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

ADRIAN ESCOBEDO, individually, on behalf  
of other members of the general public similarly  
situated;

Plaintiff,

v.

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

Defendants.

Case No.: 30-2020-01170846-CU-OE-CXC

Assigned for All Purposes to:  
Honorable Peter Wilson  
Department CX-101

**CLASS ACTION**

**PLAINTIFF’S NOTICE OF MOTION  
AND MOTION FOR FINAL APPROVAL  
OF THE CLASS ACTION  
SETTLEMENT, ATTORNEY FEE  
AWARD, COST AWARD, AND CLASS  
REPRESENTATIVE ENHANCEMENT  
PAYMENT; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION FOR FINAL  
APPROVAL**

[Declaration of Class Counsel (Douglas Han);  
Declaration of Class Representative (Adrian  
Escobedo); Declaration of Settlement  
Administrator (Veronica Olivares); and  
[Proposed] Order and Judgment filed  
concurrently herewith]

Hearing Date: January 19, 2023  
Hearing Time: 2:00 p.m.  
Hearing Place: Department CX-101

Complaint Filed: November 18, 2020  
FAC Filed: April 14, 2022  
Trial Date: None Set

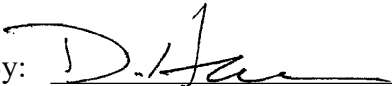
1           **PLEASE TAKE NOTICE** that on January 19, 2023 at 2:00 p.m. before Honorable Peter  
2 Wilson in Department CX-101 of the Orange County Superior Court (Civil Complex Center)  
3 located at 751 West Santa Ana Boulevard, Santa Ana, California 92701, Plaintiff Adrian  
4 Escobedo (“Plaintiff”), on behalf of himself and all persons similarly situated, moves this Court  
5 pursuant to Code of Civil Procedure section 382 and California Rule of Court, Rule 3.769 for an  
6 order of final approval of the class action settlement. This order will accomplish the following:  
7 (1) certify the Class for settlement purposes only; (2) approve the class action settlement  
8 embodied in the Joint Stipulation of Settlement and Release, Amendment to the Joint Stipulation  
9 of Settlement and Release, and Second Amendment to the Joint Stipulation of Settlement and  
10 Release (“Settlement Agreement,” “Settlement,” or “Agreement”); (3) confirm Plaintiff as the  
11 class representative; (4) confirm the appointment of Class Counsel; (5) approve the Class  
12 Representative Enhancement Payment; (6) approve Class Counsel’s application for Attorney Fee  
13 Award and Cost Award; (7) approve the Private Attorneys General Act of 2004 (“PAGA”)   
14 Payment; and (8) enter judgment approving the class action settlement.

15           As set forth in the attached memorandum of points and authorities and supporting  
16 declarations, the grounds for this Motion are this is a fair and reasonable settlement that benefits  
17 the Class and was the product of informed, non-collusive negotiations by the Parties who were  
18 represented by experienced and able counsel. (See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th  
19 1794, 1802; Manual for Complex Litigation, (Second), § 30.44 (1985).)

20           Plaintiff bases this Motion on this Notice and the accompanying Memorandum of Points  
21 and Authorities, Declaration of Douglas Han, Declaration of Adrian Escobedo, Declaration of  
22 Veronica Olivares, the complete pleadings, records and files in the case, and such other further  
23 oral and documentary evidence which may be submitted at or before the hearing on this Motion.  
24

25 Dated: December 19, 2022

**JUSTICE LAW CORPORATION**

26 By:   
27 Douglas Han  
28 *Attorneys for Plaintiff*

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 On September 16, 2022, this Court entered an order preliminarily approving a class  
4 action settlement entered on behalf of all current and former non-exempt employees (whether  
5 hired directly or through a staffing agency or labor contractor) of Defendant Ameripecc, Inc.  
6 (“Defendant”) who worked for Defendant within California for any period of time between  
7 August 31, 2016 and May 29, 2019 (“Class,” “Class Members,” and “Class Period”). Under the  
8 Settlement, the wage-and-hour claims of two hundred ninety-nine (299) Class Members who did  
9 not submit valid and timely Exclusion Forms to the Settlement Administrator (“Participating  
10 Class Members”) will be resolved for \$472,500.

11 Notice of the Settlement was distributed according to the Court’s preliminary approval  
12 order. No Class Member has submitted a written dispute to, objection to, or request for exclusion  
13 from the Settlement. (Declaration of Douglas Han In Support of Plaintiff’s Motion for Final  
14 Approval of Class Action Settlement (“Han Final Decl.”), ¶ 12; Declaration of Veronica Olivares  
15 Regarding Notice and Settlement Administration (“Olivares Decl.”), ¶¶ 10-12.)

