

1 DOUGLAS HAN (SBN 232858)
2 SHUNT TATAVOS-GHARAJEH (SBN 272164)
3 CHANCELLOR NOBLES (SBN 330081)
4 **JUSTICE LAW CORPORATION**
5 751 N. Fair Oaks Avenue, Suite 101
6 Pasadena, California 91103
7 Telephone: (818) 230-7502
8 Facsimile: (818) 230-7259

9 *Attorneys for Plaintiff*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN BERNARDINO**

12 STEVEN DELCORSO, individually, and on
13 behalf aggrieved employees pursuant to the
14 Private Attorneys General Act (“PAGA”);

15 Plaintiff,

16 v.

17 ITS TECHNOLOGIES & LOGISTICS, LLC,
18 an Illinois limited liability company;
19 CONGLOBAL INDUSTRIES, LLC, a
20 Delaware limited liability company;
21 CONGLOBAL TRANSPORT, LLC, a
22 Delaware limited liability company; and
23 DOES 1 through 100, inclusive;

24 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

NOV 23 2022

BY 
ANTHONY MARTINEZ, DEPUTY

Case No.: CIVSB2128129

Assigned for All Purposes to:
Honorable David Cohn
Department S-26

CLASS ACTION

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

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

Hearing Date: December 20, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department S-26

Complaint Filed: September 30, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 20, 2022 at 9:00 a.m., or as soon as the
2 matter may be heard, before the Honorable David Cohn in Department S-26 of the San Bernardino
3 County Superior Court, located at the San Bernardino Justice Center, 247 West Third Street, San
4 Bernardino, CA 92415-0210, Plaintiff Steven DelCorso (“Plaintiff”) will and hereby moves for an
5 order:

- 6 • Approving the parties’ stipulation to file a First Amended Complaint, attached as
7 **Exhibit 2** to the Declaration of Douglas Han.
- 8 • Granting Preliminary Approval of the proposed class action settlement described
9 herein and as set forth in the Parties’ Joint Stipulation of Class Action and PAGA
10 Settlement (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as
11 **Exhibit 3** to the Declaration of Douglas Han, including, and not limited to, the
12 means of allocation and distribution of funds, the allocations for payments under
13 the Labor Code Private Attorneys General Act of 2004 (“PAGA”) (“PAGA
14 Payments”), Attorney Fee Award, Cost Award, Class Representative Enhancement
15 Payments, and Administration Costs;
- 16 • Conditionally certifying the proposed Class for settlement purposes only;
- 17 • Appointing Plaintiffs Steven DelCorso, Raul “Rudy” Ortega, and Clemente
18 Sandoval as the Class Representatives;
- 19 • Appointing Justice Law Corporation as Class Counsel;
- 20 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
21 attached as **Exhibit A** to the Agreement;
- 22 • Approving the Opt-Out Form attached as **Exhibit B** to the Agreement;
- 23 • Directing the mailing of the proposed Class Notice and Opt-Out Form (collectively,
24 known as the “Notice Packet”) with a postage-paid return envelope to the proposed
25 Class;
- 26 • Approving the proposed deadlines for the notice and settlement administration
27 process;
- 28 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and

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

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.

Dated: November 22, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,500,000 proposed wage-
3 and-hour class action and PAGA settlement by Plaintiffs on behalf of themselves all current and
4 former California-based hourly-paid or non-exempt employees of Defendants ITS Technologies
5 & Logistics, LLC, Conglobal Industries, LLC, and Conglobal Transport, LLC (“Defendants”)
6 within the State of California at any time during the period from August 16, 2016, to July 29, 2022
7 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
8 Members is estimated to be one thousand seven hundred twenty (1,720). (Declaration of Douglas
9 Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han
10 Decl.”), ¶¶ 8-9.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims alongside Defendants ITS Technologies & Logistics, LLC;
13 Conglobal Industries, LLC; and Conglobal Transport, LLC (collectively, “Defendants”) potential
14 liability exposure, this proposed Settlement of \$1,500,000 is well within the range of
15 reasonableness. Class Counsel and Plaintiffs are convinced that the proposed Settlement is in the
16 best interests of the Class Members based on the negotiations and a detailed knowledge of the
17 issues present in this action.

