



DOUGLAS HAN (SBN 232858)  
SHUNT TATAVOS-GHARAJEH (SBN 272164)  
PHILLIP SONG (SBN 326572)  
HAIG HOGDANIAN (SBN 334699)  
**JUSTICE LAW CORPORATION**  
751 N. Fair Oaks Avenue, Suite 101  
Pasadena, California 91103  
Telephone: (818) 230-7502  
Facsimile: (818) 230-7259

*Attorneys for Plaintiffs*

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

ANTHONY PENCA, individually, and on  
behalf of other members of the general public  
similarly situated,

Plaintiff,

v.

SIERRA NEVADA BREWING CO., a  
California corporation; and DOES 1 through  
100, inclusive,

Defendants.

Case No.: 21CV02883

Assigned for All Purposes to:  
Honorable Tamara L. Mosbarger  
Department 1

**CLASS ACTION**

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

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

Hearing Date: February 1, 2023  
Hearing Time: 9:00 a.m.  
Hearing Place: Department 1

Complaint Filed: November 24, 2021  
FAC Filed: December 5, 2022  
Trial Date: None Set

1           **PLEASE TAKE NOTICE** that on February 1, 2023 at 9:00 a.m., or as soon as the matter  
2 may be heard, before the Honorable Tamara L. Mosbarger in Department 1 of the Butte County  
3 Superior Court (North Butte County Courthouse) located at 1775 Concord Avenue, Chico,  
4 California 95928, California 92101, Plaintiffs Anthony Penca and Christopher Davidson  
5 (“Plaintiffs,” “Plaintiff Penca,” and “Plaintiff Davidson”) move for an order:

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

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

5  
6 Dated: January 3, 2023

**JUSTICE LAW CORPORATION**

7  
8 By:   
9 Douglas Han  
Attorneys for Plaintiffs

## **TABLE OF CONTENTS**

I.	INTRODUCTION .....	10
II.	BACKGROUND .....	10
III.	INVESTIGATION/ LITIGATION HISTORY .....	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions .....	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action.....	11
i.	The Parties Attended Mediation Which Led to the Settlement .....	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations.....	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery .....	12
c.	Terms of the Proposed Settlement.....	12
i.	Deductions from the Settlement .....	12
ii.	Calculating Individual Settlement Shares .....	12
iii.	Notice to the Class .....	13
iv.	Distribution of Funds.....	13
v.	Release of Claims .....	13
d.	Counsel for Both Parties Are Experienced in Similar Litigation .....	14
IV.	ARGUMENT .....	15
a.	Class Action Settlements Are Subject to Court Review .....	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims .....	15
i.	The Settlement Amount of \$3,050,000 Is Fair and Reasonable .....	16
ii.	The PAGA Payment of \$100,000 Is Reasonable .....	17
c.	Discount Analysis Justifies the Settlement.....	18
d.	Conditional Certification of the Class Is Appropriate .....	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous .....	19
ii.	The Class Members Share a Well-defined Community of Interest.....	20
1.	Common Issues Predominate .....	20

1	2.	Plaintiffs’ Claims Are Typical of the Class Claims .....	21
2	3.	Plaintiffs Are Adequate to Represent the Class .....	21
3	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
4		this Controversy .....	21
5	e.	The Settlement Is Fair, Reasonable, and Adequate .....	22
6	f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
7	V.	CONCLUSION .....	22

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121 .....	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521 .....	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816 .....	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167 .....	15
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp. 610 .....	12
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1024 .....	20
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676 .....	20
<i>Carrington v. Starbucks Corp.</i>	
(2018) 30 Cal.App.5th 504 .....	17
<i>City of Detroit v. Grinnell Corporation</i>	
(2d Cir. 1974) 495 F.2d 448 .....	19
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27 .....	21
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422 .....	17
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794 .....	14, 22
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS .....	20

<b>Cases</b>	<b>Page(s)</b>
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524 .....	20
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126 .....	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164 .....	17
<i>Hicks v. Kaufman &amp; Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908 .....	19
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900 .....	18
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905 .....	15
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
185042 .....	20
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116 .....	15, 16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429 .....	20
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234 .....	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399 .....	15, 16
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576 .....	18
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319 .....	16, 19, 20