16 **II. FACTS AND PROCEDURAL HISTORY**

17 **A. PROCEDURAL HISTORY**

18 1. Plaintiff’s Claims

19 On August 31, 2020, the then-plaintiff Todd Martin provided written notice to the  
20 California Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Final  
21 Decl., *supra*, at ¶ 5.)

22 On November 18, 2020, Todd Martin filed a representative PAGA action in the Superior  
23 Court of California, County of Orange. (Han Final Decl., *supra*, at ¶ 6.)

24 On December 2, 2021, the Parties participated in a private mediation with Mark Rudy.  
25 While the Parties did not settle at mediation, the mediator assisted the Parties in further  
26 negotiations following mediation that eventually resulted in the settlement of this case. (Han  
27 Final Decl., *supra*, at ¶ 7.)

1 On January 6, 2022, an amended written notice to the LWDA was submitted that added  
2 Plaintiff as an additional PAGA representative. (Han Final Decl., *supra*, at ¶ 8.) Following Todd  
3 Martin’s death, Plaintiff filed a First Amended Complaint on April 14, 2022 that substituted  
4 Plaintiff with Todd Martin as the plaintiff and added several class action causes of action. (*Ibid.*)

5 2. Plaintiff’s Investigation<sup>1</sup>

6 Class Counsel investigated and researched facts and circumstances underlying the  
7 pertinent issues and the law applicable. This required discussions and interviews between Class  
8 Counsel and Plaintiff, as well as preliminary research into the legal issues involved. Afterwards,  
9 Class Counsel determined the claims were well-suited for class and representative action  
10 adjudication. (Han Preliminary Decl., *supra*, at ¶¶ 15-18, 42-47.)

11 Class Counsel conducted a thorough investigation of the facts and claims giving rise to  
12 this matter. This investigation included: (1) conducting discovery and meeting and conferring  
13 with Defendant; (2) reviewing and analyzing policy documents and a sampling of time and pay  
14 records produced from Defendant and other sources; (3) researching the applicable law and  
15 potential defenses; (4) interviewing current and former employees of Defendant; (5) constructing  
16 damage models; (6) having extensive discussions with Plaintiff’s expert to review and analyze  
17 Defendant’s paystubs and time data; and (7) reviewing information provided by Defendant prior  
18 to and during the mediation. (Han Preliminary Decl., *supra*, at ¶¶ 15-18, 43-44.)

19 **B. MEDIATION**

20 Class Counsel assessed liability and damages based on this information and determined  
21 the case was appropriate for consensual resolution given the high level of risk present for both  
22 sides. (Han Preliminary Decl., *supra*, at ¶¶ 42-47.) The Parties participated in mediation with  
23 Mark Rudy, eventually resulting in an agreement on a settlement of this case. (*Id.* at ¶¶ 12, 28.)

24 ///

25 ///

26 \_\_\_\_\_  
27 <sup>1</sup> For a full discussion, see ¶¶ 15-28, 42-73 of the Declaration of Douglas Han in Support  
28 of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Preliminary  
Decl.”), previously filed herein on April 20, 2022.

1 The Settlement is the product of extensive arm’s-length negotiations. The Parties  
2 debated, discussed, and resolved many difficult legal and factual issues. Moreover, the Parties  
3 were required to make reasonable compromises considering the facts, issues, and risks presented.  
4 Class Counsel considered the uncertainty and risks of further litigation and the difficulties  
5 inherent in such litigation. Class Counsel also considered the burdens of proof necessary to  
6 establish liability, the length and complexity of the trial itself, and the risks of further delays and  
7 expenses arising from possible appeals. (Han Final Decl., *supra*, at ¶ 9.)

8 **C. THE TERMS OF THE SETTLEMENT**

9 The amount available for Participating Class Members is \$472,500 less the following:  
10 (1) Attorney Fee Award of \$157,500 (1/3 of the Gross Settlement Amount); (2) Cost Award of  
11 \$15,623.55 (3) Class Representative Enhancement Payment of \$7,500; (4) Administration Costs  
12 of \$9,500; and (5) PAGA Payment of \$25,000. (Han Final Decl., *supra*, at ¶ 10.)

13 **D. NOTICE TO THE CLASS MEMBERS**

14 Following preliminary approval, the Parties directed CPT Group, Inc. to send out Notice  
15 of Class Action and PAGA Settlement (“Notice”) and the Election Not to Participate In Class  
16 Action Settlement (“Exclusion Form”) (collectively, the “Notice Packet”). The Settlement  
17 Administrator sent the Notice Packets to the last-known address of each Class Member. (Han  
18 Final Decl., *supra*, at ¶ 11; Olivares Decl., *supra*, at ¶¶ 6-7.) Prior to the mailing, the Settlement  
19 Administrator ran all addresses contained in the Class Data through the United States Postal  
20 Service’s National Change of Address Database to obtain current address information. (Olivares  
21 Decl., *supra*, at ¶ 6.) None of the Class Members have submitted written disputes, objections, or  
22 requests for exclusion. (Han Final Decl., *supra*, at ¶¶ 12; Olivares Decl., *supra*, at ¶¶ 10-12.)