18 **II. BACKGROUND**

19 On February 11, 2021, Plaintiffs Raul “Rudy” Ortega and Clemente Sandoval filed a wage-
20 and-hour class action lawsuit against Defendant in the Superior Court of California, County of San
21 Bernardino, Case Number CIVSB2103300. (Han Decl., *supra*, at ¶ 10.) On March 31, 2021,
22 Defendants successfully removed the Class Action to the United States District Court for the
23 Central District of California, Case No. 5:21-cv-00562. (*Id.* at ¶ 11.) On July 6, 2021, Plaintiff
24 DelCorso, a former hourly-paid, non-exempt employee of Defendants, provided written notice to
25 the California Labor and Workforce Development Agency (“LWDA”) and Defendants. (*Id.* at ¶
26 12.) On September 30, 2021, Plaintiff DelCorso filed the instant wage-and-hour representative
27 lawsuit in the Superior Court of California, County of San Bernardino, Case Number
28 CIVSB2128129, alleging a single claim under the Private Attorneys General Act of 2004

1 (“PAGA”) based upon the same predicate Labor Code violations alleged by Plaintiffs Ortega and
2 Sandoval. (Han Decl., *supra*, at ¶ 13.)

3 The Parties attended mediation on Plaintiffs’ claims with mediator David Phillips on April
4 29, 2022 that resulted in the global settlement of this case and the earlier filed class action. (*Id.* at
5 ¶ 14.) Pursuant to the settlement, the Parties stipulated to file a First Amended Complaint adding
6 the earlier filed class claims and Plaintiffs Raul “Rudy” Ortega and Clemente Sandoval to this
7 action. (*Id.* at ¶ 15; Exhibit 2.)

8 **III. INVESTIGATION/ LITIGATION HISTORY**

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

10 Both Parties engaged in discovery. (Han Decl., *supra*, at ¶ 17.) Plaintiffs propounded one
11 (1) set of special interrogatories and one (1) set of requests for production of to all Defendants.
12 (*Ibid.*) Defendants responded to Plaintiffs’ discovery requests. (*Ibid.*) Thereafter, the Parties met
13 and conferred and agreed to engage in an informal exchange of additional information and data in
14 preparation for mediation. (*Ibid.*)

15 Prior to the mediation, the Parties conducted significant investigation and discovery of the
16 facts and law both before and after this case was filed. (Han Decl., *supra*, at ¶ 18.) Specifically,
17 Defendants produced hundreds of documents relating to their policies, practices, and procedures.
18 (*Ibid.*) As part of Defendants’ production, Class Counsel also reviewed time records, pay records,
19 and information relating to the size and scope of the Class. (*Ibid.*) Class Counsel also interviewed
20 several dozens of Class Members who worked for Defendants throughout the Class Period. (*Ibid.*)

21 Based upon the information provided by Defendants and interviews Class Counsel had
22 with non-exempt employees, Plaintiffs contend – and Defendants deny – that Defendants: (a)
23 failed to provide employees with legally mandated meal and rest breaks and/or provide premium
24 pay or pay premium pay at the correct rate of pay; (b) failed to pay employees for all hours worked;
25 (c) failed to include non-discretionary bonuses and/or commissions in employees’ regular rates of
26 pay for purposes of overtime compensation; (d) failed to reimburse employees for necessary
27 business expenses; (e) issued noncompliant wage statements; (f) is liable for waiting time
28 penalties; and (g) is liable for penalties under the PAGA. (Han Decl., *supra*, at ¶¶ 20-27.)

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

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

4 The Parties agreed to go to mediation with experienced wage-and-hour mediator, David
5 Phillips that took place on April 29, 2022. (Han Decl., *supra*, at ¶ 29.) With the assistance of the
6 mediator, the Parties were eventually able to reach an agreement on settlement, the terms of which
7 were memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval
8 of. (*Ibid.*; Exhibit 3.)

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

10 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Decl.,
11 *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have always been
12 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
13 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

14 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense
15 and length of continued proceedings necessary to continue the litigation against Defendants. (Han
16 Decl., *supra*, at ¶ 43.) Plaintiffs and Class Counsel have also considered the inherent uncertainty
17 and risk of further litigation, the potential outcome, and the difficulties and delays of such
18 litigation. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a
19 fair, adequate, and reasonable settlement, and is in the Class’s best interests. (*Ibid.*)

