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

VICTOR ACOSTA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

TROJAN BATTERY COMPANY, LLC, a
Delaware limited liability company; TROJAN
BATTERY HOLDINGS, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 21STCV02804

Assigned for All Purposes to:
Honorable William F. Highberger
Department 10

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA 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 (Victor Acosta); Declaration of
Defense Counsel (Kara A. Cole); Declaration
of Mara Williams; Declaration of Julie Green;
and [Proposed] Order filed concurrently
herewith]

Hearing Date: June 21, 2023
Hearing Time: 2:00 p.m.
Hearing Place: Department 10

Complaint Filed: January 25, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 21, 2023 at 2:00 p.m., or as soon as the matter
2 may be heard, before the Honorable William F. Highberger in Department 10 of the Los Angeles
3 County Superior Court (Spring Street Courthouse) located at 312 North Spring Street Los Angeles,
4 California 90012, Plaintiff Victor Acosta (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Class Action and PAGA Settlement Agreement and Class Notice
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to
8 the declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action and PAGA Settlement and
14 Hearing Date for Final Approval (“Class Notice”) attached as **Exhibit A** to the
15 Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the proposed deadlines for the settlement administration process;
- 19 • Approving CPT Group, Inc. as the Administrator; and
- 20 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
21 Agreement, at which time the Court will also consider whether to grant Final
22 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
23 Litigation Expenses Payment, Class Representative Service Payment, and
24 Administration Expenses Payment, and approval of the allocation of the Private
25 Attorney General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declaration of Proposed Class
3 Representative (Victor Acosta); Declaration of Defense Counsel (Kara A. Cole); Declaration of
4 Mara Williams; Declaration of Julie Green; [Proposed] Order filed concurrently with this motion;
5 pleadings and other records on file with the Court in this matter; and such documentary evidence
6 and oral argument as may be presented at the hearing on this motion.

7
8 Dated: May 11, 2023

JUSTICE LAW CORPORATION

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10 By: 
11 Douglas Han
12 *Attorneys for Plaintiff*
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TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
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 Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	12
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	Release of Claims	13
d.	Counsel for Both Parties Are Experienced in Similar Litigation	14
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review.....	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	15
i.	The Settlement Amount of \$2,750,000 Is Fair and Reasonable	16
ii.	The PAGA Penalties of \$75,000 Are Reasonable	17
c.	Discount Analysis Justifies the Settlement.....	18
d.	Conditional Certification of the Class Is Appropriate	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	20
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	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 the Class Complies with California Rules of Court, Rule 3.769(f).....	22
V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	15
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1024	20
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	20
<i>City of Detroit v. Grinnell Corporation</i>	
(2d Cir. 1974) 495 F.2d 448.....	18
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	17
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	22
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	21
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	20

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

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

<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	15
<i>Walsh v. IKON Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17

<u>Rules</u>	
--------------	--

California Rules of Court, Rule 3.769	15
California Rules of Court, Rule 3.769 (f)	22
California Rules of Court, Rule 3.769 (g).....	15
Federal Rule 23	15

<u>Statutes</u>	
-----------------	--

Business & Professions Code § 17200	16
Code of Civil Procedure § 382.....	19, 22
Code of Civil Procedure § 877.6.....	16
Labor Code § 201.....	17
Labor Code § 202.....	17
Labor Code § 203.....	17
Labor Code § 204.....	17
Labor Code § 218.5.....	17
Labor Code § 221.....	17
Labor Code § 226.3.....	17

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

Labor Code § 226.7.....	17
Labor Code § 226 (a)	17
Labor Code § 510.....	17
Labor Code § 512 (a)	17

1	Labor Code § 558.....	17
2	Labor Code § 1174 (d).....	17
3	Labor Code § 1194.....	17
4	Labor Code § 1197.....	17
5	Labor Code § 1197.1.....	17
6	Labor Code § 1198.....	17
7	Labor Code § 2800.....	17
8	Labor Code § 2802.....	17