23 **III. THE COURT SHOULD GRANT FINAL APPROVAL OF SETTLEMENT**

24 Plaintiff submit the Court should grant final approval not only because the settlement is  
25 fair but also because public policy favors settlement over continued class-action litigation. (See,  
26 e.g., *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 434 (“Courts have long acknowledged the  
27 importance of class actions as a means to prevent a failure of justice in our judicial system.”);  
28

1 *State v. Levi Strauss & Co.* (1986) 41 Cal.3d 460, 471 (“[T]he consumer class action is an  
2 essential tool for the protection of consumers against exploitative business practices.”); *Class*  
3 *Plaintiffs v. City Of Seattle* (9th Cir. 1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . .  
4 favors settlements, particularly where complex class action litigation is concerned.”); Conte &  
5 Newberg, *Newberg on Class Actions* (4th ed. 2002) § 11.41.)

6 **A. CRITERIA FOR SETTLEMENT APPROVAL**

7 Class action settlements are subject to a two-step approval process. First, the court makes  
8 a preliminary evaluation of the fairness of the settlement based on a written motion for approval,  
9 settlement agreement, proposed notice to the class, proposed order granting a settlement hearing,  
10 and informal presentation. If the court determines the settlement appears to be within the “range  
11 of reasonableness,” the court may initiate the second step by directing the class be given notice  
12 of a formal settlement hearing. (See *Newberg on Class Actions* at § 11.25.) At the formal hearing,  
13 evidence may be presented in support of, and in opposition to, the settlement. The above  
14 procedures, commonly used by California courts and endorsed by Professor Newberg, safeguard  
15 the procedural due process rights of putative class members. (*Id.* at § 11.22, *et seq.*)

16 The first two stages have been completed here. At the final approval stage, the decision  
17 facing the Court is whether the settlement is fair, adequate, and reasonable. (*Wershba v. Apple*  
18 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 235.) Among the relevant considerations in reaching  
19 this final determination are (1) strength of plaintiffs’ case balanced against the benefits of the  
20 settlement, and (2) complexity, expected duration, and expense of further litigation. (*Id.*; see also  
21 *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1802.)

22 In assessing a settlement proposal, courts give “proper deference to the private  
23 consensual decision of the parties,” because “the Court’s intrusion upon what is otherwise a  
24 private consensual agreement negotiated between the parties to a lawsuit must be limited to the  
25 extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or  
26 overreaching by, or collusion between, the negotiating parties.” (*Hanlon v. Chrysler Inc.* (9th  
27 Cir. 1998) 150 F.3d 1011, 1027; *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1801  
28

1 (“Due regard should be given to what is otherwise a private consensual agreement between the  
2 parties.”.) The Court should consider the recommendations of counsel and the parties. (See  
3 *Kirkorian v. Borelli*, (N.D. Cal.1988) 695 F.Supp. 446, 451 (recommendation of experienced  
4 counsel carries significant weight in the court’s determination of the reasonableness of the  
5 settlement); *Vulcan So. of Westchester County, Inc. v. Fire Department of White Plains*  
6 (S.D.N.Y. 1981) 505 F.Supp. 955, 967 (same).) A presumption of fairness exists if: (1)  
7 settlement is reached through arm’s-length bargaining, (2) investigation and discovery are  
8 sufficient to allow counsel and the court to act intelligently, (3) counsel is experienced in similar  
9 litigation, and (4) percentage of objectors is small. (*Dunk*, at p. 1794.)

10 **B. THE SETTLEMENT FULFILLS ALL FINAL APPROVAL CRITERIA**

11 1. The Settlement Follows Substantial Investigation and Discovery.

12 The Settlement is the result of extensive negotiations, conducted at arm’s-length, and  
13 informed by substantial factual and legal investigations. (Han Final Decl., *supra*, at ¶¶ 5-10.)  
14 Throughout this case, Plaintiff and Class Members have also been represented by experienced  
15 counsel. (Han Final Decl., *supra*, at ¶¶ 38-43; Exhibits 5-6.)

16 Class Counsel has devoted a substantial amount time on this case. This included; (1)  
17 researching various legal issues; (2) drafting and reviewing pleadings; (3) meeting and  
18 conferring with Defendant’s counsel; (4) reviewing and analyzing the produced documents; (5)  
19 regularly communicating with Plaintiff; (6) preparing for and attending mediation; (7)  
20 negotiating, amending, and finalizing the Agreement; (8) drafting documents for preliminary  
21 and final approval; (9) briefing for the hearing for preliminary approval; and (10) coordinating  
22 and overseeing the settlement administration. (Han Final Decl., *supra*, at ¶¶ 16-32.)

