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Case #20CV375150
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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

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

15 Plaintiff,

16 v.

17 PACIFIC GROSERVICE INC., a
18 California corporation; PITTSBURG
19 WHOLESALE GROCERS, INC. d/b/a
20 PITCO FOODS, a California corporation;
21 and DOES 1 through 100, inclusive;

22 Defendants.

Case No.: 20CV375150

Assigned for All Purposes to:
Honorable Sunil R. Kulkarni
Department 1

CLASS ACTION

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

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

Hearing Date: December 8, 2022
Hearing Time: 1:30 p.m.
Hearing Place: Department 1

Complaint Filed: December 28, 2020
FAC Filed: May 11, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 8, 2022 at 1:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Sunil Kulkarni in Department 1 of the Santa Clara County
3 Superior Court, located at 191 North First Street, San Jose, California 95113, Plaintiff Jacob Blea
4 (“Plaintiff”) will and hereby move for an order:


- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or “Settlement”),
8 attached as “**EXHIBIT 2**” to the Declaration of Douglas Han, including, and not
9 limited to, the means of allocation and distribution of funds, the allocations for
10 payments under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class and PAGA
12 Representative Enhancement Payments, and the Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff Blea as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class and Representative Action Settlement
17 (“Class Notice”) attached as “**EXHIBIT A**” to the Settlement Agreement;
- 18 • Approving the Election Not To Participate In (Opt Out From) Class Action
19 Settlement Form (“Exclusion Form”) attached as “**EXHIBIT B**” to the Settlement
20 Agreement;
- 21 • Directing the mailing of the proposed Class Notice and Exclusion Form
22 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
23 to the proposed Class;
- 24 • Approving the proposed deadlines for the notice and settlement administration
25 process;
- 26 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and
- 27 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
28 Agreement, at which time the Court will also consider whether to grant Final

1 Approval of the requests for the Attorney Fee Award, the Cost Award, the Class
2 and PAGA Representative Enhancement Payments, the Administration Costs, and
3 approval of the allocation of the PAGA Payment.

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

8
9 Dated: November 8, 2022

JUSTICE LAW CORPORATION

10
11 By: 
12 _____
13 Douglas Han
14 *Attorneys for Plaintiff*

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21
22
23
24
25
26
27
28

TABLE OF CONTENTS

1

2 I. INTRODUCTION 10

3 II. BACKGROUND 10

4 III. INVESTIGATION/ LITIGATION HISTORY 11

5 a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions 11

6 b. The Parties Were Able to Reach an Agreement on Settlement of the Action 12

7 i. The Parties Attended Mediation Which Ultimately Led to the Joint

8 Stipulation and Settlement Agreement 12

9 ii. The Settlement Was Reached as a Result of Arm’s-length

10 Negotiations..... 12

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

12 Discovery 12

13 c. Terms of the Proposed Settlement 13

14 i. Deductions from the Settlement..... 13

15 ii. Calculation of the Class Members’ Individual Settlement Shares..... 13

16 iii. Notice to the Class 14

17 iv. Distribution of Funds 14

18 v. Release of Claims 15

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

20 IV. ARGUMENT 16

21 a. Class Action Settlements Are Subject to Court Review 16

22 b. The Proposed Settlement Is a Reasonable Compromise of Claims 17

23 i. The Settlement Amount of \$2,500,000 Is Fair and Reasonable 18

24 ii. The PAGA Payment of \$100,000 Is Reasonable..... 19

25 c. Discount Analysis Justifies the Settlement 20

26 d. Conditional Certification of the Class Is Appropriate 21

27 i. The Proposed Class Is Ascertainable and Sufficiently Numerous..... 21

28 ii. The Class Members Share a Well-defined Community of Interest 22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.	Common Issues Predominate.....	22
2.	Plaintiff’s Claims Are Typical of the Class Claims.....	23
3.	Plaintiff Is Adequate to Represent the Class.....	23
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	23
e.	The Settlement Is Fair, Reasonable, and Adequate	24
f.	Notice to Class Members Complies with California Rules of Court, Rule 3.769(f).....	24
V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cases	Page(s)
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	18
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	16
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	21
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	17
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	13
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1024	22
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	22
<i>City of Detroit v. Grinnell Corporation</i>	
(2d Cir. 1974) 495 F.2d 448.....	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	23
<i>Dunbar v. Albertson’s Inc.</i>	
(2006) 141 Cal.App.4th 1422	18
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	16, 24
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	22
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	22

