

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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 Plaintiff

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

SARA BOYLE, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

UNITED LEGWEAR COMPANY, LLC, a
Delaware limited liability company; UNITED
LEGWEAR DISTRIBUTION, LLC, a
Delaware limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

UNITED LEGWEAR COMPANY, LLC, a
Delaware limited liability company; UNITED
LEGWEAR DISTRIBUTION, LLC, a
Delaware limited liability company,

Cross-Complainants,

v.

WORKFORCE ENTERPRISES WFE, INC., a
California corporation; and ROES 1 through
5, inclusive,

Cross-Defendants.

Case No.: CIVDS2015276

Assigned for All Purposes to:
Honorable Jessica Morgan
Department S-26

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); and [Proposed] Order filed
concurrently herewith]

Hearing Date: December 11, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department S-26

Complaint Filed: July 16, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 11, 2023 at 9:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Jessica Morgan in Department S-26 of the San
3 Bernardino County Superior Court (San Bernardino Justice Center) located at 247 West Third
4 Street, San Bernardino, California 92415, Plaintiff Sara Boyle (“Plaintiff”) will and hereby does
5 move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Class Action and PAGA 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;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiff as the class representative;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the proposed deadlines for the settlement administration process;
- 20 • Approving Phoenix Class Action Administration Solutions as the Administrator;
21 and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payment, and
26 Administration Expenses Payment, and approval of the allocation of the Private
27 Attorney General Act of 2004 (“PAGA”) Penalties.

28 ///

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: September 26, 2023

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
Attorneys for Plaintiff

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 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 Settlement Payments	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 \$600,000 Is Fair and Reasonable	16
ii.	The PAGA Penalties of \$50,000 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.....	20
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	21

2.	Plaintiff’s Claims Are Typical of the Class Claims.....	21
3.	Plaintiff Is Adequate to Represent the Class.....	22
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	22
e.	The Settlement Is Fair, Reasonable, and Adequate	22
f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	23
V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
--------------	----------------

<i>Acosta v. TransUnion, LLC</i>	
(C.D. Cal. 2007) 240 F.R.D. 564.....	19
<i>Aguiar 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 Corp. v. Superior Court</i>	
(2012) 53 Cal.4th 1004	21
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	20, 21
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Detroit v. Grinnell Corp.</i>	
(2d Cir. 1974) 495 F.2d 448.....	19
<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
///	
///	

<u>Cases</u>	<u>Page(s)</u>
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016	
U.S.Dist.LEXIS 2904	21
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106.....	19
<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	16
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	20
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	17
<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.....	21
<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
///	

<u>Cases</u>	<u>Page(s)</u>
<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	17
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	16, 19, 20
<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 Office Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17
<u>Rules</u>	
California Rules of Court, Rule 3.769	15
California Rules of Court, Rule 3.769 (f)	23
California Rules of Court, Rule 3.769 (g).....	15
Federal Rule 23	15
<u>Statutes</u>	
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

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 221.....	17
Labor Code § 226.3.....	17
Labor Code § 226.7.....	17
Labor Code § 226 (a)	17
Labor Code § 510.....	17
Labor Code § 512 (a)	17
Labor Code § 558.....	17
Labor Code § 1174 (d).....	17
Labor Code § 1194.....	17
Labor Code § 1197.....	17
Labor Code § 1197.1.....	17
Labor Code § 1198.....	17
Labor Code § 2800.....	17
Labor Code § 2802.....	17

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement of \$600,000 by Plaintiff on behalf of herself and all individuals who were
4 hired by Workforce Enterprises WFE, Inc. (“WFE”) and assigned to work for United Legwear
5 Company, LLC (“ULC”) and/or United Legwear Distribution, LLC (“ULD”) as non-exempt,
6 hourly employees during the period from April 17, 2019 to January 31, 2023, as well as all
7 individuals who were employed by ULC and/or ULD as non-exempt, hourly employees during the
8 period from April 17, 2019 to January 31, 2023 (“Class,” “Class Members,” and Class Period”).
9 At the time of this filing, the number of Class Members is estimated to be 4,735, and the number
10 of workweeks within the Class Period is estimated to be 62,016, which was confirmed by
11 Defendants. (Declaration of Douglas Han In Support of Plaintiff’s Motion for Preliminary
12 Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

13 **II. BACKGROUND**

14 On April 17, 2020, Plaintiff provided written notice to the California Labor and Workforce
15 Development Agency (“LWDA”) and Defendants. (Han Decl., *supra*, at ¶ 9; Exhibit 4.)

16 On July 16, 2020, Plaintiff filed a representative PAGA action in the Superior Court of
17 California, County of San Bernardino. (Han Decl., *supra*, at ¶ 10; Exhibit 5.)