23 Among those matters considered during settlement negotiations were the risks,  
24 expenses, and length of further litigation. (Han Preliminary Decl., *supra*, at ¶¶ 42-47.) These  
25 considerations indicated the interests of Class Members are best served by a settlement of this  
26 case as set forth in the Agreement. As experienced litigators in employment class action cases,  
27 Class Counsel believe the Agreement is fair, reasonable, and adequate. (*Id.* at ¶ 79.)

1           2.       The Settlement Falls Within the Range of Approval by This Court.

2           Significant in evaluating the foregoing \$472,500 settlement are the risks at trial (or an  
3 appeal), as well as the costs of continuing the litigation. Defendant contends the Class would  
4 not be able to establish its entitlement to the full extent of the relief it is seeking. Plaintiff  
5 believes there is ample evidence to support class allegations. Under these circumstances, it was  
6 reasonable for the Parties to elect to settle this matter. This is because the Settlement provides  
7 immediate benefits to the Class. (Han Final Decl., *supra*, at ¶¶ 9-10.)

8           After evaluating the benefits offered by the Settlement and the expense, delay, and risk  
9 of going forward to trial, Class Counsel determined the Settlement fairly, adequately, and  
10 reasonably achieves Plaintiff’s goals and advances the Class’s interests. In other words, the  
11 Settlement falls within the “the range of reasonableness” necessary for final approval.

12           3.       Class Members Received The Best Practicable Notice.

13           California law vests the Court with broad discretion in fashioning an appropriate program  
14 to provide the best notice practicable.<sup>2</sup> (See *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960,  
15 973-74; *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392; *Cho v.*  
16 *Seagate Tech. Holdings, Inc.* (2009) 177 Cal.App.4th 734, 745-746; *Phillips Petroleum Co. v.*  
17 *Shutts* (1985) 472 U.S. 797, 811-12.)<sup>3</sup> The content and method of notice should be designed to  
18 apprise the class members of the terms of the proposed settlement and of their rights to participate  
19 in, object to or opt out of the settlement. (See *Mullane*, at p. 314; *In re Vitamin Cases* (2003) 107  
20 Cal.App.4th 820, 828.)

21       ///

22           \_\_\_\_\_  
23           <sup>2</sup>       The California Supreme Court has authorized California’s trial courts to use Federal Rule  
24           23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*  
25           (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal. 3d 126, 145-46.) Where appropriate,  
26           therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

27           <sup>3</sup>       (See also *Eisen v. Carlisle & Jacquelin* (1974) 417 U.S. 156, 175-75 (individual notice  
28           must be sent to all class members who can be identified through reasonable efforts); *Mullane v.*  
          *Central Hanover Bank & Trust Company* (1950) 339 U.S. 306, 314 (best practicable notice is  
          that which is “reasonably calculated, under all the circumstances, to apprise interested parties of  
          the pendency of the action and afford them an opportunity to present their objections”).)

1 The Notice Packet preliminarily approved met these requirements. It explained the nature  
2 of the litigation, material terms of the Settlement, sum of the settlement payments, how to  
3 participate in, object to, or be excluded from the Settlement, and where to direct inquiries.

4 4. No Class Members Have Objected to or Requested Exclusion From the  
5 Settlement.

6 There is a presumption of fairness if the percentage of objectors and opt-outs is small.  
7 (*7-Eleven Owners for Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 224, 244; *Hanlon*  
8 *v. Chrysler Corporation, supra*, 150 F.3d at pp. 1025-1026.) None of the Class Members have  
9 submitted written disputes to, objected to, and requested exclusion from the Settlement. (Han  
10 Final Decl., *supra*, at ¶ 12; Olivares Decl., *supra*, at ¶¶ 10-12.)

11 5. Class Representative Enhancement Payment Is Reasonable and Fair.

12 Class action settlements typically provide for an incentive or enhancement payment to  
13 the named plaintiff for bringing and helping to prosecute the action. Courts routinely approve  
14 these supplemental payments. (See *Newberg on Class Actions* at § 12.46; *Van Vranken v.*  
15 *Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294; *Bogosian v. Gulf Oil Corp.* (E.D. Pa.  
16 1985) 621 F.Supp. 27 (award of \$20,000.00 each to two class representatives in antitrust case);  
17 *Bryan v. Pittsburgh Plate Glass Co. (PPG Industries, Inc.)* (W.D. Pa. 1973) 59 F.R.D. 616, 617,  
18 *aff'd* 494 F.2d 799 (3d Cir.), *cert. denied* in *Abate v. Pittsburgh Plate Glass Co.* (1974) 419 U.S.  
19 900.) As the *Staton* court noted:

20 [N]amed plaintiffs . . . are eligible for reasonable incentive payments. The  
21 district court must evaluate their awards individually, using relevant factors  
22 includ[ing] the actions the plaintiff has taken to protect the interests of the  
23 class, the degree to which the class has benefited from those actions, . . . the  
24 amount of time and effort the plaintiff expended in pursuing the litigation . . .  
25 and reasonabl[e] fear[s] of workplace retaliation.