1	Cases	Page(s)
2	<i>Green v. Obledo</i>	
3	(1981) 29 Cal.3d 126	16
4	<i>Harris v. Superior Court</i>	
5	(2007) 154 Cal.App.4th 164	18
6	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
7	(2001) 89 Cal.App.4th 908	21
8	<i>Hopson v. Hanesbrands Inc.</i>	
9	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	19
10	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n</i>	
11	(1981) 452 U.S. 905.....	17
12	<i>Jones v. JGC Dallas LLC</i>	
13	(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O)	
14	2012 U.S.Dist.LEXIS 185042	22
15	<i>Kullar v. Foot Locker Retail, Inc.</i>	
16	(2008) 168 Cal.App.4th 116	17, 18
17	<i>Linder v. Thrifty Oil Co.</i>	
18	(2000) 23 Cal.4th 429	21
19	<i>Linney v. Cellular Alaska Partnership</i>	
20	(9th Cir. 1998) F.3d 1234	21
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22	(2010) 186 Cal.App.4th 399	17
23	<i>Nordstrom Com. Cases</i>	
24	(2010) 186 Cal.App.4th 576	19
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3	(2012) 203 Cal.App.4th 1112	19
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5	(1971) 4 Cal.3d 800	16
6	<i>Walsh v. IKON Solutions, Inc.</i>	
7	(2007) 148 Cal.App.4th 1440	18
8	Rules	
9	California Rules of Court, Rule 3.769	16, 17
10	California Rules of Court, Rule 3.769 (f)	24
11	California Rules of Court, Rule 3.769 (g).....	17
12	Federal Rule 23	16
13	Statutes	
14	Business and Professions Code § 17200.....	15, 18
15	Code of Civil Procedure § 382.....	21, 24
16	Code of Civil Procedure § 877.6.....	18
17	Labor Code § 201.....	19
18	Labor Code § 202.....	19
19	Labor Code § 203.....	15, 19
20	Labor Code § 204.....	19
21	Labor Code § 210.....	19
22	Labor Code § 218.5.....	19
23	Labor Code § 226.....	15, 19
24	Labor Code § 226.3.....	19
25	Labor Code § 226.7.....	15, 19
26	Labor Code § 246.....	15
27	Labor Code § 432.....	14
28	Labor Code § 510.....	15, 19

1	Statutes	Page(s)
2	Labor Code § 512 (a).....	15, 19
3	Labor Code § 1194.....	15, 19
4	Labor Code § 1197.....	15, 19
5	Labor Code § 1197.1.....	19
6	Labor Code § 1198.....	15, 19
7	Labor Code § 1198.5.....	15
8	Labor Code § 2698.....	15, 18
9	Labor Code § 2699.....	19
10	Labor Code § 2800.....	15, 19
11	Labor Code § 2802.....	15, 19
12	Labor Code § 17200.....	15, 18

13
14
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,500,000 proposed wage-
3 and-hour class action settlement by Plaintiff Jacob Blea on behalf of himself and on behalf of all
4 current and/or former hourly paid non-exempt persons employed by Defendants Pacific
5 Groservice, Inc. and Pittsburg Wholesale Grocers, Inc. d/b/a Pitco Foods (“Defendants”) in
6 California at any time beginning December 28, 2016, through and including July 27, 2022
7 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
8 Members confirmed by Defendants is one thousand four hundred seventy-four (1,474).
9 (Declaration of Douglas Han (“Han Dec.”), ¶ 7.)

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
11 vulnerabilities of the class claims alongside Defendants’ potential liability exposure, this proposed
12 settlement of \$2,500,000 is well within the range of reasonableness. Class Counsel and Plaintiff
13 are convinced that the proposed Settlement is in the best interests of the Class Members based on
14 the negotiations and a detailed knowledge of the issues present in this action.

15 **II. BACKGROUND**

16 Defendants are a wholesale distributor of grocery, beverage, frozen, and janitorial products
17 to members that include independent grocery stores, markets, gas stations, and convenience stores.
18 (Han Dec., *supra*, at ¶ 8.)