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

21 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
22 Plaintiffs’ claims and Defendants’ defenses before reaching the Settlement and engaged in
23 sufficient investigation, research, and discovery to support the Settlement. (Han Decl., *supra*, at ¶
24 44.) The Settlement was only possible following significant investigation and evaluation of
25 Defendants’ relevant policies and procedures, as well as the data Defendants produced. (*Ibid.*)
26 Furthermore, this case has reached the stage where “the Parties certainly have a clear view of the
27 strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness,
28 adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$1,500,000 (“Gross
5 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
6 Class Counsel of \$500,000 (1/3 of the Gross Settlement Amount); (b) the Cost Award to Class
7 Counsel not to exceed \$25,000 for litigation costs and expenses; (c) the Class Representative
8 Enhancement Payments of \$10,000, each, to all Plaintiffs; (d) Administration Costs to CPT Group,
9 the Settlement Administrator, in an amount not to exceed \$20,000; and (e) the PAGA Payments
10 totaling the gross sum of \$75,000 to the LWDA and Eligible Aggrieved Employees. (Han Decl.,
11 *supra*, at ¶ 30.)

12 **ii. Calculation of the Class Members’ Individual Settlement Shares**

13 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
14 that \$850,000 (“Net Settlement Amount”) will be distributed to Class Members – with an average
15 gross Individual Settlement Share estimated at this time to be \$494.18.¹ (Han Decl., *supra*, at ¶
16 32.)

17 The Settlement Administrator will pay an Individual Settlement Share from the Net
18 Settlement Amount to each Participating Class Member in accordance with the formula listed in
19 the Agreement. (Han Decl., *supra*, at ¶ 33.) Individual Settlement Shares will be apportioned as
20 follows: twenty percent (20%) wages, forty percent (40%) penalties, and forty percent (40%)
21 interest. (*Ibid.*)

22 Furthermore, the Settlement Administrator will pay a pro rata portion of the PAGA
23 Payment of \$18,750 to each Eligible Aggrieved Employee in accordance with the formula listed
24 in the Agreement. (Han Decl., *supra*, at ¶ 34.)

25 ///

26 ///

27 ///

28 ¹ \$850,000 (Net Settlement Amount) / 1,720 (Class Members) = \$494.18.

1 **iii. Notice to the LWDA**

2 On November 22, 2022, Plaintiff submitted the Settlement Agreement to the LWDA in
3 accordance with Labor Code § 2699(1)(2). Plaintiff further concurrently submitted this Motion to
4 the LWDA in accordance with the Labor Code. (Han Decl., *supra*, at ¶ 82; Exhibit 4.)

5 **iv. Notice to the Class**

6 Within ten (10) business days after entry of the Preliminary Approval Order, Defendants
7 shall deliver to the Settlement Administrator the Class Data. (Han Decl., *supra*, at ¶ 36.) Within
8 ten (10) business days after Defendants’ deadline to provide the Class Data to the Settlement
9 Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class
10 Members via first-class regular U.S. Mail. (*Ibid.*) Class Members are not required to submit a
11 claim form to receive their Individual Settlement Shares. (*Ibid.*)

12 **v. Distribution of Funds**

13 The Settlement will be funded pursuant to the timeline and manner set forth in the
14 Agreement. (Han Decl., *supra*, at ¶ 35.) Uncashed settlement checks will be escheat to the
15 California State Controller’s Office in accordance with California Unclaimed Property Law
16 pursuant to the terms set forth in the Agreement. (*Ibid.*)

17 **vi. Release of Claims**

18 As of the Effective Final Settlement Date, Class Members who do not timely opt-out of the
19 Settlement, release, remise, and forever discharge the Released Parties from the Released Claims
20 for the Class Period. Participating Class Members agree not to sue or otherwise make a claim
21 against any of the Released Parties for any of the Released Claims (“Released Claims”). (Han
22 Decl., *supra*, at ¶ 38.)

23 As of the Effective Final Settlement Date, the Settlement forever bars Plaintiff, the LWDA,
24 and any other representative, proxy, or agent thereof, including, but not limited to, any and all
25 Eligible Aggrieved Employees during the PAGA Period, from pursuing any action under PAGA,
26 Labor Code sections 2698, *et seq.*, against the Released Parties based on or arising out of alleged
27 violations of Labor Code sections alleged in this case. (Han Decl., *supra*, at ¶ 39.)