18 On January 11, 2021, ULC and ULD filed a motion to compel joinder of necessary and
19 indispensable party. (Han Decl., *supra*, at ¶ 11.) On January 14, 2021, ULC and ULD filed a
20 cross-complaint against WFE alleging the following causes of action: (1) express indemnity; (2)
21 implied indemnity; (3) contribution; (4) declaratory relief; and (5) express contractual indemnity
22 – breach of contract. (*Ibid.*)

23 After engaging in discovery, investigations, and negotiations, on March 14, 2022 and
24 October 31, 2022, the Parties remotely attended mediation with the mediator Deborah Saxe. (Han
25 Decl., *supra*, at ¶ 12.) While the Parties did not initially settle at mediation, continued negotiations
26 and assistance by the mediator resulted in a settlement via a mediator’s proposal. (*Ibid.*)

27 In line with the settlement, Plaintiff will file a First Amended Complaint adding eight (8)
28 wage-and-hour class action causes of action. (Han Decl., *supra*, at ¶ 13; Exhibit 2.)

III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions

Plaintiff propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 15.) Defendants responded to the formal discovery requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in an informal exchange of information and eventually attended mediation. (*Ibid.*)

Prior to mediation, Defendants produced several documents relating to their policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) As part of Defendants' production, Plaintiff also reviewed a sampling of time and pay records and information relating to the size and scope of the Class. (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based on the information provided by Defendants and interviews with putative class members, Plaintiff contends – and Defendants deny – Defendants: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with an experienced mediator on March 14, 2022 and October 31, 2022. (Han Decl., *supra*, at ¶ 25.) While the Parties did not initially settle at mediation, continued negotiations and assistance by the mediator resulted in a settlement via a mediator's proposal, the terms were memorialized in the Settlement. (*Id.* at ¶ 25; Exhibits 3, 6.)

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

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 28.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

///

1 Plaintiff 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 ¶ 29.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
4 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
5 on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
6 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the claims and
9 defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 30.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
12 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
14 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
15 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
16 at ¶ 30; *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 (subject to the Court’s approval) this matter be settled and compromised
20 for the non-reversionary sum of \$600,000 (“Gross Settlement Amount”) which includes: (1) Class
21 Counsel Fees Payment not to exceed \$200,000 (1/3 of the Gross Settlement Amount); (2) Class
22 Counsel Litigation Expenses Payment not to exceed \$25,000; (3) Class Representative Service
23 Payment not to exceed \$10,000; (4) Administration Expenses Payment not to exceed \$40,000 to;
24 and (5) PAGA Penalties not to exceed \$50,000. (Han Decl., *supra*, at ¶ 26.)

25 **ii. Calculating Settlement Payments**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$275,000 (“Net Settlement Amount”) will be paid to Participating Class Members. (Han Decl.,
28 *supra*, at ¶ 27.)

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 ¶ 25;
3 Exhibit 3, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty-five percent
4 (25%) to the settlement of wages claims and seventy-five percent (75%) to the settlement of claims
5 for interests and penalties. (*Id.* at § C(2)(d)(i).)

6 In addition, the portion of the PAGA Penalties that will be paid to each Aggrieved
7 Employee shall be determined using the formula set forth in the Settlement Agreement. (Han
8 Decl., *supra*, at ¶ 25; Exhibit 3, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA
9 Penalties will be allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

10 **iii. Notice to the Class**

11 No later than thirty (30) calendar days after the Court grants Preliminary Approval of the
12 Settlement, Defendants will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶
13 25; Exhibit 3, *supra*, at § G(4)(a).) No later than fourteen (14) days after receiving the Class Data,
14 the Administrator will send the Class Notice to all Class Members identified in the Class Data via
15 first-class United States Postal Service mail with a Spanish translation. (*Id.* at § G(4)(c).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
18 in the Settlement. (Han Decl., *supra*, at ¶ 25; Exhibit 3, *supra*, at §§ D(2), D(3).) Uncashed
19 settlement checks will be canceled and transmitted to the California Controller's Unclaimed
20 Property Fund. (*Id.* at § D(3)(c).)

21 **v. Release of Claims**

22 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
23 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
24 Participating Class Members, on behalf of themselves and their former and present representatives,
25 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
26 the Released Class Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 3, *supra*, at § E(2).)

27 ///

28 ///

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 3, *supra*, at § E(3).)

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and her former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and forever discharge Released Parties from Plaintiff's Release. (Han Decl., *supra*, at ¶ 25; Exhibit 3, *supra*, at § E(1).) Plaintiff also expressly waives any and all rights and benefits afforded by section 1542. (*Id.* at § E(1)(b).)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties' counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*)¹

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

1 **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.²
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 (c) Any party to a settlement agreement may serve and file a written notice of
11 motion for preliminary approval of the settlement. The settlement
12 agreement and proposed notice to class members must be filed with the
13 motion, and the proposed order must be lodged with the motion.

