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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JIMMY ARROYO, individually, on
behalf of other members of the general
public similarly situated, and on behalf of
aggrieved employees pursuant to the
Private Attorneys General Act of 2004
("PAGA");

Plaintiff,

v.

BENTLEY MILLS, INC., a Delaware
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20PSCV00789

Assigned for All Purposes to:
Honorable Thomas C. Falls
Department R

CLASS ACTION

**NAMED 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**

[Reservation ID: 228138512258]

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

Hearing Date: April 18, 2022
Hearing Time: 10:00 a.m.
Hearing Place: Department R

Complaint Filed: November 13, 2020
FAC Filed: November 10, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 18, 2022, at 10:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Thomas C. Falls in Department R of the Los Angeles County
3 Superior Court, located at the Pomona Courthouse, 350 West Mission Blvd, Pomona, California
4 91766, Plaintiff Arroyo (“Plaintiff”) will and hereby move 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 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 2**
8 to the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, the allocations for payments under the
10 California Labor Code Private Attorneys General Act of 2004 (“PAGA”), the
11 Attorney Fee Award, the Cost Award, the Class Representative Enhancement
12 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 as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as **Exhibit A** to the Agreement;
- 18 • Approving the Election Not to Participate In (“Opt Out” Form) Class Action
19 Settlement (“Exclusion Form”) attached as **Exhibit B** to the Agreement;
- 20 • Directing the mailing of the proposed Class Notice and Exclusion Form
21 (collectively, known as “Notice Packet”) with a postage-paid return envelope to
22 the proposed Class;
- 23 • Approving the proposed deadlines for the notice and settlement administration
24 process;
- 25 • Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the
26 Settlement Administrator; and

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

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); the Declaration of the Proposed Class Representative (Jimmy Arroyo); 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: March 22, 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.....	10
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	10
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..	11
c.	Terms of the Proposed Settlement.....	11
i.	Deductions from the Settlement	11
ii.	Calculation of the Class Members' Individual Settlement Shares	12
iii.	Notice to the Class	12
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	16
i.	The Settlement Amount of \$750,000 Is Fair and Reasonable.....	16
ii.	The PAGA Payment 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.	The Class Members Share a Well-defined Community of Interest.....	20
1.	Common Issues Predominate	20
2.	Plaintiff's Claims Are Typical of the Class Claims	21

3.	Plaintiff Is Adequate to Represent the Class	21
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)	22
V.	CONCLUSION	23

TABLE OF AUTHORITIES

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Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal.App.4th 12117

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(2021) 69 Cal.App.5th 52114

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(1996) 48 Cal.App.4th 179415, 22

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Ghazaryan v. Diva Limousine, Ltd.

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1	<i>Green v. Obledo</i>	
2	(1981) 29 Cal.3d 126	15
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4	(2007) 154 Cal.App.4th 164	17
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6	(2001) 89 Cal.App.4th 908	20
7	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
8	(1981) 452 U.S. 905	15
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11	185042.....	21
12	<i>Kullar v. Foot Locker Retail, Inc.</i>	
13	(2008) 168 Cal.App.4th 116	16
14	<i>Linder v. Thrifty Oil Co.</i>	
15	(2000) 23 Cal.4th 429	20
16	<i>Linney v. Cellular Alaska Partnership</i>	
17	(9th Cir. 1998) F.3d 1234	19
18	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
19	(2010) 186 Cal.App.4th 399	16
20	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
21	(2004) 34 Cal.4th 319	17, 19, 20
22	<i>In re Tableware Antitrust Litig.</i>	
23	(N.D.Cal. 2007) 484 F.Supp.2d 1059	19
24	<i>Thurman v. Bayshore Transit Mgmt.</i>	
25	(2012) 203 Cal.App.4th 1112	17
26	<i>Vasquez v. Superior Court</i>	
27	(1971) 4 Cal.3d 800	15
28	///	

Walsh v. IKON Solutions, Inc.