26 (*Staton v. Boeing* (9th Cir. 2003) 327 F.3d 938, 977 (citation omitted).)

27 ///

28 ///

1 Plaintiff served as the class representative throughout this litigation. Among other things,  
2 Plaintiff spent numerous hours with Class Counsel discussing the case facts and the law,  
3 producing and reviewing documents, preparing for the mediation, and reviewing and approving  
4 the Agreement. Moreover, Plaintiff's assistance proved to be an invaluable asset that contributed  
5 to the settlement of this case (*i.e.*, developing legal theories, obtaining putative class members'  
6 contact information, determining the importance of the documents produced). (Han Final Decl.,  
7 *supra*, at ¶¶ 33, 35; Declaration of Adrian Escobedo In Support of Plaintiff's Motion For Final  
8 Approval of Class Action Settlement ("Escobedo Decl."), ¶¶ 6-10.) Plaintiff undertook this case  
9 despite being made aware of the risks associated with serving as a representative (*i.e.*, sacrificing  
10 potential individual claims, difficulty finding employment, risk of judgment entered against him  
11 for attorneys' fees and costs). (Han Final Decl., *supra*, at ¶¶ 33-35; Escobedo Decl., *supra*, at ¶¶  
12 11-12.) Ultimately, Plaintiff decided to vindicate not only his rights but also those of former co-  
13 workers despite the risk and sacrifices involved. Finally, Plaintiff is not related to anyone  
14 associated with Class Counsel nor does Plaintiff have any conflicts of interest adverse to any of  
15 the Class Members. (Escobedo Decl., *supra*, at ¶ 13.)

16 Thus, Plaintiff is entitled to the Class Representative Enhancement Payment of \$7,500  
17 for his initiative and efforts in bringing and helping to prosecute this case.

18 6. The Payment of Attorneys' Fees Is Reasonable.

19 (i) Percentage-of-the-Benefit Method.

20 The California Supreme Court held "when class action litigation establishes a monetary  
21 fund for the benefit of the class members, and the trial court in its equitable powers awards class  
22 counsel a fee out of that fund, the court may determine the amount of a reasonable fee by  
23 choosing an appropriate percentage of the fund created." (*Laffitte v. Robert Half Intern. Inc.*  
24 (Aug. 11, 2016) 205 Cal.Rptr.3d 555, 573.) Courts may use the "percentage method for its  
25 primary calculation of the fee award. The choice of a fee calculation method is generally one  
26 within the discretion of the trial court, the goal under either the percentage or lodestar approach  
27 being the award of a reasonable fee to compensate counsel for their efforts." (*Ibid.*)



1 The Attorney Fee Award of \$157,500 is one-third (1/3) of the common fund created by  
2 the Settlement Agreement. This percentage is consistent with both the Settlement Agreement  
3 and Plaintiff's contingent-fee agreement. By extension, the Attorney Fee Award is also fair and  
4 reasonable under California's fee-shifting jurisprudence.<sup>4</sup>

5 California courts have also approved attorney's-fee awards above the benchmark of  
6 thirty-eight percent (38%) of the settlement fund. (See *Crandall v. U-Haul* (Los Angeles County  
7 Superior Court, Case No. BC178775), the Honorable Steven Czuleger awarded a 40% attorney  
8 fee request in an overtime-exemption class action; in *Bushnell v. Cremar, Inc.* (Orange County  
9 Superior Court, Case No. 657778), the Honorable Donald E. Smallwood awarded attorneys' fees  
10 in the amount of 38%; in *Abzug v. Kerkorian* CA000981 (Los Angeles County Superior Court,  
11 November 1990), the Honorable R. William Schoettler awarded a 45% fee; in *Haitz v. Meyer, et*  
12 *al.*, Alameda County Superior Court, 8-20-1990 No. 572968-3, the court awarded a 40% fee; in  
13 *Elliott v. Clothetime* (Orange County Superior Court, Case No. 01-CC00333) the Honorable  
14 Jonathan Cannon awarded a 40% fee in a wage-and-hour class action which had not yet  
15 proceeded to the class certification stage; in both *Rippee v. Boston Market Corporation*, Case  
16 No.: 05 CV 1359 BTM (JMA) and *Barile v. Boston Market Corporation*, Case No.: 05 CV 1360  
17 BTM (JMA), the Honorable Judge Barry T. Moskowitz awarded a 40% fee to plaintiffs' counsel  
18 in wage-and-hour class actions that had not proceeded to the class-certification stage.) (Han  
19 Final Decl., *supra*, at ¶ 30.)

