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

ADEDEJI ADEJOBI, individually, and on
behalf of other members of the general
public similarly situated, and on behalf of the
State of California and aggrieved employees
pursuant to the Private Attorneys General
Act ("PAGA");

Plaintiff,

v.

NULAIID FOODS, INC., a California
corporation; NULAIID-THAYER, LLC, a
California limited liability company;
THAYER FOOD PRODUCTS, LLC, a
limited liability company; NUCAL FOODS,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: STK-CV-UOE-2020-0008625

Honorable Barbara Kronlund
Department 10D

CLASS ACTION

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

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

Hearing Date: February 4, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 10D

Complaint Filed: October 13, 2020
Trial Date: None Set

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7 *Attorney for* Plaintiff

1 **PLEASE TAKE NOTICE** that on February 4, 2022 at 9:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Barbara Kronlund in Department 10D of the San
3 Joaquin County Superior Court, located at 180 East Weber Avenue, Stockton, California 95202,
4 Plaintiff Adedeji Adejobi (“Plaintiff”) will and hereby moves for an order:

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

28 ///

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

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); Declaration of Proposed Class Counsel (Nazo Koulloukian); 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: January 6, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$300,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of himself and all current and former
4 non-exempt employees of Defendant Nulaid Foods, Inc. (“Defendant”) in California at any time
5 from April 6, 2016 to December 29, 2021 (“Class,” “Class Members,” and “Class Period”). At
6 the time of this filing, the number of Class Members confirmed by Defendant is currently
7 estimated to be eighty-six (86). (Declaration of Douglas Han (“Han Dec.”), ¶ 8; Declaration of
8 Nazo Koulloukian (“Koulloukian Dec.”) ¶ 6.)

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
11 proposed settlement of \$300,000 – with an average Individual Settlement Share amount
12 estimated at \$1,616.28¹ – is well within the “ballpark” of reasonableness.

13 As the following sections show, Class Counsel is convinced that the proposed
14 Settlement is in the best interests of the Class based on the negotiations and a detailed
15 knowledge of the issues present in this action. (“Class Counsel” means the law firms of Justice
16 Law Corporation and Koul Law Firm). The length and risks of trial and perils of litigation that
17 affect the value of the claims were all carefully weighed. In addition, the defenses asserted by
18 Defendant were carefully considered by Class Counsel in arriving at the proposed Settlement.

19 **II. BACKGROUND**

20 Founded in 1963 and headquartered in California, Defendant is an egg breaking and egg
21 products processing company that produces fresh liquid eggs, extended shelf-life egg products,
22 no cholesterol egg products, and non-dairy pastry toppings. (Han Dec., *supra*, at ¶ 9.) This case
23 involves all current and former non-exempt employees of Defendant in California at any time
24 from April 6, 2016 to December 29, 2021. (*Ibid.*) Plaintiff alleges that during the Class Period,
25 Defendant’s non-exempt employees work and/or worked on an hourly basis at all times. (*Ibid.*)

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¹ \$139,000 (Net Settlement Amount) / 86 (Class Members) = \$1,616.28.

1 On August 6, 2020 and August 7, 2020, Plaintiff, a former hourly-paid, non-exempt
2 employee of Defendant from about October 2018 to August 2019, provided written notices to
3 the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the
4 specific provisions of the Labor Code he contends were violated and the theories supporting his
5 contentions. (Han Dec., *supra*, at ¶ 10; Koulloukian Dec., *supra*, at ¶¶ 3-4.) No notice of intent
6 to investigate the violations was provided by the LWDA. (Han Dec., *supra*, at ¶ 10.)

7 On October 13, 2020, Plaintiff filed a wage-and-hour class action lawsuit in the Superior
8 Court of California, County of San Joaquin, alleging eleven (11) causes of action. (Han Dec.,
9 *supra*, at ¶ 11; Koulloukian Dec., *supra*, at ¶ 5.)

10 The Parties attended mediation on Plaintiff’s claims on September 30, 2021. Under the
11 auspices of the mediator Steven J. Rottman, the Parties were able to reach an agreement on the
12 settlement of the action. (Han Dec., *supra*, at ¶ 12; Koulloukian Dec., *supra*, at ¶ 7.)