(2007) 148 Cal.App.4th 144017

Statutes

Code of Civil Procedure § 38219, 22

Code of Civil Procedure § 877.616

Federal Rule 23.....15

Labor Code § 20117, 18

Labor Code § 20217, 18

Labor Code § 20317, 18

Labor Code § 20417

Labor Code § 22617, 18

Labor Code § 226.717, 18

Labor Code § 51017, 18

Labor Code § 512(a).....17, 18

Labor Code § 117417

Labor Code § 119417, 18

Labor Code § 119717, 18

Labor Code § 1197.117

Labor Code § 119817, 18

Labor Code § 280017, 18

Labor Code § 280217, 18

Rule 3.769.....15

Rule 3.769(f).....22

Rule 3.769(g).....15

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$750,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and any and all persons who
4 worked at Bentley Mills, Inc. (“Defendant”) (whether hired directly or engaged through a staffing
5 agency) as non-exempt employees in California at any time from September 8, 2019 to December
6 31, 2021 (“Class,” “Class Member,” and “Class Period”). At the time of this filing, the number of
7 Class Members confirmed by Defendant is currently estimated to be four hundred seventy-one
8 (471). (Declaration of Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval of
9 Class Action Settlement (“Han Dec.”), ¶¶ 8-9.)

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
11 vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this proposed
12 settlement of \$750,000 is well within the range of reasonableness. Class Counsel and Plaintiff are
13 convinced that the proposed Settlement is in the best interests of the Class Members based on the
14 negotiations and a detailed knowledge of the issues present in this action.

15 **II. BACKGROUND**

16 10. On September 8, 2020, former plaintiff Briana Guzman provided written notice to
17 the California Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Dec.,
18 *supra*, at ¶ 10.) Briana Guzman filed a representative Private Attorneys General Act of 2004
19 (“PAGA”) on November 13, 2020, in the Superior Court of California, County of Los Angeles.
20 (*Ibid.*) On February 9, 2021, Plaintiff provided written notice to the LWDA and Defendant. (*Ibid.*)

21 11. The Parties attended mediation on Briana Guzman’s and Plaintiff’s claims on
22 August 31, 2021. (Han Dec., *supra*, at ¶ 11.) Under the auspices of the mediator Honorable Judge
23 Carl West, the Parties were able to reach an agreement on the settlement of the action. (*Ibid.*)

24 In line with the settlement, Briana Guzman filed a First Amended Complaint on November
25 10, 2021 in the Superior Court of California, County of Los Angeles, that replaced Briana Guzman
26 with Plaintiff and added eight (8) wage-and-hour class action causes of action. (Han Dec., *supra*,
27 at ¶ 12.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Prior to mediation, the Parties conducted significant investigation and discovery of the facts
4 and law both before and after this case was originally filed by Briana Guzman. (Han Dec., *supra*,
5 at ¶ 14.) Specifically, Defendant produced documents relating to its policies, practices, and
6 procedures. (*Ibid.*) As part of Defendant’s production, Plaintiff also reviewed time records, pay
7 records, and information relating to the size and scope of the Class. (*Ibid.*) Plaintiff also
8 interviewed Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

9 Based upon the above-described investigation and evaluation, Plaintiff contends – and
10 Defendant denies – that Defendant: (a) failed to provide employees with legally mandated rest and
11 meal breaks; (b) failed to pay employees for all hours worked; (c) maintained a rounding practice
12 that consistently resulted in underpayment of wages; (d) failed to reimburse employees for
13 necessary business expenses; and (e) is liable for issuing noncompliant wage statements and for
14 waiting time penalties. (Han Dec., *supra*, at ¶¶ 16-22.) Defendant denies Plaintiff’s contentions
15 in their entirety. (*Id.* at ¶ 23.)

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

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

19 The Parties agreed to go to mediation with experienced wage-and-hour mediator,
20 Honorable Judge Carl West that took place on August 31, 2021. (Han Dec., *supra*, at ¶ 24.) During
21 the mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
22 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the
23 mediator, the Parties were able to reach an agreement on a settlement of this case, the terms of
24 which were memorialized in a Settlement Agreement that the Parties now seek Preliminary
25 Approval of in the instant motion. (*Ibid.*)