20 The amount requested will fairly compensate Class Counsel for their successful  
21 vindication of Class Members' rights. This is considering the quality, nature, and extent of Class  
22 Counsel's efforts, outstanding results achieved, no Class Member objecting to the sum of the  
23 Attorney Fee Award, legal precedent supporting to the Attorney Fee Award sought, and Class  
24 Counsel being award similar fee requests in previous cases. Class Counsel's diligent, efficient,  
25 and creative pursuit of this matter positioned Plaintiff to settle this case successfully, affording

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26 <sup>4</sup> The Labor Code specifically provides for an award of attorneys' fees and costs for some  
27 of employees' claims. (See, e.g., Lab. Code § 226.) Plaintiff is also entitled to an award of  
28 attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

1 redress to the entire Class and avoiding the inevitable expense and risk attendant to protracted  
2 litigation. (Han Final Decl., *supra*, at ¶¶ 25-31.)

3 Defendant has not objected to the Attorney Fee Award. Similarly, the Notice Packet  
4 mailed to Class Members stated the sum of the Attorney Fee Award, and not a single Class  
5 Member objected. (Olivares Decl., *supra*, at ¶¶ 11.)

6 Considering the foregoing, the Attorney Fee Award is well within the bounds established  
7 by the above-cited authority.

8 (ii) Lodestar Method.

9 The lodestar calculation supports the Attorney Fee Award. The lodestar calculation  
10 proceeds in three (3) steps. First, a trial court must determine a baseline guide or “lodestar” figure  
11 based on the time spent and reasonable hourly compensation for each attorney involved in the  
12 case. (*Serrano v. Priest* (1975) 20 Cal.3d 25, 48.) The court then sets a reasonable hourly fee to  
13 apply to the time expended, with reference to the prevailing rates in the geographical area the  
14 action is pending. (*Bihun v. AT&T Information System* (1993) 13 Cal.App.4th 976, 997.) A  
15 “multiplier” is then selected with reference to the following factors: (1) novelty and difficulty of  
16 issues; (2) skill displayed; (3) extent the nature of the litigation precluded other employment;  
17 and (4) contingent nature of the fee award. (*Serrano*, at p. 49.)

18 Class Counsel charges hourly rates commensurate with the prevailing market rates in the  
19 Los Angeles County area for attorneys of comparable experience and skill handling complex  
20 litigation. (Han Final Decl., *supra*, at ¶¶ 17-19; Exhibit 2.) Similarly, Class Counsel’s hourly  
21 rates are also in line with the Laffey Matrix. (*Id.* at ¶ 19; Exhibit 3.)

22 Moreover, the *Serrano* factors all militate in favor of the Attorney Fee Award. This case  
23 raised several complex and contested issues, and Class Counsel demonstrated skill and creativity  
24 in prosecuting and presenting them. (Han Final Decl., *supra*, at ¶ 20.) This was also not a  
25 straightforward case as Class Counsel had to spend time researching and analyzing each of these  
26 claims and issues to adequately assess the liability. (*Id.* at ¶ 21.)

27 ///

1 Class Counsel have also spent a substantial number of hours on this case. The time Class  
2 Counsel devoted prevented them from taking on other cases, including hourly work for which  
3 compensation would have been more certain. Yet, Class Counsel still zealously represented  
4 Plaintiff and the Class and obtained an excellent result. (Han Final Decl., *supra*, at ¶ 22.)

5 While Class Counsel achieved a beneficial settlement, this was not foregone conclusion.  
6 Class Counsel’s efforts might have been frustrated by obstacles. Yet, Class Counsel navigated  
7 the shoals of unpredictability to achieve a desirable result. (Han Final Decl., *supra*, at ¶ 23.)

8 Finally, the base lodestar fees calculation is \$232,210. Under the lodestar cross-check,  
9 this results in a negative multiplier is 0.68, further evidencing the reasonableness of the Attorney  
10 Fee Award. (Han Final Decl., *supra*, at ¶ 24.)

11 (iii) The Requested Costs Award Is Reasonable

12 Class Counsel have incurred costs of \$15,623.55. These costs incurred include but are  
13 not limited to: (1) filing fees (*i.e.*, complaint, stipulation, motions); (2) service of process; (3)  
14 mediation fees; (4) expert analysis fees; (5) attorney-service costs; (6) copy charges for  
15 documents; (7) CourtCall costs for attending court hearings; (8) LexisNexis costs; and (9)  
16 postage charges. These costs were reasonably necessary to the conduct of the litigation and were  
17 also reasonable in amount. (Han Final Decl., *supra*, at ¶ 32; Exhibit 4.)

