Employees," "PAGA Timeframe," and "PAGA Payment"), on a pro rata basis. (Han Dec., *supra*, at ¶ 28.)

ii. Calculation of the Settlement Payments to Class Members

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that $1,069,500 ("Net Settlement Amount") will be distributed to Class Members – with an average Individual Settlement Share estimated at $1,463.06. (Han Dec., *supra*, at ¶ 30.)

The Settlement Administrator will pay the amount of the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Settlement Share. (Han Dec., *supra*, at ¶ 31.) The Settlement Administrator will calculate the amount of the Participating Class Members' and Defendant's portion of payroll withholding taxes and pay those amounts from the Gross Settlement Amount. (*Ibid.*) Finally, the Settlement Administrator will submit Defendant's portion of payroll withholding tax and forward those amounts along with each person's Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*)

[2] The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiffs' motion for final approval. (Han Dec., *supra*, at ¶ 29.) At that time, Plaintiffs will ask the Court to approve the amount of these costs. If Plaintiffs' actual litigation costs exceed $25,000, Plaintiffs will only seek reimbursement in the amount of $25,000. (*Ibid.*) If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and be available for distribution to all Class Members who do not submit a valid and timely request to exclude themselves from this Settlement "(Participating Class Members"). (*Ibid.*)

The Settlement Administrator will calculate and pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member. (Han Dec., *supra*, at ¶ 32.) Each Participating Class Member will receive a proportionate share of the Net Settlement Amount that is equal to:

> (i) the number of weeks he or she worked as a Class Member during the Class Period based on the Class data provided by Defendant, divided by (ii) the total number of weeks worked by any and all Class Members during the Class Period based on the same Class data, which is then multiplied by the Net Settlement Amount. A partial week worked in a given week will be credited as a workweek for purposes of this calculation. Therefore, the value of each Participating Class Member's Individual Settlement Share ties directly to the amount of weeks that he or she worked. (*Ibid.*)

Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be calculated and will be based upon the total number of pay periods he or she was employed during the PAGA Timeframe. (Han Dec., *supra*, at ¶ 33.) The individual share will be calculated by:

> determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (i.e., the sum of all pay periods of employment for each eligible aggrieved employee) and dividing that number into the $37,500 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual Eligible Aggrieved Employee's total number of pay periods employed during the PAGA Timeframe to determine that individual's proportional share. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant has tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 34.) No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within Thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator an electronic database, which will list for each Class Member: (i) last known addresses, (ii) telephone numbers and/or emails to the extent they are available, and (iii) social security numbers and dates worked ("Database"). (Han Dec., *supra*, at ¶ 35.)

Within fourteen (14) calendar days after the Settlement Administrator's receipt of the Database, the Settlement Administrator will mail the Class Notice to all identified Class Members via first-class regular U.S. Mail, using the mailing address information provided by Defendant and the results of the National Change of Address database ("NOCA") search performed on all former Defendant employee Class Members. (Han Dec., *supra*, at ¶ 36.) Class Members are not required to submit a claim form to receive their Individual Settlement Shares. (*Ibid.*) The proposed Class Notice is attached as Exhibit A to the Settlement Agreement, which is Exhibit 2 to the Declaration of Douglas Han.

iv. Distribution of Funds

No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the Gross Settlement Amount of $2,000,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶ 37.) In the event there are objectors to the Settlement Agreement, payment shall be made within twenty-one (21) calendar days after the time to appeal has run or all appeals have been exhausted, whichever occurs later. (*Ibid.*) Defendant shall also at this time provide any tax information that the Settlement Administrator may need to calculate each Participating Class Members' Individual Settlement Share, to the extent it is within Defendant's possession. (*Ibid.*)

Within fourteen (14) calendar days after the Funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancements, the PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 38.) The Settlement Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the LWDA for settlement of the PAGA claim. (*Ibid.*)