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

2 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Dec.,
3 *supra*, at ¶ 39.) Though cordial and professional, the settlement negotiations have always been
4 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
5 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
7 and length of continued proceedings necessary to continue the litigation against Defendant. (Han
8 Dec., *supra*, at ¶ 40.) Plaintiff and Class Counsel have also considered the inherent uncertainty and
9 risk of further litigation, the potential outcome, and the difficulties and delays of such litigation.
10 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
11 adequate, and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

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

13 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
14 Plaintiff’s claims and Defendant’s defenses before reaching the Settlement and engaged in
15 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
16 41.) The Settlement was only possible following significant investigation and evaluation of
17 Defendant’s relevant policies and procedures, as well as the data Defendant produced for the
18 putative class. (*Ibid.*) Furthermore, this case has also reached the stage where “the Parties certainly
19 have a clear view of the strengths and weaknesses of their cases” sufficient to support the
20 Settlement’s reasonableness, adequacy, and fairness. (*Id.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979)
21 485 F.Supp. 610, 617.)

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

23 **i. Deductions from the Settlement**

24 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
25 action be settled and compromised for the non-reversionary total sum of \$750,000 (“Gross
26 Settlement Amount”) which includes, subject to Court approval: (a) the Attorney Fee Award to
27 Class Counsel in an amount not to exceed \$262,500; (b) the Cost Award to Class Counsel in an
28 amount not to exceed \$20,000 for reimbursement of litigation costs and expenses; (c) the Class

Representative Enhancement Payment in the amount of \$10,000 to Plaintiff; (d) Administration Costs to Phoenix, the Settlement Administrator, in an amount not to exceed \$10,000; and (e) the PAGA Payment of \$50,000, seventy-five percent (75%) of which (\$37,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to Eligible Aggrieved Employees on a pro rata basis. (Han Dec., *supra*, at ¶ 25.)

ii. Calculation of the Class Members' Individual Settlement Shares

If the Court approves all proposed deductions from the Gross Settlement Amount, it is estimated that \$397,500 ("Net Settlement Amount") will be distributed to Class Members – with an average gross Individual Settlement Share estimated at \$843.95.¹ (Han Dec., *supra*, at ¶ 27.)

Each Participating Class Member's Individual Settlement Share is calculated as follows:

(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 ¶ 28.)

The portion of the PAGA Payment that is to be paid to each Eligible Aggrieved Employee shall be calculated as followed:

determining the total number of pay periods the Eligible Aggrieved Employees were employed during the PAGA Timeframe (*i.e.*, the sum of all pay periods of employment for each Eligible Aggrieved Employee) and dividing that number into the \$12,500 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 employed during the PAGA Timeframe to determine that individual's proportional share. (Han Dec., *supra*, at ¶ 29.)

iii. Notice to the Class

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver to the Settlement Administrator the Class List. (Han Dec., *supra*, at ¶ 30.) Within fourteen (14) calendar days after the receipt of the Class List from Defendant, the Settlement Administrator will mail the Notice Packet to the Class Members via first-class regular

¹ \$397,500 (Net Settlement Amount) / 471 (Class Members) = \$843.95.

U.S. Mail. (Han Dec., *supra*, at ¶ 31.) Class Members and Eligible Aggrieved Employees are not required to submit claim forms to receive their share of the settlement payments. (*Ibid.*)

iv. Distribution of Funds

If there are no objections to the Settlement, no later than thirty (30) calendar days after both the entry of the order granting final approval of the Settlement and the Judgment in the case, Defendant shall deposit the Gross Settlement Amount of \$750,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. (Han Dec., *supra*, at ¶ 32.) If there are objections to the Settlement, then no later than thirty (30) calendar days after either: (i) the expiration of the appellate period without an appeal; or (ii) a decision affirming the Settlement without material modification that has been remitted back to the trial court, Defendant shall deposit the Gross Settlement Amount of \$750,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator. (*Ibid.*) Within fourteen (14) calendar days after the deadline to fund the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement Agreement. (*Id.* at ¶ 33.)

Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share checks or their checks for the PAGA Payment to Eligible Aggrieved Employees within one hundred eighty (180) calendar days after the checks are mailed by the Settlement Administrator to them. (Han Dec., *supra*, at ¶ 34.) 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 Individual Settlement Share to the California Controller's Unclaimed Property Fund in the name of the Participating Class Member and Eligible Aggrieved Employee. (*Ibid.*)

v. Release of Claims

Upon Defendant's fulfillment of its payment obligations under section III (K)(9)(a) of the Agreement, Class Members, who do not submit a timely and valid request for exclusion, waive, 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 ¶

35; Exhibit 2, *supra*, at §§ I.GG and III.L.)

Upon Defendant’s fulfillment of its payment obligations under section III (K)(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 PAGA, Labor Code sections 2698, *et seq.*, against the Released Parties based on or arising out of alleged violations of Labor Code sections alleged in Brianna Guzman’s letter to the LWDA, Plaintiff’s letter to the LWDA and the operative complaints (“PAGA Release of Claims”). (Han Dec., *supra*, at ¶ 36; Exhibit 2, *supra*, at § III.M.)

Upon Defendant’s fulfillment of its payment obligations under section III (K)(9)(a) of the Agreement, and in exchange for the Class Representative Enhancement Payment to the Plaintiff in an amount not to exceed \$10,000, in recognition of his work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiff provides a general release of claims for himself and his respective spouse, heirs, successors and assigns. (Han Dec., *supra*, at ¶ 38; Exhibit 2, *supra*, at § III.N.)

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 scopes of the releases in this case are acceptable because they are limited to the scope of the allegations in the Complaint. 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

Counsel for both Parties are particularly experienced in wage-and-hour employment law and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel has significant experience in litigating unpaid wages and noncompliant meal and rest break class actions. (*Ibid.*) 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, the settlement versus trial on a

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

4 **IV. ARGUMENT**

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

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

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

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

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24 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
25 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
26 had an opportunity to respond. This information will be provided to the Court in conjunction with
27 the Motion for Final Approval of Class Action Settlement. *Dunk v. Ford Motor Co.* (1996) 48
28 Cal.App.4th 1794, 1801.

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

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

19 **i. The Settlement Amount of \$750,000 Is Fair and Reasonable**

20 The proposed Settlement was only possible following significant investigation and
21 evaluation of Defendant’s relevant policies and procedures, as well as the data Defendant produced
22 for the putative class, as referenced in Section III above, which permitted Class Counsel to engage
23 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 41.)

24 This discovery resulted in Plaintiff’s central theories of liability. (Han Dec., *supra*, at ¶
25 42.) These theories of liability are predicated on Plaintiff’s claims that Defendant: (a) failed to pay
26 overtime wages; (b) failed to provide meal and rest breaks and pay applicable premiums; (c) failed
27 to pay minimum wages; (d) failed to pay final wages in a timely manner; (e) failed to issue
28 compliant wage statements; (f) failed to reimburse business expenses; (g) violated PAGA; and (h)

1 violated the Business & Professions Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 42.)
2 Defendant denies Plaintiff's theories of liability and asserted several defenses. (*Id.* at ¶ 43.)

3 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
4 to certification are always present. (Han Dec., *supra*, at ¶ 44.) As the California Supreme Court
5 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
6 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
7 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
8 (*Id.*) While confident in the strength of their claims, these factors led Plaintiff to discount
9 calculations of potential damages.

10 **ii. The PAGA Payment of \$50,000 Is Reasonable**

11 The provisions of the Labor Code potentially triggering PAGA penalties in this case
12 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512(a),
13 1174, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 53.) Defendant asserts
14 that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
15 but permissive and discretionary. (*Ibid.*) Defendant also maintains that, in addition to its strong
16 arguments against the underlying claims, it had a strong argument that it would be unjust to award
17 maximum PAGA penalties given the law's unsettled state. (*Id.*; *Thurman v. Bayshore Transit*
18 *Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Thus,
19 Defendant argued that without stacking and limited to the initial violation, the PAGA penalties
20 would be limited to **\$47,100** (471 employees x \$100 initial violations) on the low end and **\$282,600**
21 (471 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec., *supra*, at ¶¶ 54-57.)