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

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

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

26 ///

27 ///

28 ² The California Supreme Court has also authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior 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 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
2 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
3 *Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum
4 amount the class could recover if plaintiff prevailed on all his claims, provided there is a record
5 that allows “an understanding of the amount that is in controversy and the realistic range of
6 outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186
7 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under
8 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
9 within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

10 **i. The Settlement Amount of \$600,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data Defendants produced for the
13 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
14 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 30.)

15 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
16 to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium
17 wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure
18 to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business &
19 Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 31.) Defendants vehemently deny
20 the theories of liability. (*Id.* at ¶ 32.)

21 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court
23 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
24 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
25 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
26 (*Ibid.*) Thus, the calculations for potential damages were discounted.

27 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
28 of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Penalties of \$50,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a),
4 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 41.) Defendants
5 asserts, regardless of the results of the underlying causes of action, PAGA penalties are not
6 mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain they had a strong
7 argument it would be unjust to award maximum PAGA penalties given the law’s current unsettled
8 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 41; *Thurman v. Bayshore Transit Mgmt.*
9 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore,
10 Defendants argued without stacking and limited to the initial violation, the PAGA penalties would
11 be limited to about **\$473,500** (4,735 employees x \$100 penalty for initial violation) on the low end
12 and **\$2,841,000** (4,735 employees x \$100 penalty for initial violation x 6 theories of recovery) on
13 the high end. (Han Decl., *supra*, at ¶¶ 42-44.)

14 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 45.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Allocating \$50,000 to PAGA civil penalties was reasonable given the fact Defendants are also
17 paying an additional \$550,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated
18 in good faith and “there is no indication that [the] amount was the result of self-interest at the
19 expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

20 Considering Defendants’ defenses, supporting evidence, and position that the case is not
21 suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

22 _____
23 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
24 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
25 [affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006)
26 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141
27 Cal.App.4th 1422 [affirming denial of certification].)

28 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 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”.)

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 **\$18,100,870.14** on the low end and around **\$18,335,910.78** on the high end. (Han Decl., *supra*, at ¶ 46.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$824,805.39	75%	65%	\$72,170.47
Meal Break Premiums	\$753,818.55	70%	65%	\$79,150.95
Overtime/Minimum Wage: Off-the-Clock Work	\$469,771.20 to \$704,811.84	65%	60%	\$65,767.97 to \$98,673.66
Unreimbursed Business Expenses	\$902,830	40%	80%	\$108,339.60
Wage Statement Penalty	\$5,918,750	80%	75%	\$295,937.50
Waiting Time Penalty	\$9,230,895	80%	75%	\$461,544.75
MAXIMUM TOTAL EXPOSURE	\$18,100,870.14 to \$18,335,910.78⁵			\$1,082,911.24 to \$1,115,816.93⁶

Thus, the realistic recovery for this case is about **\$1,082,911.24** on the low end and **\$1,115,816.93** on the high end. (Han Decl., *supra*, at ¶ 53.) The Gross Settlement Amount is about three percent (3.27%) of the maximum potential exposure and around fifty-three percent (53.77%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

///

///

///

⁵ (Han Decl., *supra*, at ¶¶ 34-40.)

⁶ (*Id.* at ¶¶ 47-52.)

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594
3 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
4 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
5 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
6 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska*
7 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in
8 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
9 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
10 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
11 if Plaintiff prevailed at trial and provides a significant recovery for 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 ¶ 54.) Plaintiff contends 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.*) Plaintiff asserts the prosecution of separate actions by individual
23 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

24 ///

25 ///

26 ///

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

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

9 This case involves approximately 4,735 Class Members, meaning the Class is sufficiently
10 numerous. (Han Decl., *supra*, at ¶ 55; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
11 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is
12 sufficiently numerous].)

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

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

23 ///

24 ///

25 ///

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 56.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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.)

$\parallel$	$\parallel$	$\parallel$
$\parallel$	$\parallel$	$\parallel$
$\parallel$	$\parallel$	$\parallel$

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 58.) Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff also has 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. Plaintiff contends 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, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

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

/ / /

///

111

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

5
6
7
8
9
0
1
2
3
4
5
6
7
8

By: 
Douglas Han
Attorneys for Plaintiff

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

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 bitty@justicelawcorp.com

On September 26, 2023, I served the foregoing document described as

**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**

for the following case: **Boyle v. United Legwear Company, LLC et al.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-783563-20**
Court Case No.: CIVDS2015270
San Bernardino 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

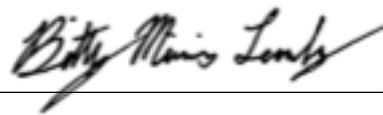
[X] BY ELECTRONIC SUBMISSION

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 September 26, 2023, at Pasadena, California.



Bitty Minnis-Lemley