19 On August 19, 2020, Plaintiff Blea, a former hourly-paid, non-exempt worker at
20 Defendants’ facility, provided written notice to the California Labor and Workforce Development
21 Agency (“LWDA”) of the specific provisions of the Labor Code he contends Defendants violated
22 and the theories supporting his contentions. (Han Dec., *supra*, at ¶ 9.) On December 28, 2020, after
23 the sixty-five (65) day notice period expired, Plaintiff Blea filed a representative Private Attorneys
24 General Act of 2004 (“PAGA”) action against Defendants in the Superior Court of California,
25 County of Santa Clara. (*Id.* at ¶ 10.)

26 The Parties attended mediation on Plaintiff Blea’s claims with mediator Jeffery Ross, Esq.
27 on April 27, 2022. (Han Dec., *supra*, at ¶ 11.) Under the auspices of the mediator, the Parties were
28 eventually able to reach an agreement on settlement of the action. (*Ibid.*)

1 Following mediation and pursuant to the terms of the settlement, on May 11, 2022, Plaintiff
2 Blea filed a First Amended Complaint in the Superior Court of California, County of Santa Clara,
3 adding the following wage-and-hour class action claims. (Han Dec., *supra*, at ¶ 12.)

4 **III. INVESTIGATION/ LITIGATION HISTORY**

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

6 After Plaintiff Blea filed the representative PAGA action, Plaintiff engaged in discovery.
7 (Han Dec., *supra*, at ¶ 14.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of
8 special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for
9 production of documents. (*Ibid.*) Plaintiff also prepared a draft *Belaire-West* notice and began the
10 process of meeting and conferring to obtain the witness contact information (*Ibid.*) Plaintiff’s
11 diligent pursuit of formal discovery led the Parties to meet and confer and agreed to attend
12 mediation and engage in an informal exchange of data. (*Ibid.*)

13 Prior to the mediation on April 27, 2022, and both before and after the lawsuit was first
14 filed, the Parties conducted a significant investigation of the facts and law. (Han Dec., *supra*, at ¶
15 15.) Specifically, Defendants produced hundreds of pages of documentation relating to its policies,
16 practices, and procedures regarding reimbursement of business expenses, paying non-exempt
17 employees for all hours worked, meal and rest period policies, bonus plans, shift differentials, and
18 payroll and operational policies and time and pay records. (*Ibid.*) Plaintiff reviewed time records,
19 pay records, and information relating to the size and scope of the Class, as well as data permitting
20 Plaintiff to understand the number of workweeks in the Class Period. Plaintiff also analyzed
21 arbitration agreements that may have prevented the matter from moving forward as a
22 representative matter. (*Ibid.*) Plaintiff also interviewed several Class Members who worked for
23 Defendants during the Class Period. (*Ibid.*) In all, the sampling included data for 650 Class
24 Members consisting of 129,000 shifts of time data and 26,929 corresponding pay period data.
25 (*Ibid.*)

26 Based upon the above-mentioned discovery, Plaintiff contend – and Defendants deny –
27 that Defendants: (a) failed to provide employees with legally mandated rest and meal breaks; (b)
28 failed to pay employees for all hours worked; (c) failed to include bonuses and incentives in

1 employees' regular rates of pay for purposes of overtime compensation, premium wages, and sick
2 leave pay; (d) failed to reimburse employees for necessary business expenses; and (e) is liable for
3 issuing noncompliant wage statements and for waiting time penalties. (Han Dec., *supra*, at ¶¶ 17-
4 23.) Defendants denies Plaintiff's contentions in their entirety. (*Id.* at ¶ 24.)

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

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

8 During the Parties' mediation with Jeffery Ross, Esq., on April 27, 2022, the Parties
9 discussed the risks of continued litigation, certification, and the merits of the claims and defenses
10 versus settlement benefits. (Han Dec., *supra*, at ¶ 25.) With the assistance of the mediator, the
11 Parties were able to reach an agreement on settlement, the terms of which were memorialized in
12 the Settlement Agreement that the Parties now seek Preliminary Approval of. (*Ibid.*; Exhibit 2.)

