

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHANCELLOR NOBLES (SBN 330081)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiff

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

STEVEN JEFFERSON, individually, and on
behalf of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act (“PAGA”);

Plaintiff,

v.

MCCORMACK BARON MANAGEMENT,
INC., a Missouri corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CGC-20-588162

Honorable Ethan P. Schulman
Department 302

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
Representative (Steven Jefferson); Declaration
of Joan Graff; and [Proposed] Order filed
concurrently herewith]

Hearing Date: February 2, 2022
Hearing Time: 9:30 a.m.
Hearing Place: Department 302

Complaint Filed: December 4, 2020
FAC Filed: November 22, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 2, 2022 at 9:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Ethan P. Schulman in Department 302 of the San
3 Francisco County Superior Court (Civic Center Courthouse), located at 400 McAllister Street,
4 San Francisco, California 94102, Plaintiff Jefferson (“Plaintiff”) will and hereby moves for an
5 order:

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

- 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); the Declaration of Proposed Class Representative (Steven Jefferson); Declaration of Joan Graff; 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 4, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	9
II.	BACKGROUND	9
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action.....	11
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	11
ii.	The Settlement Was Reached Because of Arm's-length Negotiations.....	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery..	11
c.	Terms of the Proposed Settlement.....	12
i.	Deductions from the Settlement	12
ii.	Calculation of the Individual Settlement Shares to Class Members	12
iii.	Notice to the Class	13
iv.	Distribution of Funds.....	13
v.	Release of Claims	14
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	16
i.	The Settlement Amount of \$375,000 Is Fair and Reasonable.....	16
ii.	The PAGA Payment of \$20,000 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.	The 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 Class Members Complies with California Rules of Court, Rule 3.769(f)	23
V.	CONCLUSION	23

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
69 Cal. App. 5 th 521 (2021)	14
<i>Bartold v. Glendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	20
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	15
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979)	12
<i>Brinker Restaurant Corporation v. Superior Court,</i>	
53 Cal. 4 th 1024 (2012)	21
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	21
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	18
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2d Cir. 1974)	19
<i>Dunbar v. Albertson's Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	17
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	15, 22
<i>Espinoza v. Galardi South Enterprises Inc.,</i>	
Case No. 1:14-cv-21244 (S.D. Fla. 2016)	21
<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
169 Cal. App. 4 th 1524 (2008)	20

1	<i>Green v. Obledo,</i>	
2	29 Cal. 3d 126 (1981).....	15
3	<i>Harris v. Superior Court,</i>	
4	154 Cal. App. 4 th 164 (2007)	17
5	<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
6	89 Cal. App. 4 th 908 (2001)	20
7	<i>Hopson v. Hanesbrands Inc.,</i>	
8	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009).....	18
9	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
10	452 U.S. 905 (1981)	15
11	<i>Jones v. JGC Dallas LLC,</i>	
12	Case No. 3:11-cv-02743 (N.D. Tex. 2014)	21
13	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
14	168 Cal. App. 4 th 116 (2008).....	16
15	<i>Linder v. Thrifty Oil Co.,</i>	
16	23 Cal. 4 th 429 (2000).....	20
17	<i>Linney v. Cellular Alaska Partnership,</i>	
18	151 F. 3d 1234 (9 th Cir. 1998)	19
19	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
20	186 Cal. App. 4 th 399 (2010).....	16
21	<i>Nordstrom Com. Cases,</i>	
22	186 Cal. App. 4 th 576 (2010)	18
23	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
24	34 Cal. 4 th 319 (2004).....	17, 19, 20, 21
25	<i>In re Tableware Antitrust Litig.,</i>	
26	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	19
27	<i>Thurman v. Bayshore Transit Mgmt.</i>	
28	203 Cal. App. 4 th 1112 (2012).....	17