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Participating Class Members must cash or deposit their Individual Settlement Share checks within one hundred twenty (120) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 39.) If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 30-day period after mailing the reminder notice, the Settlement Administrator will, within one hundred fifty (150) calendar days after the checks are mailed, pay the amount of the Individual Settlement Share to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member will have his or her Individual Settlement Share available to him or her per the applicable claim procedure to request that money from the State of California. (*Ibid.*)

v. Release of Claims

As of the Effective Final Settlement Date, Class Members, who do not submit a timely and valid Exclusion Form release, remise, and forever discharge the Released Parties from the Released Claims for the Class Periods. Participating Class Members agree not to sue or otherwise make a claim against any of the Released Parties for any of the Released Claims ("Released Claims"). *See* Exhibit 2 §§ (I)(EE), (III)(L). (Han Dec., *supra*, at ¶ 40.)

As provided in the Release of Claims, as of the Effective Final Settlement Date, this settlement forever bars Plaintiffs, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, from pursuing any action under PAGA, Labor Code §§ 2698, *et seq.*, against, the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in the Case. *See* Exhibit 2 § (III)(M). (Han Dec., *supra*, at ¶ 41.)

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The Released Parties include Defendant and any of their present and former parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and any of those entities' respective partners, shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims in the FAC ("Released Parties"). *See* Exhibit 2 § (I)(FF). (Han Dec., *supra*, at ¶ 42.)

As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiffs in their respective amounts, in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of claims for themselves and their spouse, heirs, successors and assigns. *See* Exhibit 2 § (III)(N). (Han Dec., *supra*, at ¶ 43.)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Plaintiffs' counsel and Defendant's counsel are particularly experienced in wage and hour employment law and class actions. Plaintiffs' counsel has significant experience in litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

Plaintiffs' counsel has prosecuted numerous cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims, to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.) This experience instructed Plaintiffs' counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed Settlement.[3] (*Ibid.*)

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

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

California Rule of Court 3.769 requires court approval for class action settlements.[4] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

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

Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

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

In weighing the strength of the plaintiff's case, *Kullar* instructs that 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, supra,* 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not require an explicit statement of the maximum amount the class could recover if the 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*, *supra*, 186 Cal.App.4th at p. 409.) Put differently, "as 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*, *supra*, 168 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.).)

As the following subsections show, the Parties' investigation and discovery revealed numerous reasons to discount claims and agree to the Settlement.

i. The Settlement Is Fair and Reasonable

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (Han Dec., supra, at ¶ 46.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid*.) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid*.)

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This discovery resulted in Plaintiffs' central theories of liability, which are predicated on Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal and rest breaks and pay applicable premiums, failed to pay minimum wages, failed to pay final wages in a timely manner, failed to issue compliant wage statements, failed to reimburse business expenses, violated PAGA, and violated the Business & Professions Code sections 17200, *et seq*. (Han Dec., *supra*, at ¶ 47.)

Defendant vehemently denies Plaintiffs' theories of liability and contend, as stated above, that all meal and rest breaks were provided in compliance with California law, that all wages were properly paid to Class Members, that it provided final wages in a timely manner, that it provided wage statements in compliance with Labor Code section 226, and that it reimbursed all business expenses. (Han Dec., *supra*, at ¶ 48.) Defendant further contends that any mistakes made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to continue, it feels confident that it would prevail. (*Ibid.*)

Although Plaintiffs believe the case is suitable for certification on the basis that there are company-wide policies that Plaintiffs contends violate California law and uniformly affect the putative Class Members, uncertainties with respect to certification are always present. (Han Dec., *supra*, at ¶ 49.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On* have reached different conclusions concerning certification of wage and hour claims.[5] (*Ibid.*)

Although remaining confident in the strengths of his claims, all of these factors led Plaintiffs to discount the following calculations of potential damage claims:

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[5](See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc*. (2006) 141 Cal.App.4th 1422 (affirming denial of certification).)

ii. The Settlement Amount of $2,000,000 Is Reasonable

In addition to being able to discover the strengths and vulnerabilities associated with Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of time and pay records and information regarding the estimated number of workweeks worked by Class Members and the average hourly rate for Class Members. (Han Dec., *supra*, at ¶ 50.) Defendant confirmed that there were approximately 45,773 workweeks worked by Class Members. (Han Dec., *supra*, at ¶ 50.) Plaintiffs were also able to determine that the average hourly rate for Class Members was $15.90. (*Ibid.*)