13 **ii. The Settlement Was Reached as a Result of Arm's-length Negotiations**

14 The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
15 *supra*, at ¶ 29.) Though cordial and professional, the settlement negotiations have always been
16 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted
17 extensive arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

18 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
19 and length of continued proceedings necessary to continue the litigation against Defendant. (Han
20 Dec., *supra*, at ¶ 30.) Plaintiff and Class Counsel have also considered the inherent uncertainty and
21 risk of further litigation, the potential outcome, and the difficulties and delays of such litigation.
22 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
23 adequate, and reasonable settlement, and is in the Class's best interests. (*Ibid.*)

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

25 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
26 Plaintiff's claims and Defendants' defenses before reaching the Settlement and engaged in
27 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
28 31.) The proposed Settlement was only possible following significant investigation and evaluation

1 of Defendants’ relevant policies and procedures, as well as the data Defendants produced for the
2 putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability
3 and potential damages. (Han Dec., *supra*, at ¶ 31.) Furthermore, this case has also reached the
4 stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases”
5 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v.*
6 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

8 **i. Deductions from the Settlement**

9 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
10 action be settled and compromised for the non-reversionary total sum of \$2,500,000 (“Gross
11 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
12 Class Counsel in an amount not to exceed \$875,000; (b) the Cost Award to Class Counsel in an
13 amount not to exceed \$25,000 for reimbursement of litigation costs and expenses; (c) the Class
14 Representative Enhancement Payment in the sum of \$10,000 to Plaintiff; (d) Administration Costs
15 to CPT Group, the Settlement Administrator, in an amount not to exceed \$20,000; and (e) the
16 PAGA Payment of \$100,000, seventy-five percent (75%) of which (\$75,000) will be paid to the
17 LWDA and twenty-five percent (25%) of which (\$25,000) (“PAGA Distribution”) will be part of
18 the Net Settlement Amount to be distributed to Class Members, on a pro rata basis, in accordance
19 with the Agreement. (Han Dec., *supra*, at ¶ 26.)

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

21 If the Court approves all proposed deductions from the Gross Settlement Amount, it is
22 estimated that \$1,472,000 (“Net Settlement Amount”) will be distributed to Class Members – with
23 an average gross Individual Settlement Share estimated at \$998.64.¹ (Han Dec., *supra*, at ¶ 28.)

24 Individual Settlement Shares will be apportioned as follows: twenty percent (20%) in
25 compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of claims
26 for alleged non-wage amounts including penalties and interest. (Settlement at § III.F.5.b.). The
27 tax allocations are consistent with the exposure analysis. (Han Dec., *supra*, at ¶ 57.)

28 ¹ \$1,472,000 (Net Settlement Amount) / 1,474 (Class Members) = \$998.64.

1 Each Participating Class Member's Individual Settlement Share is calculated as follows:

2 (i) the number of weeks he or she worked as an hourly-paid or non-exempt
3 employee during the Class Period, divided by (ii) the total number of weeks worked
4 by all Participating Class Members collectively during the Class Period, which is
5 then multiplied by the Net Settlement Amount. The Settlement Administrator will
6 use the Class Data to calculate the number of workweeks worked by each Class
Member based on their dates of employment for purposes of this calculation.
(Settlement at § III.F.5.a.)

7 **iii. Notice to the Class**

8 Within five (5) business days after entry of the Preliminary Approval Order, Defendants
9 shall deliver to provide the Class Data to the Settlement Administrator. (Settlement at § III.I.2.a.)
10 Within fourteen (14) calendar days of Defendants' deadline to provide the Class Data to the
11 Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all
12 identified Class Members via First Class Mail. (Settlement at § III.I.2.a.) Class Members have
13 sixty (60) calendar days from the initial mailing of the Class Notice to respond to the Class Notice
14 and are not required to submit a claim form to receive their Individual Settlement Shares. The
15 Parties have selected CPT Group, Inc. as the Settlement Administrator. They are well qualified to
16 serve as the Settlement Administrator. (See Declaration of Julie Green; Exhibit 1).