28 ///

1 As of the Effective Final Settlement Date, and in exchange for the Class Representative
2 Enhancement Payments to Plaintiffs DelCorso, Ortega, and Sandoval each in an amount not to
3 exceed \$10,000, and in recognition of their work and efforts in obtaining the benefits for the Class
4 and undertaking the risk for the payment of costs if this matter had not successfully resolved,
5 Plaintiffs provide a general release of claims for themselves and their spouses, heirs, successors
6 and assigns. Plaintiffs' Release of Claims also includes a waiver of Civil Code section 1542. (Han
7 Decl., *supra*, at ¶ 40.)

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

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

17 Counsel for both Parties are experienced in wage-and-hour employment law and class
18 actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel has prosecuted numerous cases on
19 behalf of employees for Labor Code violations and, thus, is experienced and qualified to evaluate
20 the class claims, the settlement versus trial on a fully informed basis, and the viability of the
21 defenses. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further
22 litigation and guided their determination to endorse the proposed Settlement. (*Ibid.*)

23 **IV. ARGUMENT**

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

25 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
26 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
27

28 ² The California Supreme Court has also authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*

1 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
2 preliminary approval of class settlements:

- 3 (a) A settlement or compromise of an entire class action, or a cause of action in
4 a class action, or as to a party, requires the approval of the court after
5 hearing.
6 . . .
7 (c) Any party to a settlement agreement may serve and file a written notice of
8 motion for preliminary approval of the settlement. The settlement
9 agreement and proposed notice to class members must be filed with the
10 motion, and the proposed order must be lodged with the motion.

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

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

16 An understanding of the amount in controversy is an important factor in whether the
17 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
18 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168
19 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186
20 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case for
21 plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see
22 also *Munoz*, at p. 409.)

23 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
24 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
25 that of the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.)
26 Finally, *Kullar* does not require an explicit statement of the maximum amount the class could
27 recover if the plaintiff prevailed on all his claims, provided there is a record that allows “an
28 understanding of the amount that is in controversy and the realistic range of outcomes of the

_____ *Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

1 litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p.
2 409.) Put differently, “as the court does when it approves a settlement as in good faith under Code
3 of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within
4 the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

5 **i. The Settlement Amount of \$1,500,000 Is Fair and Reasonable**

6 The Settlement was possible following significant investigation and evaluation of
7 Defendants’ relevant policies and procedures, as well as the additional information and data
8 Defendants produced for the putative class, as referenced in Section III above, which permitted
9 Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han
10 Decl., *supra*, at ¶ 44.)

11 Plaintiffs’ claims are predicated on Defendants’ purported: (1) failure to properly calculate
12 and pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums
13 and/or failure to pay applicable premiums at the correct rate of pay; (3) failure to pay minimum
14 wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure
15 to reimburse business expenses; (7) violation of Labor Code section 2698, *et seq.* (PAGA); and
16 (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 45.)
17 Defendants deny Plaintiffs’ theories of liability and any and all damages. (*Id.* at ¶ 46.)

18 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
19 to certification are always present. (Han Decl., *supra*, at ¶ 47.) As the California Supreme Court
20 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
21 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
22 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
23 (*Ibid.*) These factors led Plaintiffs to discount calculations of potential damages.

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

1 **ii. The PAGA Payment of \$75,000 Is Reasonable**

2 According to Plaintiffs, the provisions of the Labor Code potentially triggering PAGA
3 penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5,
4 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.
5 (Han Decl., *supra*, at ¶ 56.) Defendants assert that, regardless of the results of the underlying causes
6 of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants
7 also maintain that, in addition to their strong arguments against the underlying claims, they had a
8 strong argument that it would be unjust to award maximum PAGA penalties given the law’s
9 unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112
10 [reducing penalties by 30% under this authority].) Based on Defendants’ arguments, and without
11 stacking and limited to the initial violation, PAGA penalties could be limited to **\$125,300** (1,253
12 employees x \$100 initial violations) on the low end and **\$751,800** (1,253 employees x \$100 x 6
13 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 56-59.)

14 Plaintiffs also recognize the risk that any PAGA award could be significantly reduced.
15 (Han Decl., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the statutory
16 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
17 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$75,000 to PAGA civil penalties was
18 reasonable based on a rate of **\$2.43** per pay period [$\$75,000 \div 30,807$ pay periods as calculated by
19 Plaintiffs’ expert in PAGA date range = **\$2.43**], given the fact that Defendants are also paying an
20 additional \$1,425,000 in the class settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in
21 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
22 of other Class Members,” such amounts are generally considered reasonable.⁵ (*Ibid.*)

23
24 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
25 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
26 \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”.)

