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

PHILLIP COLON, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

T. M. COBB COMPANY d/b/a HALEY
BROS., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 22CV-02037

Assigned for All Purposes to:
Honorable Brian McCabe
Courtroom 8

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: November 23, 2022
Hearing Time: 8:15 a.m.
Hearing Place: Courtroom 8

Complaint Filed: July 6, 2022
FAC Filed: August 31, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 23, 2022 at 8:15 a.m., or as soon as the
2 matter may be heard, before the Honorable Brian McCabe in Courtroom 8 of the Merced County
3 Superior Court, located at 627 West 21st Street Merced, California 95340, Plaintiffs Phillip Colon
4 and Dominic Fredieu (“Plaintiffs,” “Plaintiff Colon,” and “Plaintiff Fredieu”) will and hereby
5 move for an order, as follows:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Class Action and PAGA Settlement
8 Agreement (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as
9 **Exhibit 2** to the declaration of Douglas Han, including, and not limited to, the
10 means of allocation and distribution of funds, the allocations for payments under
11 the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Class Counsel
12 Fees Payment, Class Counsel Litigation Expense Payment, Class Representative
13 Service Payments, and Administrator Expense Payment;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement and Hearing Date for
18 Final Approval (“Class Notice”), attached as **Exhibit A** to the Agreement;
- 19 • Approving opt out procedure described in the Settlement;
- 20 • Directing the mailing of the proposed Class Notice and Exclusion Form
21 (collectively, known as the “Class Notice”) with a postage-paid return envelope to
22 the proposed Class, as set forth in the Agreement;
- 23 • Approving the proposed deadlines for the notice and settlement administration
24 process;
- 25 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Class Counsel Fees Payment, the Class Counsel Litigation Expense Payment, the Class Representative Service Payments, the Administrator Expense Payment, and approval of the allocation of the PAGA Penalties.

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

Dated: October 26, 2022

JUSTICE LAW CORPORATION

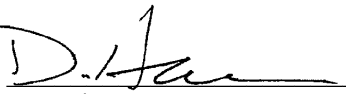
By: 
Douglas Han
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Ultimately Led to the Class Action and PAGA Settlement Agreement	11
ii.	The Settlement Was Reached as a Result of Arm's-length Negotiations	12
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	13
i.	Deductions from the Settlement	13
ii.	Calculation of the Class Members' Individual Settlement Shares	13
iii.	Notice to the Class	14
iv.	Distribution of Funds	14
v.	Release of Claims	14
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review	16
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	17
i.	The Settlement Amount of \$2,250,000 Is Fair and Reasonable	17
ii.	The PAGA Penalties of \$100,000 Is Reasonable	19
c.	Discount Analysis Justifies the Settlement	19
d.	Conditional Certification of the Class Is Appropriate	21
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous	21
ii.	The Class Members Share a Well-defined Community of Interest	22

1	1.	Common Issues Predominate.....	22
2	2.	Plaintiffs’ Claims Are Typical of the Class Claims.....	23
3	3.	Plaintiffs Are Adequate to Represent the Class.....	23
4	4.	Class Action is Superior for the Fair and Efficient Adjudication	
5		of this Controversy	23
6	e.	The Settlement Is Fair, Reasonable, and Adequate	24
7	f.	Notice to Class Members Complies with California Rules of Court, Rule	
8		3.769(f)	24
9	V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases

Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal.App.4th 121 18

Amaro v. Anaheim Arena Management, LLC

(2021) 69 Cal.App.5th 521 15

Bartold v. Glendale Federal Bank

(2000) 81 Cal.App.4th 816 21

In re Beef Industry Antitrust Litigation

(5th Cir. 1979) 607 F.2d 167 16

Boyd v. Bechtel Corp.

(N.D.Cal. 1979) 485 F.Supp.610 13

Brinker Restaurant Corp. v. Superior Court

(2012) 53 Cal.4th 1024 22

Capitol People First v. State Dept. of Developmental Services

(2007) 155 Cal.App.4th 676 22

City of Detroit v. Grinnell Corporation

(2d Cir. 1974) 495 F.2d 448..... 20

Classen v. Weller

(1983) 145 Cal.App.3d 27 23

Dunbar v. Albertson's Inc.

(2006) 141 Cal.App.4th 1422 18

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 16, 24

Espinoza v. Galardi South Enters.