1	<i>Vasquez v. Superior Court,</i>	
2	4 Cal. 3d 800 (1971).....	15
3	<i>Walsh v. IKON Solutions, Inc.,</i>	
4	148 Cal. App. 4 th 1440 (2007).....	17
5	<u>Statutes</u>	
6	Business and Professions Code §§ 17200	16
7	Code of Civil Procedure § 382	19, 22
8	Code of Civil Procedure § 384	14
9	Federal Rule 23.....	15
10	Labor Code § 201	17
11	Labor Code § 202	17
12	Labor Code § 203	17
13	Labor Code § 226	17
14	Labor Code § 510	17
15	Labor Code § 512	17
16	Labor Code § 1194	17
17	Labor Code § 1197	17
18	Labor Code § 1198	17
19	Labor Code § 2800	17
20	Labor Code § 2802	17
21	California Rules of Court, Rule 3.769.....	15, 23

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$375,000 proposed wage
3 and hour class action settlement by Plaintiff on behalf of himself and any and all persons who
4 have been employed by Defendant McCormack Baron Management, Inc. (“Defendant”) as non-
5 exempt employees in California at any time from December 4, 2016 to September 15, 2021
6 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
7 Members confirmed by Defendants is estimated to be one hundred seventy (170). (Declaration
8 of Douglas Han (“Han Dec.”) ¶ 8.)

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 \$375,000 – with an average Individual Settlement Share estimated at
12 \$1,097.06¹ – is well within the “ballpark” of reasonableness.

13 **II. BACKGROUND**

14 Defendant is a property management company operating throughout California, a
15 division of McCormack Baron Salazar “the nation’s leading for-profit developer, manager and
16 asset manager of economically-integrated urban neighborhoods.” (Han Dec., *supra*, at ¶ 9.)

17 On September 24, 2020, Plaintiff, a former employee of Defendant, provided written
18 notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendant.
19 (Han Dec., *supra*, at ¶ 10.) After waiting the requisite sixty-five (65) days for the notice period to
20 expire, Plaintiff filed a representative PAGA action on December 4, 2020 in the Superior Court
21 of California, County of San Francisco. (*Id.* at p. 11.)

22 The Parties attended mediation on Plaintiff’s claims on September 15, 2021 and reach an
23 agreement on the settlement of the action pursuant to a mediator’s proposal under the auspices of
24 the mediator Anthony F. Pantoni. (Han Dec., *supra*, at ¶ 12.)

25 On November 22, 2021, Plaintiff filed a First Amended Complaint in the Superior Court
26 of California, County of San Francisco that added eight (8) wage-and-hour class action causes of
27 action under the Labor Code. (Han Dec., *supra*, at ¶ 13.)

28

¹ \$186,500 (Net Settlement Amount) / 170 (Class Members) = \$1,097.06.

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

5 **III. INVESTIGATION/ LITIGATION HISTORY**

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

7 After Plaintiff filed his lawsuit, both Parties engaged in discovery. (Han Dec., *supra*, at ¶
8 15.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
9 interrogatories, one (1) set of requests for admissions; and one (1) set of requests for production
10 of documents. (*Ibid.*) The Parties met and conferred regarding this discovery. (*Ibid.*)

11 Prior to mediation, the Parties conducted significant investigation and discovery of the
12 facts and law both before and after the Class Action was filed. (Han Dec., *supra*, at ¶ 16.)
13 Defendant produced hundreds of documents relating to its policies, practices, and procedures.
14 (*Ibid.*) As part of Defendant's production, Plaintiff also reviewed time records, pay records, and
15 information relating to the size and scope of the Class. (*Ibid.*) Plaintiff also interviewed Class
16 Members who worked for Defendant throughout the Class Period. (*Ibid.*)

17 Based upon Defendant's document production and interviews Class Counsel had with
18 non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant failed to
19 provide employees with legally mandated meal and rest breaks. (Han Dec., *supra*, at ¶ 18.)

20 Plaintiff also asserts – and Defendant denies – that Defendant failed to pay employees for
21 all hours worked. (Han Dec., *supra*, at ¶ 19.) This apparently extended to working off-the-clock,
22 Defendant having an improper rounding policy, and Defendant failing to factor non-discretionary
23 bonuses into employees' regular rates for overtime compensation and sick pay. (*Id.* at ¶¶ 20-21.)

24 Additionally, Plaintiff contends – and Defendant denies – that Defendant failed to
25 reimburse employees for incurring business expenses. (Han Dec., *supra*, at ¶ 22.)