17 **iv. Distribution of Funds**

18 No later than fourteen (14) calendar days after the date the Final Approval of the Settlement
19 can no longer be appealed or, if there are no objectors and no plaintiff in intervention at the time
20 the Court grants Final Approval of the Settlement, the date the Court enters judgment granting Final
21 Approval of the Settlement, Defendants shall deposit the Gross Settlement Amount of \$2,500,000
22 by wiring the funds to the Settlement Administrator. (Settlement at § III.I.8.a.) Within fourteen
23 (14) calendar days after the Settlement Administrator's receipt of the Gross Settlement Amount
24 shall calculate and disburse all payments due under the Settlement Agreement, including all
25 Individual Settlement Shares, Attorney Fee Award, Cost Award, Class and PAGA Representative
26 Enhancement Payments, portion of the PAGA Payment to the LWDA, and Administration Costs.
27 (Settlement at § III.I.8.b.1.)

28 ///

1 Participating Class Members must cash or deposit their Individual Settlement Share checks
2 within one hundred eighty (180) calendar days from the date of their issuance. (Settlement at §
3 III.I.9.) If any checks are not cashed or deposited within ninety (90) calendar days after mailing,
4 the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed
5 or not deposited by the expiration of the 90-day period after mailing the reminder notice, the
6 Settlement Administrator will, within two hundred (200) calendar days after the checks are mailed,
7 pay the unclaimed sums to the State Controller’s Unclaimed Property Fund in the name of the
8 Class Member. (*Ibid.*)

9 **v. Release of Claims**

10 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
11 Settlement Agreement, Plaintiff and the Participating Class Members release the Released Parties
12 from the Released Claims for the Class Period. (Settlement at § III.J.). “Released Claims” means
13 all claims alleged or could have been alleged based on the facts alleged in the operative complaint,
14 including all of the following causes of action: (a) Violation of California Labor Code §§ 510 and
15 1198 (Unpaid Wages and Overtime); (b) Violation of California Labor Code §§226.7, 512(a)
16 (Unpaid Meal Period Premiums); (c) Violation of California Labor Code § 226.7 (Unpaid Rest
17 Period Premiums); (d) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum
18 Wages); (e) Violation of California Labor Code § 203 (Wages and Final Wages Not Timely Paid);
19 (f) Violation of California Labor Code §§ 226, 432, and/or 1198.5 (Non-Compliant Wage
20 Statements, Personnel Records, and Time Records); (g) Violation of California Labor Code §§
21 2800 and 2802 (Unreimbursed Business Expenses); (h) Violations of California Business &
22 Professions Code § 17200, *et seq.*; (i) Violation of California Labor Code § 246 (Failure to Pay
23 Sick Pay); (j) Claims for Statutory Penalties under the Private Attorneys General Act of 2004
24 (“PAGA”), Labor Code §§ 2698 *et seq.* (Settlement at § I.JJ.)

25 As of the Effective Final Settlement Date, and in exchange for the Class Representative
26 Enhancement Payments in amount not to exceed \$10,000 to Plaintiff, in recognition of his work
27 and efforts in obtaining the benefits for the Class, and undertaking the risk for the payment of costs
28 in the event this matter had not successfully resolved, and in exchange for the enhanced release

1 below, Plaintiff provide a general release of claims for themselves and their spouses, heirs,
2 successors and assigns. (Settlement at § III.L.).

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

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

12 Counsel for both Parties are particularly experienced in wage-and-hour employment law
13 and class actions. (Han Dec., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel has significant experience
14 in litigating unpaid wages and noncompliant meal and rest break class actions. (Ibid.) Class
15 Counsel has prosecuted numerous cases on behalf of employees for Labor Code violations and,
16 thus, are experienced and qualified to evaluate the class claims, the settlement versus trial on a
17 fully informed basis, and the viability of the defenses. (Ibid.) This experience instructed Class
18 Counsel on the risks and uncertainties of further litigation and guided their determination to
19 endorse the proposed Settlement.² (Ibid.)

20 **IV. ARGUMENT**

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

22 California Rules of Court, rule 3.769 requires court approval for class action settlements.³
23 “Before final approval, the court must conduct an inquiry into the fairness of the proposed

24 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
25 Notice of Class Action and PAGA Settlement has been provided to the Class and they have had an
26 opportunity to respond. This information will be provided to the Court in conjunction with the Motion
for Final Approval of Class Action Settlement.

27 ³ The California Supreme Court has also authorized California’s trial courts to use Federal Rule
28 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, Plaintiff cite Federal Rule 23 and federal case law in addition to California law.