(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS..... 22

Ghazaryan v. Diva Limousine, Ltd.

(2008) 169 Cal.App.4th 1524 21

1	<i>Green v. Obledo</i>	
2	(1981) 29 Cal.3d 126	16
3	<i>Harris v. Superior Court</i>	
4	(2007) 154 Cal.App.4th 164	18
5	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
6	(2001) 89 Cal.App.4th 908	21
7	<i>Hopson v. Hanesbrands Inc.</i>	
8	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	19
9	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
10	(1981) 452 U.S. 905.....	16
11	<i>Jones v. JGC Dallas LLC</i>	
12	(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
13	185042.....	22
14	<i>Kullar v. Foot Locker Retail, Inc.</i>	
15	(2008) 168 Cal.App.4th 116	17
16	<i>Linder v. Thrifty Oil Co.</i>	
17	(2000) 23 Cal.4th 429	21
18	<i>Linney v. Cellular Alaska Partnership</i>	
19	(9th Cir. 1998) 151 F.3d 1234	20
20	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
21	(2010) 186 Cal.App.4th 399	17
22	<i>Nordstrom Com. Cases</i>	
23	(2010) 186 Cal.App.4th 576	19
24	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
25	(2004) 34 Cal.4th 319	18, 21, 22
26	<i>In re Tableware Antitrust Litig.</i>	
27	(N.D.Cal. 2007) 484 F.Supp.2d 1059	20
28		

Thurman v. Bayshore Transit Mgmt.

(2012) 203 Cal.App.4th 1112 19

Vasquez v. Superior Court

(1971) 4 Cal.3d 800 16

Walsh v. IKON Solutions, Inc.

(2007) 148 Cal.App.4th 1440 18

Rules

Federal Rule 23 16

California Rules of the Court, Rule 3.769 16

California Rules of the Court, Rule 3.769 (f) 24

California Rules of the Court, Rule 3.769 (g)..... 16

Statutes

Business & Professions Code § 17200 14, 18

Code of Civil Procedure § 382..... 21, 24

Code of Civil Procedure § 877.6..... 17

Code of Civil Procedure § 1542..... 15

Labor Code § 201..... 14,19

Labor Code § 202..... 14, 19

Labor Code § 203..... 19

Labor Code § 204..... 19

Labor Code § 210..... 19

Labor Code § 218.5..... 19

Labor Code § 221..... 19

Labor Code § 226.3..... 19

Labor Code § 226.7..... 14, 19

Labor Code § 226 (a) 14, 19

Labor Code § 226 (e) 19

Labor Code § 246..... 19

1	Labor Code § 510.....	14, 19
2	Labor Code § 512 (a).....	14, 19
3	Labor Code § 551.....	19
4	Labor Code § 552.....	19
5	Labor Code § 558.....	19
6	Labor Code § 1174 (d).....	19
7	Labor Code § 1194.....	14, 19
8	Labor Code § 1197.....	14, 19
9	Labor Code § 1197.1.....	19
10	Labor Code § 1198.....	14, 19
11	Labor Code § 2698.....	17
12	Labor Code § 2800.....	14, 19
13	Labor Code § 2802.....	14, 19

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1 **I. INTRODUCTION**

2 This Motion seeks preliminary approval of a non-reversionary \$2,250,000 proposed wage-
3 and-hour class and Private Attorneys General Act of 2004 (“PAGA”) action settlement by
4 Plaintiffs Phillip Colon and Dominic Fredieu (“Plaintiffs,” “Plaintiff Colon,” and “Plaintiff
5 Fredieu”) on behalf of themselves and on behalf of all current and former hourly-paid or non-
6 exempt employees of Defendant T.M. Cobb Company (“Defendant”) within the State of California
7 at any time during the period from July 7, 2019, through July 7, 2022 (“Class,” “Class Members,”
8 and “Class Period”). At the time of this filing, the number of Class Members is estimated to be
9 five thousand seven hundred and one (5,701). (Declaration of Douglas Han In Support of
10 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶ 7.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this proposed
13 Settlement of \$2,250,000 is well within the range of reasonableness. Class Counsel and Plaintiffs
14 are convinced the proposed Settlement is in the best interests of the Class Members based on the
15 negotiations and a detailed knowledge of the issues present in this action.