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

28 Defendant has denied Plaintiff's contentions in their entirety. (Han Dec., *supra*, at ¶ 25.)

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

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

4 The Parties agreed to go to mediation with experienced wage-and-hour mediator,
5 Anthony F. Pantoni that took place on September 15, 2021. (Han Dec., *supra*, at ¶ 26.) During
6 the mediation, the Parties discussed the risks of continued litigation, certification, and the merits
7 of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the mediator, the
8 Parties were able to reach an agreement on a settlement of the Class Action via a mediator's
9 proposal, the terms of which were memorialized in a Settlement Agreement, that the Parties now
10 seek Preliminary Approval of in the instant motion. (*Ibid.*; Exhibit 2.)

11 **ii. The Settlement Was Reached Because of Arm's-length Negotiations**

12 The Settlement Agreement was reached because of arm's-length negotiations. (Han
13 Dec., *supra*, at ¶ 45.) Though cordial and professional, the settlement negotiations have always
14 been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel
15 conducted extensive arm's-length negotiations until an agreement was reached. (*Ibid.*)

16 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
17 expense and length of continued proceedings. (Han Dec., *supra*, at ¶ 46.) Plaintiff and Class
18 Counsel have also considered the uncertainty and risk of further litigation, the potential outcome,
19 and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel
20 have also conducted extensive settlement negotiations. (*Ibid.*) Based on the foregoing, Plaintiff
21 and Class Counsel believe the settlement set forth in the Settlement Agreement is fair, adequate,
22 and reasonable and is in the Class's best interest. (*Ibid.*)

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

24 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
25 before reaching the Settlement and engaged in sufficient investigation, research, and discovery to
26 support the Settlement. (Han Dec., *supra*, at ¶ 47.) The proposed settlement was only possible
27 following significant discovery and evaluation of Defendant's relevant policies and procedures,
28 as well as the data it produced for the Class. (*Ibid.*) This case has reached the stage where "the

Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement. (Han Dec., *supra*, at ¶ 47; *Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$375,000 (“Total Consideration”) which includes, subject to Court approval: (a) Attorney Fee Award in an amount not to exceed \$131,250 to Class Counsel; (b) Cost Award to Class Counsel for actual litigation costs not to exceed \$20,000; (c) Class Representative Enhancement Payment in the amount of \$10,000 to the Class Representative; (d) Administration Costs to Phoenix in the sum not to exceed \$7,250; and (e) PAGA Payment of \$20,000, seventy-five percent (75%) of which (\$15,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$5,000) shall be distributed to the Eligible Aggrieved Employees, on a pro rata basis. (Han Dec., *supra*, at ¶ 27.)

ii. Calculation of the Individual Settlement Shares to Class Members

After all Court-approved deductions from the Total Consideration, it is estimated that \$186,500 (“Net Settlement Amount”) will be distributed to Class Members – with an average Individual Settlement Share estimated at \$1,097.06. (Han Dec., *supra*, at ¶ 29.)

Individual Settlement Shares will be apportioned as follows: ten percent (10%) wages and ninety percent (90%) penalties and interests. (Han Dec., *supra*, at ¶ 30.)

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

(i) the number of weeks he or she worked during the Class Period based on the Class List provided by Defendant, divided by (ii) the total number of weeks worked 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.)

The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of pay periods employed

1 during the PAGA Timeframe. (Han Dec., *supra*, at ¶ 32.) This will be calculated by:

2 determining the total number of pay periods the Eligible Aggrieved Employees were
3 employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment
4 for each eligible aggrieved employee) and dividing that number into the \$5,000 amount
5 allocated to Eligible Aggrieved Employees to determine the monetary value assigned to
6 each pay period. That number will then be multiplied by the individual eligible aggrieved
employee's total number of pay periods employed during the PAGA Timeframe to
determine that individual's proportional share. (*Ibid.*)

7 **iii. Notice to the Class**

8 Within twenty-one (21) calendar days after entry of the Preliminary Approval Order,
9 Defendant shall deliver to Settlement Administrator the Class List. (Han Dec., *supra*, at ¶ 34.)
10 Within fourteen (14) calendar days after the receipt of the Class List from Defendant, the
11 Settlement Administrator shall mail the Notice Packet to the Class Members via first-class
12 regular U.S. Mail using the most current mailing address information available. (*Id.* at p. 35.)