<b>Cases</b>	<b>Page(s)</b>
<i>In re Tableware Antitrust Litig.</i>	
(N.D.Cal. 2007) 484 F.Supp.2d 1059.....	19
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112 .....	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800 .....	15
<i>Walsh v. IKON Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440 .....	17
<b>Rules</b>	
Federal Rule 23.....	15
Rule 3.769 .....	15
Rule 3.769 (f).....	22
Rule 3.769 (g).....	15
<b>Statutes</b>	
Business & Professions Code § 17200.....	16
Code of Civil Procedure § 382 .....	19, 22
Code of Civil Procedure § 877.6 .....	16
Code of Civil Procedure § 1542 .....	14
Labor Code § 201 .....	17
Labor Code § 202 .....	17
Labor Code § 203 .....	17
Labor Code § 204 .....	17
Labor Code § 218.5 .....	17
Labor Code § 221 .....	17
Labor Code § 226 .....	17
Labor Code § 226.3 .....	17
Labor Code § 226.7 .....	17



1	<b><u>Statutes</u></b>	<b><u>Page(s)</u></b>
2	Labor Code § 246 .....	17
3	Labor Code § 510 .....	17
4	Labor Code § 512 (a).....	17
5	Labor Code § 558 .....	17
6	Labor Code § 1174 .....	17
7	Labor Code § 1194 .....	17
8	Labor Code § 1197 .....	17
9	Labor Code § 1197.1 .....	17
10	Labor Code § 1198 .....	17
11	Labor Code § 2800 .....	17
12	Labor Code § 2802 .....	17

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

## **I. INTRODUCTION**

This motion seeks preliminary approval of a non-reversionary \$3,050,000 proposed wage-and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former hourly-paid, non-exempt employees (whether hired directly or through staffing agency People 2.0 Global LLC dba Allevity Recruiting & Staffing fka Anderson and Associates) of Defendant Sierra Nevada Brewing Co. (“Defendant”) within the State of California at any time during the period from October 17, 2017, through January 31, 2023 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is estimated to be two thousand one hundred (2,100), which was confirmed by Defendant. (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

## **II. BACKGROUND**

On November 24, 2021, Plaintiff Penca, a former employee of Defendant, filed wage-and-hour class action lawsuit in the Superior Court of California, County of Butte, alleging eight (8) causes of action. (Han Decl., *supra*, at ¶ 10.)

After engaging in discovery, investigations, and negotiations, the Parties remotely attended mediation with the mediator Lynn S. Frank on October 1, 2022. (Han Decl., *supra*, at ¶ 11.) Under the auspices of the mediator, the Parties reached a settlement via a mediator’s proposal. (*Ibid.*)

In line with the settlement, Plaintiffs provided written notice to the Labor and Workforce Development Agency (“LWDA”) and Defendant on October 26, 2022. (Han Decl., *supra*, at ¶ 12.) On December 5, 2022, Plaintiff Penca filed a First Amended Complaint that added Plaintiff Davidson as a plaintiff, added allegations and facts to conform with the information learned before and during mediation, and added a PAGA cause of action. (*Id.* at ¶ 13.)

## **III. INVESTIGATION/ LITIGATION HISTORY**

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

After initiating this lawsuit, both Parties engaged in discovery. (Han Decl., *supra*, at ¶ 15.) Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of

1 information and then remotely attend mediation. (Han Decl., *supra*, at ¶ 15.)