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

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 58.) Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Therefore, allocating \$50,000 to PAGA civil penalties was reasonable based on a rate of **\$3.46** per pay period [$\$50,000 \div 14,466$ pay periods in PAGA date range = **\$3.46**], given the fact that Defendant is also paying an additional \$700,000 in the class settlement. (*Ibid.*)

Considering Defendant's defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$750,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be discretionary, for the reasons stated above, the total estimated potential exposure, assuming certification and prevailing at trial, would be **\$3,927,666.72** on the low end and **\$4,263,852.12** on the high end. (Han Dec., *supra*, at ¶ 59.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$647,822.88	70%	60%	\$77,738.75
Meal Break Premiums	\$17,347.80	60%	50%	\$3,469.56
Overtime/Minimum Wage: Off-the-Clock	\$672,370.80 to \$1,008,556.20	50%	50%	\$168,092.70 to \$252,139.05
Overtime/Minimum Wage: Rounding	\$154,209.24	30%	40%	\$64,767.88
Unreimbursed Business Expenses	\$306,150	30%	70%	\$64,291.50
Wage Statement Penalty	\$1,436,550	50%	50%	\$359,137.50
Waiting Time Penalty	\$693,216	50%	50%	\$173,304
MAXIMUM TOTAL EXPOSURE	\$3,927,666.72 to \$4,263,852.12⁵			\$910,801.89 to \$994,848.24⁶

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⁵ (Han Dec., *supra*, at ¶¶ 45-52.)

⁶ (*Id.* at ¶¶ 60-66.)

1 Based on this analysis, the realistic recovery for this case is about **\$910,801.89** on the low
2 end and **\$994,848.24** on the high end. (Han Dec., *supra*, at ¶ 67.) The Gross Settlement Amount
3 of \$750,000 is approximately sixteen percent (15.92%) of the maximum potential exposure and
4 about sixty-eight percent (67.77%) of the maximum realistic exposure at trial. (*Ibid.*)

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

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

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

23 The proposed Class is ascertainable and numerous as to make it impracticable to join all
24 Class Members, and there are common questions of law and fact that predominate over any
25 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 68.) Plaintiff’s claims
26 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
27 interests of the Class. (*Ibid.*) The prosecution of separate actions by individual Class Members
28 would create the risk of inconsistent or varying adjudications. (*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 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 four hundred seventy-one (471) Class Members, which was confirmed
10 by Defendant. (Han Dec., *supra*, at ¶ 69.) Thus, the Class is sufficiently numerous. (*Id.*;
11 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a
12 proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

13 **ii. The 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 **1. Common Issues Predominate**

24 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
25 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
26 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
27 other words, courts determine whether the elements necessary to establish liability are susceptible
28 to common proof, even if the class members must individually prove their damages. (*Brinker*

1 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
2 regularly granted class certification when the plaintiff can present evidence of common policies.
3 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
4 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
5 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
6 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

7 Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged
8 by Plaintiff. (Han Dec., *supra*, at ¶ 70; Declaration of Jimmy Arroyo Re Adequacy In Support of
9 Motion for Preliminary Approval of Class Action Settlement (“Arroyo Dec.”), ¶¶ 2-8, 12-16.)
10 Plaintiff contends all Class Members were subject to the same or similar employment practices,
11 policies, and procedures described in detail above. (Han Dec., *supra*, at ¶ 70; Arroyo Decl., *supra*,
12 at ¶¶ 2-8, 12-16.)

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

14 Typical claims rely on legal theories and facts that are substantially like those of other class
15 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of
16 Defendant and alleges he and the Class Members were employed by the same company and injured
17 by Defendant’s common policies and practices related to the claims described above. (Han Dec.,
18 *supra*, at ¶ 71; Arroyo Decl., *supra*, at ¶¶ 2-8, 12-16.) Plaintiff seeks relief for these claims and
19 derivative claims on behalf of all Class Members. (Han Dec., *supra*, at ¶ 71; Arroyo Decl., *supra*,
20 at ¶¶ 2-8, 12-16.) Thus, Plaintiff’s claims arise from the same employment practices and are based
21 on the same legal theories as those applicable to the Class. (Han Dec., *supra*, at ¶ 71; Arroyo
22 Decl., *supra*, at ¶¶ 2-8, 12-16.)