18 **IV. CERTIFICATION OF THE CLASS FOR SETTLEMENT PURPOSES IS**  
19 **APPROPRIATE**

20 **A. THE LEGAL STANDARD**

21 Section 382 of the Code of Civil Procedure provides “when the question is one of a  
22 common or general interest, of many persons, or when the parties are numerous, and it is  
23 impracticable to bring them all before the court, one or more may sue or defend for the benefit  
24 of all. (Code Civ. Proc. § 382.) Class certification under section 382 is appropriate when “(1)  
25 [t]here [is] . . . an ascertainable class; and (2) there [is] . . . a well defined community of interest  
26 in the questions of law and fact involved affecting the parties to be represented.” (*Daar v. Yellow*  
27 *Cab Co.* (1967) 67 Cal.2d 695, 704 (citations omitted).) The community-of-interest requirement

1 itself embodies three factors: “(1) predominant questions of law or fact; (2) class representatives  
2 with claims or defenses typical of the class; and (3) class representatives who can adequately  
3 represent the class.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470.) Any doubt  
4 to class treatment should be resolved in favor of class certification, subject to later modification  
5 if necessary. (*Id.* at pp. 473-475.) The decision to certify a class is a purely procedural one and  
6 should be based on the allegations in the operative complaint, and not in the perceived factual or  
7 legal merit of the class claims. (*Linder v. Thrifty Oil Co., supra*, 23 Cal.4th at pp. 439-441.)

8 **B. THE CRITERIA FOR CERTIFICATION OF THE CLASS ARE**  
9 **SATISFIED.**

10 1. The Class Is Ascertainable.

11 Class Members who worked for Defendant have been identified through employee and  
12 payroll files. (Han Preliminary Decl., *supra*, at ¶ 74.) (See *Rose v. City of Hayward* (1981) 126  
13 Cal.App.3d 926, 932 (finding that “[c]lass members are ‘ascertainable’ where they may be  
14 readily identified without unreasonable expense or time by reference to official records.”).)

15 2. The Numerosity Requirement Is Satisfied.

16  
17 The numerosity requirement is fulfilled when the individual joinder of all class members  
18 would be impracticable. A proposed class numbering “as few as 40 class members should raise  
19 a presumption that joinder is impracticable,” thus satisfying the numerosity requirement.  
20 (*Newberg on Class Actions* § 3.5.)

21 There are two hundred ninety-nine (299) Class Members. (Olivares Decl., *supra*, at ¶ 6.)  
22 This means joinder would be impracticable, and a class-wide proceeding is more appropriate.

23 3. Common Issues of Law and Fact Predominate Over Any Individual  
24 Issues.

25 The court should grant class certification when questions of law and fact common to all  
26 class members predominate over any questions affecting only individual members. (*Hicks v.*  
27 *Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916 (“As a general rule, if the  
28

1 defendant’s liability can be determined by facts common to all members of the class, a class will  
2 be certified even if the members must individually prove their damages. To determine whether  
3 common questions of fact predominate, the trial court must examine the issues framed by the  
4 pleadings and the law applicable to the causes of allegation alleged.”.)

5 The commonality and predominance requirements are “easily met,” because “[when] the  
6 defendant has engaged in some course of conduct that affects a group of persons and gives rise  
7 to a cause of action, one or more of the elements of that cause of action will be common to all of  
8 the persons affected.” (*Gen’l Tel. Co. of Southwest v. Falcon* (1982) 457 U.S. 147, 155.) The  
9 fact that “calculation of individual damages may at some point be required does not foreclose  
10 the possibility of taking common evidence on [liability issues].” (*Sav-on Drug Stores, Inc. v.*  
11 *Superior Court* (2004) 34 Cal.4th 319, 332 (holding the legal question of whether the plaintiff-  
12 employees were nonexempt and entitled to overtime was a common question that predominated  
13 over the individual questions of each employee’s duties performed and hours worked);  
14 *Clothesrigger, Inc. v. GTE Corp.*(1987) 191 Cal.App.3d 605, 617 (“[T]he necessity for class  
15 members to prove their own damages does not mean individual fact questions predominate”).)

16 The scope of this case is focused on a specific class of persons employed by Defendant  
17 during a specific period. The common questions of law and fact in this case all stem from the  
18 claims Class Members were not paid for all hours, were not properly paid overtime and minimum  
19 wages, did not receive meal and rest breaks, and were not reimbursed for business expenses.  
20 Plaintiff and Class Members all sought the same remedies. These common issues predominate  
21 over individual issues because identical evidence establishes liability as to all Class Members.  
22 (Han Preliminary Decl., *supra*, at ¶ 76.) Thus, the commonality and predominance requirements  
23 are satisfied. (*Stephens v. Montgomery Ward & Co., Inc.* (1987) 193 Cal.App.3d 411, 421.)