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 the
12 normal perils of litigation as well as the additional uncertainties inherent in complex class actions.”
13 (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub nom.*
14 *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
litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *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

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1 of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within
2 the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

3 **i. The Settlement Amount of \$2,500,000 Is Fair and Reasonable**

4 The proposed Settlement was only possible following significant investigation and
5 evaluation of Defendants’ relevant policies and procedures, as well as the data Defendants
6 produced for the putative class, as referenced in Section III above, which permitted Class Counsel
7 to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶
8 31.)

9 This investigation and evaluation informed Plaintiff’s central theories of liability that are
10 predicated on Defendants’ alleged failure to: (a) properly calculate and pay overtime wages; (b)
11 failure to provide meal and rest breaks and pay applicable premiums; (c) failure to pay minimum
12 wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements; (f) failure
13 to reimburse business expenses; (g) violation of Labor Code section 2698, *et seq.* (PAGA); and
14 (h) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 32.)
15 Defendants deny Plaintiff’s theories of liability and asserted several defenses. (*Id.* at ¶ 33.)

16 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
17 to certification are always present. (Han Dec., *supra*, at ¶ 52.) As the California Supreme Court
18 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
19 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
20 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
21 (*Ibid.*) While confident in the strength of their claims, these factors led Plaintiff to discount
22 calculations of potential damages.

23 ///

24 _____
25 ⁴ (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 \$100,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
3 include but are not limited to Labor Code sections 201, 202, 203, 204, 210, 218.5, 226, 226.3,
4 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2699, 2800, and 2802. (Han Dec., *supra*, at ¶ 42.)
5 Defendants asserted that, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintained
7 that, in addition to its strong arguments against the underlying claims, it had a strong argument
8 that it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*;
9 *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30%
10 under this authority].) Defendants argued that without stacking and limited to the initial violation,
11 the PAGA penalties would be limited to \$85,800 (858 employees x \$100 initial violations) on the
12 low end and \$514,800 (858 employees x \$100 x 6 theories of recovery) on the high end. (Han
13 Dec., *supra*, at ¶¶ 43-45.)

14 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
15 (Han Decl., *supra*, at ¶ 47.) Many of the causes of action brought were duplicative of the statutory
16 claims, such as violations of Labor Code sections 201, 202, 203, 226.3, 226.7, 510, 512(a), 1194,
17 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) allocating \$100,000 to PAGA civil penalties was
18 reasonable as it represents nearly twenty percent (19.5%) of the realistic PAGA exposure. (*Ibid.*)
19 Also given the fact that Defendants are also paying an additional \$2,400,000 in the class settlement
20 is a sufficient deterrent that achieves the policy goals of PAGA. (*Ibid.*) When PAGA penalties are
21 negotiated in good faith and “there is no indication that [the] amount was the result of self-interest
22 at the expense of other Class Members,” such amounts are generally considered reasonable.⁵
23 (*Ibid.*)

24 Considering Defendants’ defenses, its supporting evidence, and its position that the case is
25 not suitable for class treatment, the settlement of \$2,500,000 is reasonable, adequate, and fair.

26 _____
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 **c. Discount Analysis Justifies the Settlement**

2 Excluding the civil penalties, which could be completely discretionary, for the reasons
 3 stated, the total estimated potential exposure, assuming certification and prevailing at trial, would
 4 be approximately \$11,952,837 on the low end and \$12,808,422 on the high end. (Han Dec., *supra*,
 5 at ¶ 48.)

6 Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
7 Rest Break Premiums	\$1,628,405.00	70%	50%	\$244,260.75
8 Meal Break Premiums	\$534,374.30	50%	30%	\$187,030.90
9 Overtime/Minimum Wage: Off-the-Clock Work	\$1,712,126.60 to \$2,567,711.40	60%	60%	\$273,940.25 to \$410,833.82
10 Overtime/Minimum Wage: Regular Rate	\$35,737.00	10%	25%	\$24,122.47
11 Unreimbursed Business Expenses	\$574,210.00	25%	70%	\$129,197.25
12 Wage Statement Penalty	\$3,432,000	50%	50%	\$858,000.00
13 Waiting Time Penalty	\$4,035,984	50%	30%	\$1,412,594.40
14 MAXIMUM TOTAL EXPOSURE	\$11,952,837 to \$12,808,422 ⁶			\$3,129,146.02 to \$3,266,039.59 ⁷