13 Pursuant to the settlement of the action, Plaintiff will file and serve on Defendant a
14 Request for Dismissal with Prejudice of Nulaid Thayer, LLC, Thayer Food Products, LLC, and
15 NuCal Foods, Inc., who were listed as additional defendants in the original complaint. (Han
16 Dec., *supra*, at ¶ 13.) This will occur within ten (10) days of the Court issuing a Preliminary
17 Approval Order. (*Ibid.*)

18 Defendant generally and specifically denies any and all liability or wrongdoing of any
19 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
20 any sort, and contends that for any purpose other than settlement, the Class Action is not
21 appropriate for PAGA or class treatment, and lacks manageability. (Han Dec., *supra*, at ¶ 14.)

22 **III. INVESTIGATION/ LITIGATION HISTORY**

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

24 After Plaintiff filed his wage-and-hour class action lawsuit, both Parties engaged in
25 discovery. (Han Dec., *supra*, at ¶ 15.) Plaintiff propounded one (1) set of form interrogatories,
26 one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of
27 requests for production of documents. (*Ibid.*) Afterwards, the Parties met and conferred. (*Ibid.*)

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1 Prior to the mediation, the Parties conducted significant investigation and discovery of
2 the facts and law both before and after the Class Action was filed. (Han Dec., *supra*, at ¶ 16;
3 Koulloukian Dec., *supra*, at ¶ 7.) Specifically, Defendant produced several documents relating
4 to its policies, practices, and procedures. (Han Dec., *supra*, at ¶ 16.) Plaintiff also reviewed
5 time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*)
6 Plaintiff also interviewed Class Members. (*Ibid.*)

7 Based upon Defendant's document production as well as interviews Class Counsel had
8 with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant failed
9 to provide employees legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶¶ 18-19.)
10 This was allegedly due to a combination of improper, uniform policies and practices. (*Ibid.*)

11 Plaintiff also alleges – and Defendant denies – that Defendant failed to compensate
12 employees for all hours worked. (Han Dec., *supra*, at ¶ 20.) This largely due to allegedly
13 stringent policies coupled with a general discouragement of overtime work. (*Ibid.*)

14 Furthermore, Plaintiff contends – and Defendant denies – that Defendant failed to factor
15 non-discretionary bonuses into employees' regular rates of pay for purposes of overtime
16 compensation and payment of sick leave and premium wages. (Han Dec., *supra*, at ¶ 21.)

17 Next, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse
18 employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 22.) This apparently
19 extended to not reimbursing employees for using their personal cell phones. (*Ibid.*)

20 Plaintiff contends – and Defendant denies – that Defendant is liable for waiting time
21 penalties and for issuing noncompliant wage statements. (Han Dec., *supra*, at ¶¶ 23-24.)

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

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

25 The Parties agreed to go to mediation with experienced wage-and-hour mediator Steven
26 J. Rottman that took place on September 30, 2021. (Han Dec., *supra*, at ¶ 26; Koulloukian
27 Dec., *supra*, at ¶ 7.) During the mediation, the Parties discussed the risks of continued litigation,
28 risks of certification, and risks on the merits of the claims versus the benefits of settlement.

(Han Dec., *supra*, at ¶ 26; Koulloukian Dec., *supra*, at ¶ 7.) Under the auspices of the mediator, the Parties were able to reach an agreement on a settlement of the action, the terms of which were memorialized in a Settlement Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 26, Exhibit 2; Koulloukian Dec., *supra*, at ¶ 7.)

ii. The Settlement Was Reached Because of Arm's-Length Negotiations

The Settlement was reached via arm's-length negotiations. (Han Dec., *supra*, at ¶ 43; Koulloukian Dec., *supra*, at ¶ 7.) Though cordial and professional, the settlement negotiations have always been adversarial, and non-collusive in nature. (Han Dec., *supra*, at ¶ 43; Koulloukian Dec., *supra*, at ¶ 7.) At the mediation, the Parties' counsel conducted extensive arm's length settlement negotiations until an agreement was reached by all Parties. (Han Dec., *supra*, at ¶ 43; Koulloukian Dec., *supra*, at ¶ 7.)

Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification and trial and through any possible appeals. (Han Dec., *supra*, at ¶ 44 Koulloukian Dec., *supra*, at ¶ 8.) Plaintiff and Class Counsel have also considered the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (Han Dec., *supra*, at ¶ 44 Koulloukian Dec., *supra*, at ¶ 8.) Moreover, Plaintiff and Class Counsel have conducted extensive settlement negotiations. (Han Dec., *supra*, at ¶ 44 Koulloukian Dec., *supra*, at ¶ 8.) Based on the foregoing, Plaintiff and Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and reasonable. (Han Dec., *supra*, at ¶ 44 Koulloukian Dec., *supra*, at ¶¶ 8, 11.)

iii. The Settlement Is Because of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research, and discovery to support the settlement. (Han Dec., *supra*, at ¶ 45; Koulloukian Dec., *supra*, at ¶ 7.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data it produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and

1 potential damages. (Han Dec., *supra*, at ¶ 45; Koulloukian Dec., *supra*, at ¶ 7.) Furthermore,
2 this case has reached the stage where “the Parties certainly have a clear view of the strengths
3 and weaknesses of their cases” sufficient to support the Settlement. (Han Dec., *supra*, at ¶ 45;
4 *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

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

6 **i. Deductions from the Settlement**

7 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
8 action be settled and compromised for the non-reversionary total sum of \$300,000 (“Gross
9 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
10 Class Counsel in an amount not to exceed \$120,000; (b) the Cost Award to Class Counsel in a
11 sum not to exceed \$20,000; (c) the Class Representative Enhancement Payment in the amount
12 of \$5,000 to Plaintiff; (d) the Administration Costs to Phoenix, the Settlement Administrator, in
13 a sum not to exceed \$6,000; and (e) the PAGA Payment of \$10,000, seventy-five percent (75%)
14 of which (\$7,500) will be paid to the California Labor and Workforce Development Agency
15 (“LWDA”) and twenty-five percent (25%) of which (\$2,500) shall be distributed to Eligible
16 Aggrieved Employees, on a pro rata basis. (Han Dec., *supra*, at ¶ 27.)

17 **ii. Calculation of the Individual Settlement Shares to Class Members**

18 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
19 that \$139,000 (“Net Settlement Amount”) will be distributed to Class Members – with an
20 average Individual Settlement Share estimated at \$1,616.28. (Han Dec., *supra*, at ¶ 29.)

21 Each Participating Class Member’s Individual Settlement Share will be apportioned as
22 follows: twenty percent (20%) unpaid wages, forty percent (40%) penalties, and forty percent
23 (40%) interest. (Han Dec., *supra*, at ¶ 30.)

24 Each Participating Class Member will receive a proportionate share of the Net
25 Settlement Amount that is equal to:

26 (i) the number of workweeks he or she worked during the Class Period provided by
27 Defendant to the Settlement Administrator in the Class List, divided by (ii) the total
28 number of workweeks by any and all Participating Class Members collectively, during
the Class Period based on the same Class List, which is then multiplied by the Net
Settlement Amount. (Han Dec., *supra*, at ¶ 31.)

Furthermore, each Eligible Aggrieved Employee's share of the Net Settlement Amount will be calculated by:

dividing the total number of pay periods all Eligible Aggrieved Employees worked during the PAGA Timeframe into the \$2,500 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each pay period. That number will then be multiplied by the individual Eligible Aggrieved Employee's total number of pay periods worked during the PAGA Timeframe to determine that individual's proportional share. (Han Dec., *supra*, at ¶ 32.)

iii. Notice to the Class

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to Settlement Administrator the Class List. (Han Dec., *supra*, at ¶ 34.)

Within fourteen (14) calendar days after the receipt of the Class List from Defendant, the Settlement Administrator shall mail the Notice Packet to the Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 35.) Class Members and Eligible Aggrieved Employees are not required to submit a claim form to receive their share of the Net Settlement Amount pursuant to the Agreement. (*Ibid.*)

iv. Distribution of Funds

No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Defendant shall deposit the \$300,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶ 36.) Within fourteen (14) calendar days after the funding of the Settlement, the Settlement Administrator shall calculate and pay all payments due under the Settlement Agreement, including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. (*Id.* at ¶ 37.)

Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Settlement checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 38.) If any checks are not redeemed or deposited within ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred

(200) calendar days after the checks are mailed, cancel the checks, and pay the sum of Settlement checks to the California State Controller: Unpaid Wage Fund. (*Ibid.*)

v. Release of Claims

Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the Agreement, Participating Class Members, waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims for the time frame from April 6, 2016 to December 29, 2021 ("Released Claims"). (Han Dec., *supra*, at ¶ 39, Exhibit 2, *supra*, at §§ I.F.F. & III.K.)

Upon Defendant's fulfillment of its payment obligations under section III (J)(9)(a) of the Agreement, the LWDA, and any other representative, proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees during the PAGA Timeframe, are barred from pursuing any action for civil penalties under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, and waive, release, promise never to assert in any forum, remise and forever discharge the Released Parties based on or arising out of the Released Claims, and/or alleged violations of Labor Code sections alleged in Plaintiff's letters to the LWDA and the Complaint. (Han Dec., *supra*, at ¶ 40, Exhibit 2, *supra*, at § III.L.)

Upon Defendant's fulfillment of its payment obligations under section III (J)(9) of the Agreement, Plaintiff agrees to, in exchange for the consideration provided for by the Agreement, a comprehensive release of all known and unknown claims, including a California Civil Code section 1542 waiver arising out of the operative allegations in the case ("Comprehensive Release"). (Han Dec., *supra*, at ¶ 42, Exhibit 2, *supra*, at §§ I.M. & III.M.)

As for 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 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 Class Counsel and Counsel for Defendant are particularly experienced in wage-and-hour employment law and class actions. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1; Koulloukian Dec., *supra*, at ¶¶ 12-20, 22.) Class Counsel has prosecuted numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and the viability of the defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1; Koulloukian Dec., *supra*, at ¶¶ 12-20, 22.) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed Settlement.² (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1; Koulloukian Dec., *supra*, at ¶¶ 12-20, 22.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

California Rule of Court 3.769 requires court approval for class action settlements.³ “Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

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

...

(c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement

² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action Settlement 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.

³ The California Supreme Court also has 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, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 agreement and proposed notice to class members must be filed with the
2 motion, and the proposed order must be lodged with the motion.

3 Courts act within their discretion in approving settlements that are fair, not collusive, and take
4 into account “all the normal perils of litigation as well as the additional uncertainties inherent in
5 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167,
6 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981)
452 U.S. 905.)

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

8 An understanding of the amount in controversy is an important factor in whether the
9 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
10 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.*
11 (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los*
12 *Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the
13 strength of the case for plaintiffs on the merits, balanced against the amount offered in
14 settlement.” (*Ibid.*)

15 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
16 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement
17 for that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not
18 require an explicit statement of the maximum amount the class could recover if the plaintiff
19 prevailed on all his claims, provided there is a record that allows “an understanding of the
20 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
21 *supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a
22 settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy
23 itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168
24 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488,
25 499-500.)).

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As the following subsections show, the Parties' investigation and discovery revealed numerous reasons to discount claims and agree to the Settlement.

i. The Settlement Amount of \$300,000 Is Fair and Reasonable

The proposed Settlement was possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data Defendant produced for the putative class, as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 45; Koulloukian Dec., *supra*, at ¶ 7.)

This discovery resulted in Plaintiff's central theories of liability, which are predicated on Plaintiff's claims that Defendant failed to properly calculate and pay overtime wages, failed to pay minimum wages, failed to provide meal and rest breaks and pay applicable premiums, failed to issue compliant wage statements, failed to timely pay wages, failed to reimburse business expenses, violated PAGA, and violated the Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 46.) Defendant has vehemently denied Plaintiff's theories of liability. (*Id.* at ¶ 47.)