1 Considering Defendants’ defenses, their supporting evidence, and their position that the
 2 case is not suitable for class treatment, the Settlement of \$1,500,000 is reasonable, adequate, and
 3 fair.

4 **c. Discount Analysis Justifies the Settlement**

5 Excluding the civil penalties, which could be completely discretionary, for the reasons
 6 stated, Plaintiffs calculated the total estimated potential exposure, assuming certification and
 7 prevailing at trial, would be approximately **\$11,282,677.87** on the low end and about
 8 **\$11,693,877.87** on the high end. (Han Decl., *supra*, at ¶ 62.)

Category	Plaintiffs’ Potential Exposure Assessment	Certification Risk	Merits Risk	Plaintiffs’ Realistic Exposure Assessment
Rest Break Premiums	\$621,142.27	70%	60%	\$74,537.07
Meal Break Premiums	\$525,616.40	60%	60%	\$84,098.62
Overtime/Minimum Wage: Off-the-Clock Work	\$822,400 to \$1,233,600	60%	50%	\$164,480 to \$246,720
Overtime/Minimum Wage: Rounding	\$44,176	40%	40%	\$13,252.80
Overtime/Minimum Wage: Regular Rate	\$754,860	40%	50%	\$158,520
Unreimbursed Business Expenses	\$3,812,000	30%	70%	\$609,920
Wage Statement Penalty	\$4,702,483.20	60%	60%	\$752,397.31
Waiting Time Penalty	\$621,142.27	60%	60%	\$74,537.07
MAXIMUM TOTAL EXPOSURE	\$11,282,677.87 to \$11,693,877.87⁶			\$1,857,205.80 to \$1,939,445.80⁷

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 23 Based on this analysis, Plaintiffs assessed their realistic recovery for this case is
 24 **\$1,857,205.80** on the low end and **\$1,939,445.80** on the high end. (Han Decl., *supra*, at ¶ 71.) The
 25 Gross Settlement Amount of \$1,500,000 is about thirteen percent (12.83%) of the maximum
 26 potential exposure and approximately seventy-seven percent (77.34%) of the maximum realistic
 27

28 ⁶ (Han Decl., *supra*, at ¶¶ 48-55.)

⁷ (*Id.* at ¶¶ 62-71.)

1 exposure at trial, which is an excellent settlement. (Han Decl., *supra*, at ¶ 71.)

2 The only question at preliminary approval is whether the settlement is within the range of
3 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
4 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
5 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
6 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also
7 *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
8 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
9 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
10 speculative measure of what might have been achieved by the negotiators”.) Nevertheless, this
11 settlement is in line with the realistic exposure had Plaintiffs prevailed at trial and provides a
12 significant recovery for the Class Members.

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

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

20 Plaintiffs contend – and Defendants deny – the proposed Class is ascertainable and
21 numerous as to make it impracticable to join all Class Members, and there are common questions
22 of law and fact that predominate over any questions affecting any individual Class Member. (Han
23 Decl., *supra*, at ¶ 72.) Plaintiffs contend that as former hourly-paid, non-exempt employees of
24 Defendants, their claims are typical of the claims of the Class, and Class Counsel will fairly and
25 adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert that the prosecution of
26 separate actions by individual Class Members would create the risk of inconsistent or varying
27 adjudications. (*Ibid.*)

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

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

9 Plaintiffs contend this case involves an estimated one thousand seven hundred twenty
10 (1,720) Class Members. (Han Decl., *supra*, at ¶ 73.) Thus, Plaintiffs contend the Class is
11 sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524,
12 1531, n.5 [finding that a proposed class of “as many as 190 current and former employees” is
13 sufficiently numerous].)

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

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

24 **1. Common Issues Predominate**

25 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
26 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
27 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
28 other words, courts determine whether the elements necessary to establish liability are susceptible

1 to common proof, even if the class members must individually prove their damages. (*Brinker*
2 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
3 regularly granted class certification when the plaintiff can present evidence of common policies.
4 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
5 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
6 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
7 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

8 Plaintiffs assert alleged common issues of fact and law predominate as to each of the claims
9 alleged. (Han Decl., *supra*, at ¶ 74.) Plaintiffs contend all Class Members were subject to the same
10 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