16 **II. BACKGROUND**

17 On April 23, 2020, Plaintiff Fredieu provided written notice to the California Labor and
18 Workforce Development Agency (“LWDA”) and Defendant, setting forth the facts and theories
19 of alleged violations against Defendant. (Han Decl., *supra*, at ¶ 9.)

20 On July 6, 2022, Plaintiff Colon filed the instant wage-and-hour class action lawsuit in the
21 Superior Court of California, County of Merced (Case No. 22CV-02037), alleging eight (8) causes
22 of action. (*Id.* at ¶ 10.) On August 31, 2022, Plaintiff Colon filed a First Amended Complaint
23 including Plaintiff Fredieu as an additional Class Representative and a Private Attorney General
24 Action (“PAGA”) cause of action. (*Id.* at ¶ 11.)

25 The Parties attended mediation on Plaintiff Fredieu’s PAGA claims with mediator Jeffery
26 Ross on June 21, 2022, which resulted in a mediator’s proposal that would include both Class and
27 PAGA claims. (Han Decl., *supra*, at ¶ 12.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 After Plaintiff Fredieu initiated his case, the Parties engaged in informal discovery and
4 exchange of information. (Han Decl., *supra*, at ¶ 16.) The Parties conducted significant
5 investigation and discovery of the facts and law both before and after this case was filed. (*Ibid.*)
6 Defendant produced hundreds of documents relating to its policies, practices, and procedures
7 regarding reimbursement of business expenses, paying non-exempt employees for all hours
8 worked, meal and rest break policies, and payroll, timekeeping, and operational policies. (*Ibid.*)
9 As part of Defendant’s production, Plaintiffs reviewed time records, pay records, and information
10 relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the
11 number of Weeks Worked during the Class Period. (*Ibid.*) Plaintiffs also interviewed numerous
12 Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

13 Based upon the information provided by Defendant and interviews Class Counsel had with
14 hourly-paid or non-exempt employees, Plaintiffs contend – and Defendant denies – that Defendant:
15 (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay
16 employees for all hours worked, including minimum wages and overtime; (c) failed to reimburse
17 employees for necessary business expenses; (d) issued noncompliant wage statements; and (e) is
18 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 16-22.)

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

20 **i. The Parties Attended Mediation Which Ultimately Led to the Class**
21 **Action and PAGA Settlement Agreement**

22 On June 21, 2022, the Parties attended a full day Zoom mediation with experienced
23 mediator, Jeffery Ross. (Han Decl., *supra*, at ¶ 24.) The Parties discussed the risks of continued
24 litigation as well as the risks of certification and risks on the merits of the claims versus the benefits
25 of settlement. With the mediator’s assistance, the Parties reached an agreement, the terms of which
26 were memorialized in the Settlement Agreement. (*Ibid.*; Exhibit 2.)

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1 Defendant denies any liability or wrongdoing of any kind associated with the claims
2 alleged in this case and disputes the damages and penalties claimed by Plaintiffs. (Han Decl.,
3 *supra*, ¶ 23.) Defendant further contends, for any purpose other than settlement, Plaintiffs' claims
4 are not appropriate for class or representative action treatment based on the terms of an arbitration
5 agreement with class and representative action waivers that applied to Plaintiffs and the Class
6 Members. (*Ibid.*) Defendant argues, among other things, it has always complied with the Labor
7 Code and the Industrial Wage Commission Orders. (*Ibid.*)

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

9 The Settlement Agreement was reached because of arm's-length negotiations. (Han Decl.,
10 *supra*, at ¶ 28.) Though cordial and professional, the settlement negotiations were adversarial and
11 non-collusive in nature. (*Ibid.*) At mediation, the Parties' counsel conducted extensive arm's-
12 length settlement negotiations until an agreement was ultimately reached by all Parties via a
13 mediator's proposal. (*Ibid.*)

14 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense and
15 length of continued proceedings necessary to continue the litigation against Defendant. (Han Decl.,
16 *supra*, at ¶ 39.) Plaintiffs and Class Counsel considered the uncertainty and risk of further
17 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*)
18 Plaintiffs and Class Counsel conducted extensive settlement negotiations, including formal
19 mediation on June 21, 2022. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe
20 the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement,
21 and is in the Class's best interests. (*Ibid.*)