2 Prior to mediation, the Parties conducted significant investigation and discovery of the  
3 relevant facts and law. (Han Decl., *supra*, at ¶ 16.) Specifically, Defendant produced documents  
4 relating to its wage-and-hour policies, practices, and procedures. As part of Defendant's  
5 production, Plaintiffs also reviewed time records, pay records, Class Members' personnel files,  
6 and information relating to the size and scope of the Class. (*Ibid.*) Several putative class members  
7 were also reviewed to attain a better understanding of the day-to-day alleged violations. (*Ibid.*)

8 Based on the information provided by Defendant and interviews with putative class  
9 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees  
10 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)  
11 failed to include non-discretionary bonuses and incentives in employees' regular rate of pay for  
12 purposes of overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse  
13 employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is  
14 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

16 **i. The Parties Attended Mediation Which Led to the Settlement**

17 The Parties remotely attended mediation with the mediator Lynn S. Frank on October 1,  
18 2022. (Han Decl., *supra*, at ¶ 26.) Under the auspices of the mediator, the Parties reached a  
19 settlement via a mediator's proposal, the terms were memorialized in the Settlement Agreement  
20 the Parties seek Preliminary Approval of. (*Id.* at ¶ 26; Exhibit 2.)

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

22 The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶  
23 37.) Though cordial and professional, the settlement negotiations have always been adversarial  
24 and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted extensive  
25 arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

26 ///

27 ///

28 ///

1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings  
2 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,  
3 *supra*, at ¶ 38.) Plaintiffs and Class Counsel also have considered the uncertainty and risks,  
4 potential outcome, and difficulties and delays inherent in further litigation. (*Ibid.*) Plaintiffs and  
5 Class Counsel conducted extensive settlement negotiations, including formal mediation. (*Ibid.*)  
6 Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and  
7 reasonable settlement, and is in the best interests of the Class Members. (*Ibid.*)

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

9 The Parties investigated and evaluated the strengths and weaknesses of the Parties' claims  
10 and defenses before reaching the Settlement and engaged in research and discovery to support the  
11 Settlement. (Han Decl., *supra*, at ¶ 39.) The Settlement was only possible following significant  
12 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to  
13 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has  
14 reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses  
15 of their cases" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (*Ibid.*;  
16 *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

### 17 **c. Terms of the Proposed Settlement**

#### 18 **i. Deductions from the Settlement**

19 The Parties agreed (contingent upon the Court's approval) this action be settled and  
20 compromised for the non-reversionary total sum of \$3,050,000 ("Gross Settlement Amount")  
21 which includes: (1) Attorney Fee Award of \$1,159,000; (2) Cost Award not to exceed \$25,000;  
22 (3) Class Representative Enhancement Payments totaling \$20,000; (4) Administration Costs not  
23 to exceed \$20,000; (5) PAGA Payment of \$100,000; and (6) \$337,584 as credit toward  
24 Defendant's satisfaction of the Gross Settlement Amount. (Han Decl., *supra*, at ¶ 27.)

#### 25 **ii. Calculating Individual Settlement Shares**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated  
27 \$1,388,416 ("Net Settlement Amount") will be distributed to Participating Class Members – with  
28 an *average* gross Individual Settlement Share estimated at \$661,15. (Han Decl., *supra*, at ¶ 28.)

1 Participating Class Member will receive a proportionate share of the Net Settlement  
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29.)  
3 Individual Settlement Share will be apportioned twenty percent (20%) as wages and eighty percent  
4 (80%) as interest and penalties. (*Ibid.*) The PAGA Payment that is paid to each Eligible Aggrieved  
5 Employee shall be determined using the formula set forth in the Settlement Agreement. (*Id.* at ¶  
6 30.) Eligible Aggrieved Employees' portion of the PAGA Payment will be allocated as one  
7 hundred percent (100%) penalties. (*Ibid.*)

### 8 **iii. Notice to the Class**

9 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,  
10 Defendant shall deliver to the Settlement Administrator the Class Data. (Han Decl., *supra*, at ¶  
11 31.) The Settlement Administrator shall mail the Notice Packet to the Class Members via first-  
12 class regular U.S. Mail using the most current mailing address information available within  
13 fourteen (14) calendar days after the receipt of the Class Data from Defendant. (*Ibid.*)

### 14 **iv. Distribution of Funds**

15 The Settlement will be funded pursuant to the timeline and manner set forth in the  
16 Settlement. (Han Decl., *supra*, at ¶ 32.) Uncashed settlement checks will be mailed to the *cy pres*  
17 recipient Community Legal Information Center. (*Ibid.*)

### 18 **v. Release of Claims**

19 Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the  
20 Settlement Agreement, Plaintiffs and the Participating Class Members will fully and finally release  
21 and discharge the Released Parties from the Released Claims. (Han Decl., *supra*, at ¶ 33.)