The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 56.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

Class Counsel calculated penalties under this cause of action by multiplying the number of active Class Members (because of the shortened statutory period for this claim), by the civil penalties that each could be awarded for the Labor Code sections enumerated under Labor Code section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 57.) Class Counsel then applied discounts in light of the countervailing arguments with regard to the other causes of action, as well as the Court's power to award "a lesser amount than the maximum civil liability." (Lab. Code § 2699(e)(2).) (*Ibid.*)

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Given the state of the law and the range of PAGA penalties requested and actually awarded in California courts, it is difficult to determine a reasonable value and actual exposure for PAGA penalties. (Han Dec., *supra*, at ¶ 58.) However, if PAGA penalties are granted on any one of the violations alleged in Plaintiffs' operative complaint, the total penalties exposure for the eligible pay periods could be approximately $2,155,500 (([1 x $100] + [22 x $200]) x 479 employees). (*Ibid.*) Plaintiffs calculated Defendant's PAGA exposure using one hundred percent (100%) violation rate based on the average number of pay periods (23) during the one-year statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the PAGA theories of recovery (6) gives potential civil penalties of $12,933,000. (*Ibid.*)

Although Plaintiffs argued they could obtain over $12 million for PAGA penalties, it seems unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶ 59.) PAGA's plain language indicates that an employer will be assessed a lower, "initial" penalty for each initial pay period in which a violation occurs, and a higher, "subsequent" penalty for each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, "Until the employer has been notified that it is violating a Labor Code provision (whether or not the commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a 'violation' subject to penalties [and will be assessed only the 'initial' violation rate]." (*Amaral, supra,* 163 Cal.App.4th at 1209.) This language could be interpreted as indicating that until the Labor Commissioner or a court informs an employer that it has violated the Labor Code, the employer can only be assessed the "initial" violation rate. Under this interpretation, the maximum individual civil penalty for one statutory violation is $47,900 (479 employees x 100 (initial violation)), and for all possible Labor Code violations is $287,400.

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Furthermore, PAGA's statutory language is unclear as to whether PAGA penalties may be "stacked" – that is, whether multiple civil penalties can be recovered in the same pay period for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f) establishes "a civil penalty for a violation" (emphasis added), implying a separate civil penalty for each violation. On the other hand, employers cite Labor Code section 2699, subdivision (g)(1), which states that "an aggrieved employee may recover the civil penalty described in subdivision (f)…on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed" (emphasis added). However, Defendants contended that the Ninth Circuit's opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.* (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057, which, preclude the aggregation of PAGA penalties for purposes of removal, prevents "stacking" of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties would be limited to $47,900 on the low end and $287,400 on the high end based on six (6) major theories of recovery.

To the extent Defendant's exposure remains in the millions of dollars, the civil penalties could be "unjust, arbitrary and oppressive, or confiscatory." In fact, many courts have taken liberties to dramatically reduce the civil penalties. (*See e.g. Viceral v. Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims' full potential value, where "Plaintiffs face[d] a substantial risk of recovering nothing on either class or PAGA claims"]; *Costter v. Lyft, Inc. (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037* [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of the PAGA claims' potential value, where the defendant's obligations were "genuinely unclear" and there was no evidence the defendant acted deliberately or negligently failed to learn about its obligations].).

Under a more conservative approach, Class Counsel considered the possibility that the Court could assess only the initial violation rate, bringing the basic PAGA penalty to $287,400 [479 employees x $100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 59.)

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Plaintiffs also recognized the risk that any PAGA award could be significantly reduced. (Han Dec., *supra*, at ¶ 60.) Many of the causes of action brought were duplicative of the statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating $150,000 to PAGA civil penalties was reasonable based on a rate of $13.34 per pay period [$150,000 ÷ 11,241 Pay Periods in PAGA Date Range = $13.34], given the fact that Defendant are also paying an additional $1,850,000 in the class settlement. (*Id*. (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of $5 per violation and a total PAGA penalty of $150,000 while the plaintiff requested a rate of $25 to $75 per violation and a total PAGA penalty of $70,000,000).)) Where PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable. (Han Dec., *supra*, at ¶ 60.) (citing *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.").)