Although Plaintiff believes the case is suitable for certification, uncertainties with respect to certification are present. (Han Dec., *supra*, at ¶ 48; Koulloukian Dec., *supra*, at ¶ 8.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (Han Dec., *supra*, at ¶ 48.) Decisions following *Sav-On* have reached different conclusions concerning certification of wage-and-hour claims.⁴ (*Ibid.*) Although confident in the strengths of his claims, these factors led Plaintiff to discount the calculations of potential damage claims.

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⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422 (affirming denial of certification).)

1 **ii. The PAGA Payment of \$10,000 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, 226(a), 226.7, 510, 512(a),
4 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 56.)
5 Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained
7 that, in addition to its strong arguments against the underlying claims, it had a strong argument
8 that it would be unjust to award maximum PAGA penalties given the current unsettled state of
9 law. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
10 penalties by 30% under this authority].) Defendant argued that without stacking and limited to
11 the initial violation, PAGA penalties would be limited to **\$6,100** (61 employees x \$100 initial
12 violation) on the low end and **\$48,800** (61 employees x \$100 x 8 theories of recovery) on the
13 high end based on six (8) major theories of recovery. (Han Dec., *supra*, at ¶¶ 56-60.)

14 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
15 (Han Dec., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the
16 statutory claims, such as violations of Labor Code sections 201, 202, 203, 226(a), 226.7, 510,
17 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, the
18 maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether
19 the Court would award the maximum penalties under the law. (*Ibid.*) Consequently, allocating
20 \$10,000 to PAGA civil penalties was reasonable based on a rate of **\$4.59** per pay period
21 [\$10,000 / 2,180 Pay Periods in PAGA Date Range = **\$4.59**], given the fact that Defendant is
22 also paying an additional \$290,000 in the class settlement.⁵ (*Ibid.*) When PAGA penalties are
23 negotiated in good faith and “there is no indication that [the] amount was the result of self-

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27 ⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
28 \$5 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 \$120,000,000).)

interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁶ (Han Dec., *supra*, at ¶ 61.)

Considering Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement amount of \$300,000 is reasonable 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 **\$973,314.38** on the low end and **\$1,067,231.63** on the high end. (Han Dec., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$161,077.38	70%	60%	\$19,329.29
Meal Break Premiums	\$159,091.50	50%	50%	\$39,772.88
Overtime/Minimum Wage: Off-the-Clock	\$187,834.50 to \$281,751.75	50%	60%	\$37,566.90 to \$56,350.35
Overtime/Minimum Wage: Non-Discretionary Bonuses, Sick Leave Pay, and Underpaid Premium Wages	\$4,033	30%	40%	\$1,693.86
Unreimbursed Business Expenses	\$51,768	30%	70%	\$10,871.28
Wage Statement Penalty	\$216,550	30%	40%	\$90,951
Waiting Time Penalty	\$192,960	30%	40%	\$81,043.20
MAXIMUM TOTAL EXPOSURE	\$973,314.38 to \$1,067,231.63⁷			\$281,228.41 to \$300,011.86⁸

Based on this analysis, the realistic recovery for this case is **\$281,228.41** on the low end and **\$300,011.86** on the high end. (Han Dec., *supra*, at ¶ 70.) The Gross Settlement Amount of \$300,000 is approximately twenty-eight percent (28.11%) of the maximum potential exposure and almost one hundred percent (99.99%) of the maximum realistic exposure at trial, which is

⁶ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 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.”).)

⁷ (Han Dec., *supra*, at ¶¶ 49-55.)

⁸ (*Id.* at ¶¶ 63-69.)

1 an excellent settlement. (Han Dec., *supra*, at ¶ 70.)

2 The only question at preliminary approval is whether the settlement is within the range
3 of possible approval. (*In re Tableware Antitrust Litig.* (N.D. Cal. 2007) 484 F.Supp.2d 1078,
4 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
5 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
6 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
7 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t
8 is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive
9 litigation that induce consensual settlements. The proposed settlement is not to be judged
10 against a hypothetical or speculative measure of what might have been achieved by the
11 negotiators.”) Nevertheless, this settlement is in line with the realistic exposure had Plaintiff
12 prevailed at trial and provides a significant recovery for the Class Members. Thus, there can be
13 no doubt that this settlement is fair and reasonable.