22 Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the  
23 Settlement Agreement, Plaintiffs, LWDA, and any other representative, proxy, or agent thereof,  
24 including, but not limited to, the Eligible Aggrieved Employees, will fully and finally release and  
25 discharge the Released Parties from the PAGA Released Claims. (Han Decl., *supra*, at ¶ 34.)

26 ///

27 ///

28 ///

1        Upon Defendant’s fulfillment of its payment obligations under section III (J)(9)(a) of the  
2 Settlement Agreement, in exchange for the Class Representative Enhancement Payments to  
3 Plaintiffs and in recognition of their work and efforts in obtaining the benefits for the Class and  
4 undertaking the risk of paying litigation costs if this matter had not successfully resolved, Plaintiffs  
5 provide a general release of claims for themselves and any respective spouse, heirs, successors,  
6 and assigns. (Han Decl., *supra*, at ¶ 35.) Plaintiffs shall also be deemed to have expressly waived  
7 and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of  
8 section 1542 of the Civil Code, or any other similar provision under federal or state law. (*Ibid.*)

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

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

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

24        ///

25        ///

---

26        <sup>1</sup>        The final factor mentioned in *Dunk* – the number of objectors – is not determinable until  
27 the Notice Packet has been provided to the Class, and they have had an opportunity to respond.  
28 This information will be provided to the Court in conjunction with the Motion for Final Approval  
of Class Action Settlement.

1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.<sup>2</sup>  
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed  
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for  
6 preliminary approval of class settlements:

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

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

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

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

27 ///

28 ///

---

<sup>2</sup> 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 Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 In weighing the strength of the plaintiff's case, *Kullar* instructs the court is not to "decide  
2 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of  
3 the attorneys." (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) Finally,  
4 *Kullar* does not require an explicit statement of the maximum amount the class could recover if  
5 the plaintiff prevailed on all his claims, provided there is a record that allows "an understanding  
6 of the amount that is in controversy and the realistic range of outcomes of the litigation." (*Munoz*  
7 *v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p. 409.) Put differently,  
8 "as the court does when it approves a settlement as in good faith under Code of Civil Procedure §  
9 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of  
10 reasonableness." (*Kullar*, at p. 133.)

11 **i. The Settlement Amount of \$3,050,000 Is Fair and Reasonable**

12 The Settlement Agreement was only possible following significant investigation and  
13 evaluation of the relevant policies and procedures, as well as the data Defendant produced for the  
14 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive  
15 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 39.)

16 The claims are predicated on Defendant's purported: (1) failure to properly calculate and  
17 pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks  
18 and pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant  
19 wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8)  
20 violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 40.)  
21 Defendant vehemently denies the theories of liability. (*Id.* at ¶ 41.)

22 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to  
23 certification are always present. (Han Decl., *supra*, at ¶ 42.) As the California Supreme Court  
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is  
25 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*  
26  
27  
28



1 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.<sup>3</sup>  
2 (Han Decl., *supra*, at ¶ 42.) Thus, the calculations for potential damages were discounted.

3 **ii. The PAGA Payment of \$100,000 Is Reasonable**

4 The provisions of the Labor Code potentially triggering PAGA penalties in this case  
5 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,  
6 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl.,  
7 *supra*, at ¶ 51.) Defendant asserted, regardless of the results of the underlying causes of action,  
8 PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also  
9 maintained it had a strong argument it would be unjust to award maximum PAGA penalties given  
10 the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112  
11 [reducing penalties by 30% under this authority].) Defendant argued without stacking and limited  
12 to the initial violation, the PAGA penalties would be **\$94,200** (942 employees x \$100 initial  
13 violations) on the low end and **\$659,400** (942 employees x \$100 x 7 theories of recovery) on the  
14 high end. (Han Decl., *supra*, at ¶¶ 52-55.)