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

23 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties'
24 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
25 research, and discovery. (Han Decl., *supra*, at ¶ 30.) The Settlement was only possible following
26 significant investigation and evaluation of Defendant's relevant policies and procedures. (*Ibid.*)
27 This case has reached the stage where "the Parties certainly have a clear view of the strengths and
28 weaknesses of their cases" sufficient to support the Settlement's reasonableness, adequacy, and

1 fairness. (Han Decl., *supra*, at ¶ 30.); *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610,
2 617.) Although Defendant denies any liability, Defendant is agreeing to the Settlement solely to
3 avoid the cost of litigation. (*Ibid.*) Accordingly, the Parties desire to fully, finally, and forever
4 settle, compromise and discharge all disputes and claims arising from or relating to the action on
5 the terms set forth in the Settlement and detailed herein. (*Ibid.*)

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

7 **i. Deductions from the Settlement**

8 The Parties agreed this action be settled and compromised for the non-reversionary total
9 sum of \$2,250,000 (“Gross Settlement Amount”) which includes: (a) Class Counsel Fees Payment
10 of \$787,500 (35% of the Gross Settlement Amount); (b) Class Counsel Litigation Expense
11 Payment of \$30,000; (c) Class Representative Service Payments of \$10,000 to each Plaintiff; (d)
12 Administrator Expense Payment of \$40,000; and (e) PAGA Penalties of \$100,000. (Han Decl.,
13 *supra*, at ¶ 25.)

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

15 1. After all Court-approved deductions from the Gross Settlement Amount, it
16 is estimated that \$1,272,500 (“Net Settlement Amount”) will be distributed to Class Members –
17 with an *average* gross Individual Settlement Share estimated at \$223.20.¹ (Han Decl., *supra*, at ¶
18 28.) However, the net workweek value is \$28.00 per workweek². (*Ibid.*)

19 Each Participating Class Member will receive a proportionate share of the Net Settlement
20 Amount that will be calculated by the Settlement Administrator in accordance with the formula
21 set forth in the Agreement. (Settlement Agreement, at §3.2.4.) Individual Settlement Shares will
22 be apportioned twenty percent (20%) wages and eighty percent (80%) penalties and interests.
23 (Settlement Agreement, at §3.2.4.1.)

24 The Settlement Administrator will also pay each Class Member their portion of the twenty-
25 five percent (25%) of the PAGA Penalties (\$25,000) from the Gross Settlement Amount using the
26 formula set forth in the Agreement. (Settlement Agreement, at §3.2.5.1.)

27
28 ¹ \$1,272,500 (Net Settlement Amount) / 5,701 (Class Members) = \$223.20

² \$1,272,500 (Net Settlement Amount) / 80,360 (Workweeks) = \$28.00

1 **iii. Notice to the Class**

2 Not later than (15) days after the Court grants Preliminary Approval of the
3 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
4 of a Microsoft Excel spreadsheet. (Settlement Agreement, at §4.2.) Within fourteen (14) days after
5 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
6 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice. (Settlement
7 Agreement, at §8.4.2.) Class Members are not required to submit a claim form to receive their
8 Individual Settlement.

9 **iv. Distribution of Funds**

10 The Settlement will be funded pursuant to the timeline and manner set forth in the
11 Agreement. (Settlement Agreement, at §4.3.) Uncashed settlement checks will be mailed to the
12 California State Controller’s Unclaimed Property Fund. (Settlement Agreement, at §4.4.3.)

13 **v. Release of Claims**

14 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
15 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
16 Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties.
17 (Settlement Agreement, at §6.)

18 All Participating Class Members, on behalf of themselves and their respective former and
19 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
20 Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based
21 on the Class Period facts stated in the Operative Complaint and ascertained in the course of the
22 Action including, (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2)
23 violation of Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation
24 of Labor Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections
25 1194 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final
26 wages not timely paid); (6) violation of Labor Code section 226(a) (non-compliant wage
27 statements); (7) violations of Labor Code sections 2800 and 2802 (unreimbursed business
28 expenses); and (8) violation of Business & Professions Code section 17200, et seq. (Settlement

1 Agreement, at §6.2.)

2 All Aggrieved Employees are deemed to release, on behalf of themselves and their
3 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
4 and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
5 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
6 Complaint, and the PAGA Notice and ascertained in the course of the Action. (Settlement
7 Agreement, at §6.3.)