23 **3. Plaintiff Is Adequate to Represent the Class**

24 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 72;
25 Arroyo Decl., *supra*, at ¶¶ 9-11, 17-19.) Plaintiff has conducted himself diligently and responsibly
26 in representing the Class in this litigation, understands his fiduciary obligations, and has actively
27 participated in the prosecution of this case. (Han Dec., *supra*, at ¶ 72; Arroyo Decl., *supra*, at ¶¶
28 9-11, 17-19.) Plaintiff has spent time in meetings and conferences with Class Counsel to provide

1 Class Counsel with a complete understanding of his work environment and requirements. (Han
2 Dec., *supra*, at ¶ 72; Arroyo Decl., *supra*, at ¶¶ 9-11, 17-19.) Furthermore, Plaintiff also has no
3 interests averse to the interests of the other Class Members. (Han Dec., *supra*, at ¶ 72; Arroyo
4 Decl., *supra*, at ¶¶ 9-11, 17-19.)

5 **4. Class Action Is Superior for Fair and Efficient Adjudication**

6 A class action is superior to other available means for the fair and efficient adjudication of
7 this controversy. Plaintiff contends the joinder of all Class Members is impractical, and that class
8 treatment will permit many similarly situated persons to prosecute their common claims for
9 settlement purposes simultaneously in a single forum without the duplication of effort and expense
10 that numerous individual actions would necessitate. Additionally, due to several Class Members
11 being current employees, Plaintiff believes fear of retaliation further supports the superiority of
12 class-wide relief—as this fear often discourages current employees from seeking legal redress.

13 **e. The Settlement Is Fair, Reasonable, and Adequate**

14 In deciding to approve a proposed class action settlement under Code of Civil Procedure
15 section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk*,
16 48 Cal.App.4th at 1801.) A proposed settlement is presumed when: (1) the parties reached
17 settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow
18 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
19 percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present in this case.

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

21 California Rules of Court, rule 3.769(f), provides:

22 If the court has certified the action as a class action, notice of the final approval
23 hearing must be given to class members in the manner specified by the court. The
24 notice must contain an explanation of the proposed settlement and procedures for
25 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.

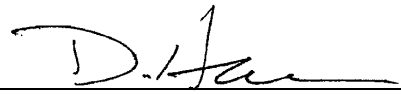
26 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
27 advises Class Members of their right to participate in the Settlement; how to object to or request
28 exclusion from the Settlement; and the date, time, and location of the Final Approval hearing.

1 **V. CONCLUSION**

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

6
7 Dated: March 22, 2022

JUSTICE LAW CORPORATION

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10 Douglas Han
11 *Attorneys for Plaintiff*
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Make a Reservation

BRIANNA GUZMAN, INDIVIDUALLY, AND ON BEHALF OF AGGRIEVED EMPLOYEES
PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT ("PAGA") vs BENTLEY MILLS, INC., A
DELAWARE CORPORATION;

Case Number: 20PSCV00789 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2020-11-13 Location: Pomona Courthouse South - Department R

Reservation

Case Name:

BRIANNA GUZMAN, INDIVIDUALLY, AND ON BEHALF
OF AGGRIEVED EMPLOYEES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT ("PAGA") vs
BENTLEY MILLS, INC., A DELAWARE CORPORATION;

Case Number:

20PSCV00789

Type:

Motion re: (Motion for Preliminary Approval of Class
Action Settlement)

Status:

RESERVED

Filing Party:

Brianna Guzman, individually, and on behalf of aggrieved
employees pursuant to the Private Attorneys General
Act ("PAGA") (Plaintiff)

Location:

Pomona Courthouse South - Department R

Date/Time:

04/18/2022 10:00 AM

Number of Motions:

1

Reservation ID:

228138512258

Confirmation Code:

CR-SSYQE999DH62TIDA4

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount:

\$61.65

Type:

Visa

Account Number:

XXXX7323

24

Authorization:

00729G

Chat

 Print Receipt

 [Reserve Another Hearing](#)

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PROOF OF SERVICE
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On March 22, 2022, I served the foregoing document described as

NAMED 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: **Guzman v. Bentley Mills, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-805423-20**
Court Case No.: 20PSCV00789
Los Angeles 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 March 22, 2022, at Pasadena, California.



Mariah Anderson