15 Plaintiffs also recognized the risk any PAGA award could be significantly reduced. (Han  
16 Decl., *supra*, at ¶ 56.) Many of the causes of action brought were duplicative of the statutory  
17 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,  
18 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was  
19 reasonable based on a rate of **\$3.46** per pay period [ $\$100,000 \div 28,887$  pay periods in PAGA date  
20 range], given Defendant is also paying an additional \$2,950,000 in the class settlement.<sup>4</sup> (*Ibid.*)  
21 When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount

22 <sup>3</sup> (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification  
23 of class claiming misclassification and ordering summary adjudication in favor of employees],  
24 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for  
25 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming  
26 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].)

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

was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.<sup>5</sup> (Han Decl., *supra*, at ¶ 56.)

Considering Defendant’s defenses, supporting evidence, and position the case is not suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

**c. Discount Analysis Justifies the Settlement**

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$18,298,533.17** on the low end and around **\$20,175,476.33** on the high end. (Han Decl., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$3,150,553.01	70%	60%	\$378,066.36
Meal Break Premiums	\$886,805.44	60%	60%	\$141,888.87
Overtime/Minimum Wage: Off-the-Clock Work	\$3,753,886.32 to \$5,630,829.48	60%	50%	\$750,777.26 to \$1,126,165.90
Overtime/Minimum Wage: Regular Rate	\$502,518	30%	40%	\$211,057.56
Unreimbursed Business Expenses	\$874,736	20%	70%	\$209,936.64
Wage Statement Penalty	\$2,873,100	60%	60%	\$459,696
Waiting Time Penalty	\$6,256,934.40	60%	60%	\$1,001,109.50
<b>MAXIMUM TOTAL EXPOSURE</b>	<b>\$18,298,533.17 to \$20,175,476.33<sup>6</sup></b>			<b>\$3,152,532.19 to \$3,527,920.83<sup>7</sup></b>

Based on this analysis, the realistic recovery for this case is **\$3,152,532.19** on the low end and **\$3,527,920.83** on the high end. (Han Decl., *supra*, at ¶ 65.) The Gross Settlement Amount of \$3,050,000 is about fifteen percent (15.12%) of the maximum potential exposure and around eighty-six percent (86.45%) of the maximum realistic exposure at trial. (*Ibid.*)

<sup>5</sup> (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at \*24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”.)

<sup>6</sup> (Han Decl., *supra*, at ¶¶ 43-50.)

<sup>7</sup> (*Id.* at ¶¶ 58-64.)

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

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

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

18 The Class is ascertainable and numerous as to make it impracticable to join all Class  
19 Members, and there are common questions of law and fact that predominate over any questions  
20 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 66.) Plaintiffs contend the claims  
21 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the  
22 interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual  
23 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

25 “Ascertainability is required in order to give notice to putative class members as to whom  
26 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)  
27 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs  
28 by describing a set of common characteristics sufficient to allow a member of that group to identify

1 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*  
2 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently  
3 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

4 This case involves about two thousand one hundred (2,100) Class Members. (Han Decl.,  
5 *supra*, at ¶ 67.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine,*  
6 *Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current  
7 and former employees” is sufficiently numerous].)

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

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

### 18 **1. Common Issues Predominate**

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

U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

Plaintiffs assert common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 68.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiffs are former employees of Defendant and allege they and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 69.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 70.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs have no interest averse to the interests of the other Class Members. (*Ibid.*)

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

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

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 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) parties reached settlement after  
6 arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the  
7 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of  
8 objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

19       **V. CONCLUSION**

20          Plaintiffs submit the Settlement is in the Class’s best interests. Under the applicable class  
21 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class  
22 should be conditionally certified for settlement purposes, and Notice Packet should be approved.

23  
24 Dated: January 3, 2023

**JUSTICE LAW CORPORATION**

25  
26 By:   
27 Douglas Han  
28 Attorneys for Plaintiffs