13 **iv. Distribution of Funds**

14 No later than twenty-one (21) calendar days after the entry of the order granting final
15 approval of the Settlement, Defendant shall deposit the Total Consideration of \$375,000 needed
16 to pay the entire Total Consideration by wiring the funds to the Settlement Administrator. (Han
17 Dec., *supra*, at ¶ 36.) Defendant shall provide any tax information the Settlement Administrator
18 may need to calculate each Participating Class Member's Individual Settlement Share. (*Ibid.*)

19 Within fourteen (14) calendar days after the funding of the Settlement, the Settlement
20 Administrator shall calculate and pay all payments due under the Settlement Agreement,
21 including all Individual Settlement Shares, the Attorney Fee Award, the Cost Award, the Class
22 Representative Enhancement Payment, the PAGA Payment, and the Administration Costs. (Han
23 Dec., *supra*, at ¶ 37.)

24 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
25 their Settlement checks within one hundred eighty (180) calendar days after the checks are
26 mailed to them. (Han Dec., *supra*, at ¶ 38.) If any checks are not redeemed or deposited within
27 ninety (90) calendar days after mailing, the Settlement Administrator will send a reminder
28 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 amount of the Settlement checks to Legal Aid At Work (“LAAW”). The selection of LAAW as the cy pres recipient satisfies Code of Civil Procedures sections 384. (Han Dec., *supra*, at ¶¶ 39-40.)

v. Release of Claims

Upon Defendant’s fulfillment of its payment obligations under section III (J)(9)(a) of the Agreement, Participating Class Members release, promise never to assert in any forum, remise and forever discharge the Released Parties from the Released Claims during the Class Period (“Released Claims”). (Han Dec., *supra*, at ¶ 41; Exhibit 2, *supra*, at §§ I.GG. & 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, are precluded from pursuing any action for civil penalties under PAGA against the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in Plaintiff’s letter to the LWDA and the operative complaints. (Han Dec., *supra*, at ¶ 42; Exhibit 2, *supra*, at § III.L.)

Upon Defendant’s fulfillment of its payment obligations under section III (J)(9) in the Agreement, Plaintiff releases in exchange for the consideration provided for by the Agreement a comprehensive release of all known and unknown claims by Plaintiff, including a Civil Code section 1542 waiver arising out of the operative allegations in the case (“Comprehensive Release”). (Han Dec., *supra*, at ¶ 44; 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.*)

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

2 Both Parties' counsel are particularly experienced in wage-and-hour employment law and
3 class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel has significant experience
4 in litigating unpaid wages, non-compliant meal breaks, and non-compliant rest breaks class
5 actions. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further
6 litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

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.³
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
12 for preliminary approval of class settlements:

- 13 (a) A settlement or compromise of an entire class action, or a cause of action
14 in 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 in approving 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
23 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den.
24 *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

25 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
26 the Notice of Class Action Settlement has been provided to the Class and they have had an
27 opportunity to respond. This information will be provided to the Court in conjunction with the
28 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 **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
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is “the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Ibid.*)

8 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
9 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
10 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not
11 require an explicit statement of the maximum amount the class could recover if the plaintiff
12 prevailed on all his claims, provided there is a record that allows “an understanding of the
13 amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz,*
14 *supra*, 186 Cal.App.4th at p. 409.)

15 **i. The Settlement Amount of \$375,000 Is Fair and Reasonable**

16 The proposed Settlement was possible following significant discovery and evaluation of
17 Defendant’s relevant policies and procedures, as well as the data Defendant produced for the
18 putative class as referenced in Section III above, which permitted Class Counsel to engage in a
19 comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 47.)