Accordingly, taking into consideration Defendants' defenses, their supporting evidence, and their position that the Class Action is not suitable for class treatment, the settlement amount of $2,000,000— with an average Individual Settlement Share estimated at $1,463.06—is reasonable and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately $5,641,027.72 on the low end and $6,095,896.90 on the high end. (Han Dec., *supra*, at ¶ 61.)

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Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	$750,139.74	70%	60%	$90,016.77
Meal Break Premiums	$798,561.60	60%	50%	$159,712.32
Overtime/Minimum Wage: Off-the-Clock	$909,738.38 to $1,364,607.56	60%	60%	$145,558.14 to $218,337.21
Unreimbursed Business Expenses	$359,142	40%	70%	$64,645.56
Wage Statement Penalty	$1,083,350	50%	50%	$270,837.50
Waiting Time Penalty	$1,740,096	50%	50%	$435,024
MAXIMUM TOTAL EXPOSURE	**$5,641,027.72** to **$6,095,896.90**[6]			**$1,165,794.29** to **$1,238,573.36**[7]

Based on this analysis, the realistic recovery for this case is $1,165,794.29 on the low end and $1,238,573.36 on the high end. (Han Dec., *supra*, at ¶ 68.) The Gross Settlement Amount of $2,000,000 is approximately thirty-two percent (32.81%) of the maximum potential exposure and is approximately one hundred sixty-one percent (161.48%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig*. (N.D. Cal. 2007) 484 F.Supp.2d 1078, 1079.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.") Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have prevailed at trial and provides a significant recovery for the Class Members. Thus, there can be no doubt that this settlement is fair and reasonable.

[6] Han Dec., *supra*, at ¶¶ 51-55.
[7] Han Dec., *supra*, at ¶¶ 62-67.

d. Conditional Certification of the Class Is Appropriate

For settlement purposes only, the requisites for establishing conditional class certification are met. Code of Civil Procedure Section 382 "authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies "both [1] an ascertainable class and [2] a well-defined community of interest among class members." (*Ibid.*)

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 69.) Plaintiffs' claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed below, this case is amenable to class certification. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

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The Class Action involves seven hundred thirty-one (731) Class Members. (Han Dec., *supra*, at ¶ 70.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of "as many as 190 current and former employees" is sufficiently numerous.) Further, all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records concerning hourly-paid and non-exempt employees employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." (*Sav-On Drugs*, *supra*, 34 Cal.4th at p. 326.) "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Rather, courts focus on the Defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate." (*Id*. (citing *Sav-On Drugs*, *supra*, 34 Cal.4th at p. 333).) The application of each of these factors is discussed below.

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*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On*, *supra*, 34 Cal.4th at p. 327).) 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*, *supra*, 53 Cal.4th at p. 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. 2014) Case No. 3:11-cv-02743 (certified collective action involving 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-21244

(court certified class of dancers on state law claims).)

Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 71.) All hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All Plaintiffs' claims surround Defendant's common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for noncompliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially similar to other class members. **(***Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt employees and allege they and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Dec., *supra*, at ¶ 72.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

3. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶ 73.) They have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have also spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

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. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situation persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Moreover, because a number of the Class Members are current employees, the fear of retaliation further support superiority of class-wide relief because that fear of retaliation often discourages victims from seeking legal redress while currently employed by the same employer.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that 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) the 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) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows, all of these elements are present here. Thus, Plaintiffs request that this Court grant their motion for Preliminary Approval.

f. Notice to Class Members Complies with California Rule of Court 3.769(f)

California Rule of Court, No. 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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The proposed Class Notice meets all of these requirements. The proposed Class Notice advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval hearing. (See Han Dec., *supra*; Exhibit A to Exhibit 2.)

V. CONCLUSION

Plaintiffs respectfully submit that the proposed Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved.

Dated: July 26, 2021

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