11 **2. Plaintiffs' Claims Are Typical of the Class Claims**

12 Typical claims rely on legal theories and facts that are substantially like those of other class
13 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former non-exempt,
14 hourly employees of Defendants and allege they and the Class Members were employed by the
15 same companies and were injured by Defendants' common policies and practices related to the
16 claims described above. (Han Decl., *supra*, at ¶ 74.) Plaintiffs seek relief for these claims and
17 derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the
18 same employment practices and are based on the same legal theories as those applicable to the
19 Class. (*Ibid.*)

20 **3. Plaintiffs Are Adequate to Represent the Class**

21 Plaintiffs contend they have proven to be adequate Class Representatives. (Han Decl.,
22 *supra*, at ¶ 76.) Plaintiffs have conducted themselves diligently and responsibly in representing the
23 Class in this litigation, understand their fiduciary obligations, and have actively participated in the
24 prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class
25 Counsel to provide Class Counsel with a complete understanding of their work environment and
26 requirements. (*Ibid.*) Plaintiffs have no interest that is averse to the interests of the other Class
27 Members. (*Ibid.*)

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

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

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

11 In deciding whether to approve a proposed class action settlement under Code of Civil
12 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
13 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
14 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
15 after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel
16 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
17 percentage of objectors is small.⁸ (*Id.* at p. 1802.)

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

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

20 If the court has certified the action as a class action, notice of the final approval
21 hearing must be given to class members in the manner specified by the court. The
22 notice must contain an explanation of the proposed settlement and procedures for
23 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.

24 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
25 advises the Class Members of their right to participate in the Settlement; how and when to object

26 _____
27 ⁸ The final factor mentioned in *Dunk* – the percentage of objectors – will not be determinable
28 until the Notice has been sent out 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.

1 to or opt-out of the Settlement; and the date, time, and location of the Final Approval hearing. (See
 2 Han Decl., *supra*; Exhibits A-B to Exhibit 3.)

3 **g. Proposed Administration Schedule**

4 a.	Deadline for Defendants to submit Class Data to Settlement Administrator	Within ten (10) business days after entry of the Preliminary Approval Order	SAR III.H.2.a
6 b.	Deadline for Settlement Administrator to mail the Notice Packet to Class Members	Within ten (10) business days after Defendants' deadline to provide the Class Data to the Settlement Administrator	SAR III.H.2.c
8 c.	Deadline for Class Members to postmark opt-out(s) to the Settlement Administrator or submit written objections/Response Deadline	Within sixty (60) calendar days from initial mailing of the Notice Packet	I.MM
11 e.	Deadline for Class Counsel to file Motion for Final Approval of Settlement	Sixteen (16) Court days before Final Approval Hearing	Code of Civil Procedure § 1005
13 f.	Deadline for Class Counsel to file Motion for Attorney Fee Award, Cost Award, and Class Representative Enhancement Payment	Sixteen (16) Court days before Final Approval Hearing	Code of Civil Procedure § 1005
16 g.	Deadline for Class Counsel to file declaration of due diligence by Class Administrator	Ten (10) calendar days before Final Approval Hearing	III.H.2.h
18 h.	Final Approval Hearing and Final Approval	_____ at _____ a.m./p.m. in Department S-26	
19 i.	Effective Date	Date Final Approval is no longer appealable	I.Q
21 j.	Deadline for Defendants to Submit GSA to Class Administrator	No later than fourteen (14) calendar days after Effective Date	III.H.8.a
23 k.	Deadline for Settlement Administrator to issue payments to Class Members, the LWDA and then after to Class Counsel and Class Representatives	Within ten (10) business days after receipt of GSA from Defendants	III.H.8.b
25 l.	Deadline for Class Administrator to send Reminder Notices to Class Members	Ninety (90) days after payment are mailed to Class Members	III.H.9

1	m.	Uncashed checks will be paid to the California State Controller's Office Unclaimed Property Fund	Within two hundred (200) days after payments are mailed to Class Members	III.H.9
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3	n.	Settlement Administrator will serve parties with a declaration providing final report of disbursements	Within three hundred and sixty-five (365) days after disbursement	III.H.10
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5	o.	Class Counsel to file the declaration re disbursements	Within 10 calendar days of receipt of the Declaration from the Settlement Administrator relating to disbursements	III.H.10
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9 **V. CONCLUSION**

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

14
 15 Dated: November 22, 2022

JUSTICE LAW CORPORATION

16
 17 By: 
 18 Douglas Han
 Attorneys for Plaintiff