16
 17 Based on this analysis, the realistic recovery for this case is \$3,129,146.02 on the low end
 18 and \$3,266,039.59 on the high end. (Han Dec., *supra*, at ¶ 56.) The Gross Settlement Amount of
 19 \$2,500,000 is about seventeen percent (19.51%) of the maximum potential exposure and is
 20 approximately seventy-five percent (76.65%) of the maximum realistic exposure at trial, which is
 21 a good settlement. (*Ibid.*)

22 The only question at preliminary approval is whether the settlement is within the range of
 23 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
 24 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
 25 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
 26 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also

27
 28 ⁶ (Han Decl., *supra*, at ¶¶ 35-41.)

⁷ (*Id.* at p. ¶¶ 49-55.)

1 *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
2 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
3 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
4 speculative measure of what might have been achieved by the negotiators”.) Nevertheless, this
5 settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a
6 significant recovery for the Class Members.

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

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

14 The proposed Class is ascertainable and numerous as to make it impracticable to join all
15 Class Members, and there are common questions of law and fact that predominate over any
16 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 58.) Plaintiff contends
17 that as a former hourly-paid, non-exempt employee of Defendant, his claims are typical of the
18 claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class.
19 (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate actions by individual Class Members
20 would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

22 “Ascertainability is required in order to give notice to putative class members as to whom
23 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
24 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
25 by describing a set of common characteristics sufficient to allow a member of that group to identify
26 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
27 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
28 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

1 This case involves one thousand four hundred seventy-four (1,474) Class Members, which
2 was confirmed by Defendant. (Han Dec., *supra*, at ¶ 59.) Thus, the Class is sufficiently numerous.
3 (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a
4 proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

15 **1. Common Issues Predominate**

16 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
17 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
18 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
19 other words, courts determine whether the elements necessary to establish liability are susceptible
20 to common proof, even if the class members must individually prove their damages. (*Brinker*
21 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
22 regularly granted class certification when the plaintiff can present evidence of common policies.
23 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
24 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
25 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
26 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

27 Plaintiff asserts common issues of fact and law predominate as to each of the claims
28 alleged. (Han Dec., *supra*, at ¶ 60.) Specifically, Plaintiff contend all Class Members were subject

1 to the same or similar employment practices, policies, and procedures described in detail above.
2 (Han Dec., *supra*, at ¶ 60.)

3 **2. Plaintiff's Claims Are Typical of the Class Claims**

4 Typical claims rely on legal theories and facts that are substantially like those of other class
5 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of
6 Defendants and alleges he and the Class Members were employed by the same company and
7 injured by Defendants' common policies and practices related to the claims described above. (Han
8 Dec., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and derivative claims on behalf of all
9 Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are
10 based on the same legal theories as those applicable to the Class. (*Ibid.*)

11 **3. Plaintiff Is Adequate to Represent the Class**

12 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 62.)
13 They have conducted themselves diligently and responsibly in representing the Class in this
14 litigation, understand their fiduciary obligations, and have actively participated in the prosecution
15 of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to
16 provide Class Counsel with a complete understanding of their work environment and requirements.
17 (*Ibid.*) Further, Plaintiff has no interest that is averse to the interests of the other Class Members.
18 (*Ibid.*)

19 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 20 **of this Controversy**

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

28 ///

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

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

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

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

11 If the court has certified the action as a class action, notice of the final approval
12 hearing must be given to class members in the manner specified by the court. The
13 notice must contain an explanation of the proposed settlement and procedures for
14 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.

15 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
16 advises the Class Members of their right to participate in the Settlement; how and when to object
17 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
18 hearing. (See Han Dec., *supra*; Exhibits A and B to Exhibit 2.)

19 **V. CONCLUSION**

20 Plaintiff submits that the proposed Settlement is in the best interests of the Class, as it is
21 fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the
22 proposed Settlement should be preliminarily approved by the Court, the Class should be
23 conditionally certified for purposes of settlement only, and the Notice Packet should be approved.

24
25 Dated: November 8, 2022

JUSTICE LAW CORPORATION

26
27 By:  _____

Douglas Han
Attorneys for Plaintiff