20 This discovery informed Plaintiff’s central theories of liability, which are predicated on
21 Defendant alleged failed to properly calculate and pay overtime wages, failed to pay minimum
22 wages, failed to provide meal and rest breaks and pay applicable premiums, failed to pay wages
23 in a timely manner, failed to issue compliant wage statements, failed to reimburse business
24 expenses, violated PAGA, and violated Business & Professions Code sections 17200, *et seq.*
25 (Han Dec., *supra*, at ¶ 48.) Defendant has denied Plaintiff’s allegations. (*Id.* at p. 49.)

26 ///

27 ///

28 ///

1 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Dec., *supra*, at ¶ 50.) As the California Supreme Court
3 ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of
4 the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions
5 concerning certification of wage-and-hour claims.⁴ (*Ibid.*) While remaining confident in his
6 claims' strengths, these factors led Plaintiff to discount the calculations of potential damages.

7 **ii. The PAGA Payment of \$20,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a), 1194,
10 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 59.) Defendant asserted that, regardless of
11 the results of the underlying causes of action, PAGA penalties are not mandatory but permissive
12 and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments
13 against the underlying claims, it had a strong argument that it would be unjust to award
14 maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit*
15 *Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
16 Defendant argued that without stacking and limited to the initial violation, the PAGA penalties
17 would be limited to **\$6,500** (65 employees x \$100 initial violations) on the low end and **\$39,000**
18 (65 employees x \$100 x 6 theories of recovery) on the high end based on six (6) major theories
19 of recovery. (Han Dec., *supra*, at ¶¶ 60-63.)

20 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
21 (Han Dec., *supra*, at ¶ 64.) Many of the causes of action brought were duplicative of the statutory
22 claims such as violations of California Labor Code sections 201, 202, 203, 226(a), 226.7, 510,
23 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay
24 period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the

25 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing
26 decertification of class claiming misclassification and ordering summary adjudication in favor of
27 employees), review granted Nov. 28, 2007, 171 P.3d 545 (2007) (not cited as precedent, but
28 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).)

maximum penalties under the law. (Han Dec., *supra*, at ¶ 64.) Therefore, allocating \$20,000 to PAGA civil penalties was reasonable based on a rate of **\$9.20** per pay period [$\$20,000 \div 2,175$ Pay Periods in PAGA Date Range = **\$9.20**], given the fact that Defendant are also paying an additional \$355,000 in the class settlement.⁵ (*Ibid.*) Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁶ (*Ibid.*)

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 **\$1,157,229.82** on the low end and **\$1,299,900.43** on the high end. (Han Dec., *supra*, at ¶ 65.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$251,598.56	70%	60%	\$30,191.83
Meal Break Premiums	\$10,968.75	60%	50%	\$2,193.75
Overtime/Minimum Wage: Off-the-Clock	\$285,178.73 to \$427,849.34	50%	50%	\$71,294.68 to \$106,962.34
Overtime/Minimum Wage: Rounding	\$16,068.78	30%	40%	\$6,748.89
Overtime/Minimum Wage: Non-Discretionary Bonuses and Sick Leave Pay	\$5,249	40%	50%	\$1,574.70
Unreimbursed Business Expenses	\$90,500	30%	70%	\$19,005
Wage Statement Penalty	\$211,250	30%	40%	\$88,725
Waiting Time Penalty	\$286,416	30%	40%	\$120,294.72
MAXIMUM TOTAL EXPOSURE	\$1,157,229.82 to \$1,299,900.43⁷			\$340,028.57 to \$375,696.23⁸

⁵ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of \$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 \$70,000,000).)

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 ¶¶ 51-58.)

1 Based on this analysis, the realistic recovery for this case is **\$340,028.57** on the low end
2 and **\$375,696.23** on the high end. (Han Dec., *supra*, at ¶ 74.) The Total Consideration of
3 \$375,000 is approximately twenty-nine percent (28.85%) of the maximum potential exposure
4 and about one hundred percent (99.81%) of the maximum realistic exposure at trial, which is an
5 excellent settlement. (*Ibid.*)

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

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

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

25 ///

26 ///

27
28 ⁸ (Han Dec., *supra*, at ¶¶ 66-73.)