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

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

22 The proposed Class is ascertainable and numerous as to make it impracticable to join all
23 Class Members, and there are common questions of law and fact that predominate over any
24 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 71.) Plaintiff’s claims
25 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
26 protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
27 Class Members would create the risk of inconsistent or varying adjudications, and a class action
28 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*)

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
3 whom the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home*
4 *Corp.* (2001) 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of
5 unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member
6 of that group to identify himself or herself as having a right to recover based on the
7 description.” (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The
8 proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th
9 429, 435.)

10 The Class Action involves about eighty-six (86) Class Members, which was confirmed
11 by Defendant. (Han Dec., *supra*, at ¶ 72; Koulloukian Dec., *supra*, at ¶ 6.) Thus, the Class is
12 sufficiently numerous.⁹ (Han Dec., *supra*, at ¶ 72.)

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

14 The community of interest requirement “embodies three factors: (1) predominant
15 common questions of law or fact; (2) class representatives with claims or defenses typical of the
16 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drugs*,
17 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does*
18 *not mandate that class members have uniform or identical claims.*” (*Capitol People First v.*
19 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in
20 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
22 class certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The
23 application of each of these factors is discussed below.

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27 ⁹ (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5
28 (finding that a proposed class of “as many as 190 current and former employees” is
sufficiently numerous).)

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Plaintiff asserts that common issues of fact and law predominate as to each of the claims they alleged. (Han Dec., *supra*, at ¶ 73.) All hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures that are discussed in greater detail above. (*Ibid.*)

Typical claims rely on legal theories and facts that are substantially like other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) 72. Plaintiff was a non-exempt employee of Defendant. (Han Dec., *supra*, at ¶ 74; Koulloukian Dec., *supra*, at ¶ 3.) Plaintiff alleges that he and the Class Members were employed by the same company and injured by Defendant's common policies and practices described in detail above. (Han Dec., *supra*, at ¶ 74.) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

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3. Plaintiff is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 75; Koulloukian Dec., *supra*, at ¶¶ 9-10.) Specifically, Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary obligations, and has actively participated in the prosecution of this case. (Han Dec., *supra*, at ¶ 75; Koulloukian Dec., *supra*, at ¶¶ 9-10.) Plaintiff has spent time in meetings and conferences with counsel to provide counsel with a complete understanding of his work environment and requirements. (Han Dec., *supra*, at ¶ 75; Koulloukian Dec., *supra*, at ¶¶ 9-10.) Furthermore, Plaintiff does not have any interest that is averse to the interest of other Class Members. (Han Dec., *supra*, at ¶ 75; Koulloukian Dec., *supra*, at ¶¶ 9-10.) Finally, the proposed Class Counsel is adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1; Koulloukian Dec., *supra*, at ¶¶ 12-20, 22.)

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. Joinder of all Class Members is impractical. Class treatment will permit many similarly-situation persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Also, because several Class Members are current employees, the fear of retaliation further support superiority of class-wide relief because that fear of retaliation often discourages victims 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 that 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) the 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;

1 and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,
2 all these elements are present here. Plaintiff requests that this Court grant Preliminary Approval.

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

4 California Rule of Court, No. 3.769(f), provides:

5 If the court has certified the action as a class action, notice of the final approval
6 hearing must be given to class members in the manner specified by the court.
7 The notice must contain an explanation of the proposed settlement and
8 procedures for class members to follow in filing written objections to it and in
9 arranging to appear at the settlement hearing and state any objections to the
10 proposed settlement.

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

15 **V. CONCLUSION**

16 Plaintiff respectfully submits the proposed Settlement is in the best interests of the Class,
17 as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines,
18 the proposed Settlement should be preliminarily approved by the Court, the Class should be
19 conditionally certified for purposes of settlement, and the Notice Packet should be approved.

20 Dated: January 6, 2022

JUSTICE LAW CORPORATION

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23 Douglas Han
24 *Attorneys for Plaintiff*
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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 mking@justicelawcorp.com

On January 7, 2022, 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: **Adejobi v. Nulaid Foods, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 801642-20**
Court Case No.: STK-CV-UOE-2020-0008625
San Joaquin 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 January 7, 2022, at Pasadena, California.



Madeline King