8 In exchange for the Class Representative Service Payments of \$10,000 to each Plaintiff, in
9 recognition of their work and efforts in obtaining the benefits for the Class and undertaking the
10 risk for the payment of costs if this matter had not successfully resolved, Plaintiffs provide a
11 general release of claims for themselves and their spouses, heirs, successors and assigns.
12 (Settlement Agreement, at §6.1.) Plaintiffs' Release of Claims also includes a waiver of Civil
13 Code section 1542. (*Ibid.*)

14 Released Parties include Defendant and each of its former and present directors, officers,
15 shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns,
16 subsidiaries, affiliates. (Settlement Agreement, at §1.41.)

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

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

26 Both Parties' counsel are experienced in wage-and-hour employment law and class and
27 PAGA actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous
28 cases on behalf of employees for Labor Code violations and are experienced and qualified to

1 evaluate the class claims, the settlement versus trial on a fully informed basis, and the viability of
2 the defenses. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.)) This experience instructed Class Counsel
3 on the risks and uncertainties of further litigation and guided their determination to endorse the
4 proposed Settlement.³ (*Ibid.*)

5 After factoring in the risks explained in this Motion, Class Counsel believes that the
6 proposed Settlement is fair and reasonable. (Han Decl., *supra*, ¶¶ 35-53.)

7 **IV. ARGUMENT**

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

9 California Rules of Court, rule 3.769 requires court approval for class action settlements.⁴
10 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
11 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
12 preliminary approval of class settlements:

13 (a) A settlement or compromise of an entire class action, or a cause of action in
14 a class action, or as to a party, requires the approval of the court after
15 hearing.

16 . . .

17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
19 agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion.

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

23 / / /

24 ³ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
25 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
26 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.

27 ⁴ The California Supreme Court has also authorized California’s trial courts to use Federal
28 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, Plaintiffs cites Federal Rule 23 and federal case law in addition to California law.

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

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

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

19 **i. The Settlement Amount of \$2,250,000 Is Fair and Reasonable**

20 The Settlement was possible following significant investigation and evaluation of
21 Defendant’s relevant policies and procedures, as well as the data Defendant produced for the
22 putative class, as referenced in Section III above, which permitted Class Counsel to engage in a
23 comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 30.)

24 Plaintiffs’ claims are predicated on Defendant’s purported: (1) failure to pay overtime
25 wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay
26 minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
27 (6) failure to reimburse business expenses; (7) violation of Labor Code section 2698, *et seq.*
28

1 (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl.,
2 *supra*, at ¶ 31.) Defendant denies Plaintiffs' theories of liability. (*Id.* at ¶ 32.)

3 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
4 to certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court
5 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
6 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
7 *Stores, Inc.* reached different rulings concerning certification of wage-and-hour claims.⁵ (*Ibid.*)

8 Class Counsel understands Defendant makes the following defenses, among others, in
9 connection with Plaintiffs' claims: (a) Defendant contends its policies specifically prohibit off-the-
10 clock work and that its employees were paid for all time under Defendant's control or that they
11 were suffered or permitted to work; (b) Defendant contends overtime was paid at the correct
12 regular rate of pay; (c) Defendant contends Plaintiffs and Class Members were compensated for
13 all time worked; (d) Defendant contends it maintained compliant meal and rest break policies and
14 practices during the Class Period such that all Class Members were provided with all required meal
15 periods and rest breaks and were paid premiums when appropriate; (e) Defendant denies Class
16 Members were owed any expense reimbursement because all Class Members were not required to
17 purchase their own PPEs, and (f) Defendant denies it owes wage statement or waiting time
18 penalties. Thus, Defendant asserts no damages can be recovered on a class-wide or representative
19 basis. Finally, Defendant argues if litigation were to continue, it feels confident it would prevail.
20 While Plaintiffs disagreed with Defendant's contentions, Plaintiffs had to acknowledge the risks
21 associated with establishing liability. Because of these uncertainties, Plaintiffs believed a discount
22 was appropriate.

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25 ⁵ (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 Penalties 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, 221, 226(a),
4 226(e), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800,
5 and 2802. (Han Decl., *supra*, at ¶ 51.) Defendant asserted PAGA penalties are not mandatory but
6 permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its strong arguments
7 against the underlying claims, it had a strong argument it would be unjust to award maximum
8 PAGA penalties given the law’s unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012)
9 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued
10 stacking and limited to the initial violation, the PAGA penalties would be limited to \$205,200
11 (2,052 employees x \$100) on the low end and \$1,231,200 (2,052 employees x \$100 x 6 theories
12 of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 41-44.)