1 The proposed Class is ascertainable and numerous as to make it impracticable to join all
2 Class Members, and there are common questions of law and fact that predominate over any
3 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 75.) Plaintiff contends
4 that as an hourly-paid employee of Defendant, his claims are typical of the claims of the Class
5 Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)
6 Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would
7 create the risk of inconsistent or varying adjudications, and a class action is superior to other
8 available means for the fair and efficient adjudication of the case. (*Ibid.*)

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

10 “Ascertainability is required in order to give notice to putative class members as to whom
11 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
12 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
13 by describing a set of common characteristics sufficient to allow a member of that group to
14 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
15 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
16 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

17 The Class Action involves one hundred seventy (170) Class Members. (Han Dec., *supra*,
18 at ¶ 76.) Thus, the Class is sufficiently numerous.⁹ (*Ibid.*) Furthermore, all Class Members can
19 and will be identified by Defendant to the Settlement Administrator through a review of
20 Defendant’s employment records concerning hourly-paid and/or non-exempt employees
21 employed by Defendant within the State of California during the Class Period. (*Ibid.*)

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

23 The community of interest requirement “embodies three factors: (1) predominant
24 common questions of law or fact; (2) class representatives with claims or defenses typical of the
25 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drugs,*
26 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*

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

1 *mandate that class members have uniform or identical claims.” (Capitol People First v.*
2 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).)
3 Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to
4 assess whether that common behavior toward similarly situated plaintiffs renders class
5 certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The
6 application of each of these factors is discussed below.

7 **1. Common Issues Predominate**

8 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
9 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
10 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
11 other words, courts determine whether the elements necessary to establish liability are
12 susceptible to common proof, even if the class members must individually prove their damages.
13 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
14 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v.*
15 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving
16 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-
17 21244 (court certified class of dancers on state law claims).)

18 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
19 he alleged. (Han Dec., *supra*, at ¶ 77.) Plaintiff contends all hourly-paid and non-exempt
20 employees who worked for Defendant during the Class Period were subject to the same or
21 similar employment practices, policies, and procedures described above. (*Ibid.*)

22 **2. Plaintiff’s Claims Are Typical of the Class Claims**

23 Plaintiff was a non-exempt employee of Defendant. (Han Dec., *supra*, at ¶ 78;
24 Declaration of Steven Jefferson (“Jefferson Dec.”) ¶ 6.) Plaintiff alleges he and the Class
25 Members were employed by the same company and injured by Defendant’s common policies
26 and practices described above. (Han Dec., ¶ 78; Jefferson Dec., ¶¶ 13-16.) Thus, Plaintiff’s
27 claims arise from the same employment practices and are based on the same legal theories as
28 those applicable to the other Class Members. (Han Dec., ¶ 78; Jefferson Dec., ¶¶ 13-16.)

- 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

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 79; Jefferson Dec., *supra*, at ¶¶ 10-12, 17-18.) 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., ¶ 79; Jefferson Dec., ¶¶ 10-12, 17-18.) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of his work environment and requirements. (Han Dec., ¶ 79; Jefferson Dec., ¶¶ 10-12, 17-18.) Plaintiff also does not have any interest adverse to the interest of other Class Members. (Han Dec., ¶ 79; Jefferson Dec., ¶¶ 10-12, 17-18.) The proposed Class Counsel is also adequate. (Han Dec., ¶¶ 2-7; Exhibit 1.)

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 members of the proposed class is impractical and that 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. Moreover, because several Class Members are current employees, Plaintiff believes the fear of retaliation further support superiority of class-wide relief because that fear of retaliation often discourages victims from seeking legal redress while currently employed by the same employer.

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; and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,

all these elements are present here.

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

California Rule of Court, rule 3.769(f), provides:

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

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

V. CONCLUSION

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

Dated: January 4, 2022

JUSTICE LAW CORPORATION



Douglas Han
Attorneys for Plaintiff

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

On January 5, 2022, I served the foregoing document described as

for the following case: **Jefferson v. McCormack Baron Management, Inc.**
 LWDA/Court Case No.: **LWDA Case No.: CM- 807646-20**
Court Case No.: CGC-20-588162
San Francisco County Superior Court

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

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.

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

[Handwritten signature]

PROOF OF SERVICE