24 4. Plaintiff’s Claims Are Typical.

25 A class representative’s claims are typical of a class when they arise from the same event,  
26 practice, or course of conduct that gives rise to the claims of other putative class members, and  
27 if their claims rest on the same legal theories. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47;

1 *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*(1987) 191 Cal.App.3d 1341, 1347 (“[I]t has  
2 never been the law in California that the class representative must have identical interests with  
3 the class members.”).)

4 As a former employee of Defendant, Plaintiff’s claims are typical of Class Members’  
5 claims because they arise from the same factual basis and based on the same legal theories. (Han  
6 Preliminary Decl., *supra*, at ¶ 77.)

7 5. Plaintiff and Class Counsel Adequately Represent the Class.

8 The adequacy requirement is met by fulfilling two conditions: (1) the class representative  
9 must be represented by counsel qualified to conduct the pending litigation, and (2) the class  
10 representative’s interests cannot be antagonistic to those of the class. (*McGhee v. Crocker-*  
11 *Citizens Nat. Bank* (1976) 60 Cal.App.3d 442, 451.)

12 First, Plaintiff and the Class are represented by experienced and competent counsel. Class  
13 Counsel is qualified and has served as class counsel in numerous class actions. (Han Final Decl.,  
14 *supra*, at ¶¶ 38-43; Exhibits 5-6.) Thus, Class Counsel is “qualified, experienced, and generally  
15 able to conduct the proposed litigation.” (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 875.)  
16 Second, Plaintiff has no conflicts with the Class, and his interests are aligned with those of the  
17 Class, securing recovery for the Class. (Han Preliminary Decl., *supra*, at ¶ 78.)

18 6. Class Treatment Is Superior to the Alternatives

19 Absent class treatment, similarly situated persons with relatively small but meritorious  
20 claims for damages would, as a practical matter, have no means of redress because of the time,  
21 effort, and expense required to prosecute individual actions. (See *Hanlon v. Chrysler*  
22 *Corporation, supra*, 150 F.3d at p. 1023.) The Supreme Court has stated that “the policy at the  
23 very core of the class action mechanism is to overcome the problem that small recoveries do not  
24 provide the incentive for any individual to bring a solo action prosecuting his or her rights. The  
25 class action solves this problem by aggregating the relatively paltry potential recoveries into  
26 something worth someone’s (usually an attorney’s) labor.” (*Amchem Prods. v. Windsor* (1997)  
27

1 521 U.S. 591, 617) (citation and quotation omitted.)

2 Other relevant considerations regarding superiority include the improbability that each  
3 class member will come forward to prove his or her separate claim and whether the class  
4 approach would serve to deter or redress the alleged wrongdoing. (*Linder v. Thrifty Oil Co.*,  
5 *supra*, 23 Cal. 4th at p. 435.) In employment cases, concerns like fear of the employer, lack of  
6 representation, size of claim, and employee’s perception about the difficulty of litigation increase  
7 the likelihood an employer will not be held accountable. Acknowledging these concerns, courts  
8 have noted that “[t]he risk entailed in suing one’s employer are such that the few hardy souls  
9 who come forward should be permitted to speak for others when the vocal ones are otherwise  
10 fully qualified.” (*St. Marie v. Eastern RR Ass’n* (S.D.N.Y. 1976) 72 F.R.D. 443, 449 (overruled  
11 as to damages and liability but not as to class certification).) Here, the class approach serves to  
12 deter and redress the alleged wrongdoing by ensuring all claims are addressed.

13 Finally, if the individual claims are relatively small and the socio-economic status and  
14 sophistication of the class members contrasts with defendant’s, a class action is appropriate  
15 because the size of the individual claims “would prove uneconomic for potential plaintiffs” to  
16 pursue individually, as “litigation costs would dwarf potential recovery.” (*Hanlon v. Chrysler*  
17 *Corporation, supra*, 150 F.3d at p. 1023.) These issues from a practical standpoint lead to the  
18 unbalanced situation where the employer is represented by counsel, but the employee is not.

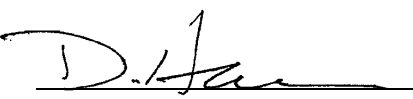
19 Each of the above reasons compels the conclusion that a class action is the preferred  
20 method of resolution for this case.

21 **V. CONCLUSION**

22 For the reasons set forth herein, Plaintiff requests this Court grant final approval of the  
23 Settlement and enter the companion order.

24 Dated: December 19, 2022

**JUSTICE LAW CORPORATION**

25  
26 By:   
27 Douglas Han  
Attorneys for Plaintiff