13 Plaintiffs recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶
14 46.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) Thus,
15 Thus, allocating \$100,000 to PAGA civil penalties was reasonable, given that Defendant is paying
16 an additional \$2,150,000 in the class settlement, which would serve as a reasonable deterrent to
17 future violations. When PAGA penalties are negotiated in good faith and “there is no indication
18 that [the] amount was the result of self-interest at the expense of other Class Members,” such
19 amounts are generally considered reasonable.⁶ (*Ibid.*)

20 Considering Defendant’s defenses, its supporting evidence, and its position the case is not
21 suitable for class treatment, the Settlement of \$2,250,000 is reasonable, adequate, and fair.

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

23 Excluding the civil penalties, which could be discretionary, for the reasons stated, the total
24 estimated potential exposure, assuming certification and prevailing at trial, would be
25 approximately \$20,574,869.66 on the low end and \$21,257,929.66 on the high end. (Han Decl.,
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27 ⁶ (*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”.)

supra, at ¶ 47.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,235,204.66	70%	60%	\$148,224.55
Meal Break Premiums	\$561,425.00	50%	25%	\$210,534.37
Overtime/Minimum Wage: Off-the-Clock Work	\$1,366,120.00 to \$2,049,180.00	50%	50%	\$341,530.00 to \$512,295.00
Wage Statement Penalty	\$2,565,000.00	60%	60%	\$410,400.00
Waiting Time Penalty	\$14,847,120.00	60%	60%	\$2,375,539.20
MAXIMUM TOTAL EXPOSURE	\$20,574,869.66 to \$21,257,929.66			\$3,486,228.12 to \$3,656,993.12

Based on this analysis, the realistic recovery for this case is \$3,486,228.12 on the low end and \$3,656,993.12 on the high end. The Gross Settlement Amount of \$2,250,000 is about ten percent (10.5%) of the maximum potential exposure and approximately sixty-one percent (61.5%) of the maximum realistic exposure at trial, which is a reasonable settlement. (Han Decl., *supra*, at ¶ 53.)

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

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

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

8 Plaintiffs contend the Class is ascertainable and numerous to make it unfeasible to join all
9 Class Members, and there are common questions of law and fact predominating. (Han Decl., *supra*,
10 at ¶ 54.) Plaintiffs contend as former hourly-paid, non-exempt employees of Defendant, their
11 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
12 the Class’s interests. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual Class
13 Members would create the risk of inconsistent adjudications. (*Ibid.*)

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

15 “Ascertainability is required in order to give notice to putative class members as to whom
16 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
17 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
18 by describing a set of common characteristics sufficient to allow a member of that group to identify
19 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
20 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
21 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

22 This case involves about five thousand seven hundred and one (5,701) Class Members.
23 (Han Decl., *supra*, at ¶ 55.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva*
24 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many
25 as 190 current and former employees” is sufficiently numerous].)

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

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

11 **1. Common Issues Predominate**

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

23 Plaintiffs contend they assert common issues of fact and law predominate as to each of the
24 claims. (Han Decl., *supra*, at ¶ 56.) Plaintiffs contend all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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Typical claims rely on legal theories and facts 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 allegedly injured by Defendant's common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 57.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Plaintiffs' claims arise from the same alleged employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs contend they have proven to be adequate Class Representatives. (Han Decl., *supra*, at ¶ 58.) Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of their work environment. (*Ibid.*) Plaintiffs claim to 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 similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense numerous individual actions would necessitate. Because several Class Members are current employees, Plaintiffs believe – and Defendant disputes – fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

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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) 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 Class Notice meets all these requirements. The proposed Class Notice
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 Decl., *supra*; Exhibits A to Exhibit 2.)

19 **V. CONCLUSION**

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

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25 Dated: October 26, 2022

JUSTICE LAW CORPORATION

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28 Douglas Han
Attorneys for Plaintiffs

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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On October 27, 2022, I served the foregoing document described as

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

for the following case: **Colon, et al. v. T. M. Cobb Company d/b/a Haley Bros.**
LWDA/Court Case No.: **LWDA Case No.: CM- 784241-20**
Court Case No.: 22CV-02037
Merced County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 27, 2022, at Pasadena, California.



Mariah Anderson