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$2,750,000 proposed wage-
3 and-hour class action and PAGA settlement by Plaintiff on behalf of himself and all current and
4 former hourly-paid or non-exempt employees of Defendant Trojan Battery Company, LLC
5 (“Defendant”) within the State of California at any time during the period from July 28, 2016 to
6 December 31, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the
7 number of Class Members is estimated to be nine hundred seventy-seven (977), which was
8 confirmed by Defendant. (Declaration of Douglas Han In Support of Plaintiff’s Motion for
9 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

10 **II. BACKGROUND**

11 On October 16, 2020, Plaintiff, a former employee of Defendant, provided written notice
12 to the Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*,
13 at ¶ 9; Exhibit 3.)

14 On January 25, 2021, Plaintiff filed a wage-and-hour class action lawsuit against Defendant
15 and Trojan Battery Holdings, LLC in the Superior Court of California, County of Los Angeles,
16 alleging nine (9) causes of action. (Han Decl., *supra*, at ¶ 10; Exhibit 4.) On April 30, 2021, the
17 Court granted the Parties’ stipulation to remove Trojan Battery Holdings, LLC as a named
18 defendant without prejudice. (*Ibid.*)

19 After engaging in extensive discovery, investigations, and negotiations, the Parties
20 remotely attended mediation with the mediator Tripper Ortman on September 23, 2022. (Han
21 Decl., *supra*, at ¶ 11.) Under the auspices of the mediator after a full day of mediation, the Parties
22 reached a settlement. (*Ibid.*)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

25 Plaintiff and Defendant propounded form interrogatories, special interrogatories, requests
26 for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 13.) The Parties
27 responded to the formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to
28 engage in an informal exchange of information and then eventually attended mediation. (*Ibid.*)

1 Prior to the mediation, Defendant produced several documents relating to its policies,
2 practices, and procedures. (Han Decl., *supra*, at ¶ 14.) As part of Defendant’s production, Plaintiff
3 also reviewed time records, pay records, and information relating to the size and scope of the Class.
4 (*Ibid.*) Several putative class members were also interviewed to attain a better understanding of
5 the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

6 Based on the information provided by Defendant and interviews with putative class
7 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
8 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
9 failed to include non-discretionary bonuses and incentives in employees’ regular rate of pay for
10 purposes of overtime compensation and premium wages; (4) failed to reimburse employees for
11 necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for
12 waiting time penalties. (Han Decl., *supra*, at ¶¶ 16-23.)

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

14 **i. The Parties Attended Mediation Which Led to the Settlement**

15 The Parties attended mediation with an experienced mediator on September 23, 2022. (Han
16 Decl., *supra*, at ¶ 24.) Under the auspices of the mediator, the Parties reached a settlement, the
17 terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 24; Exhibits 2, 5.)

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

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

23 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
24 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
25 *supra*, at ¶ 28.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
26 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
27 on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
28 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

2 The Parties investigated and evaluated the strengths and weaknesses of the Parties’ claims
3 and defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 29.) The Settlement was only possible following significant
5 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
6 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
7 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
8 of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han
9 Decl., *supra*, at ¶ 29; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

11 **i. Deductions from the Settlement**

12 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
13 for the non-reversionary total sum of \$2,750,000 (“Gross Settlement Amount”) which includes:
14 (1) Class Counsel Fees Payment not to exceed \$962,500 (35% of the Gross Settlement Amount);
15 (2) Class Counsel Litigation Expenses Payment not to exceed \$20,000; (3) Class Representative
16 Service Payment not to exceed \$10,000; (4) Administration Expenses Payment not to exceed
17 \$13,000; and (5) PAGA Penalties not to exceed \$75,000. (Han Decl., *supra*, at ¶ 25.)

18 **ii. Calculating Settlement Payments**

19 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
20 \$1,669,500 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
21 *average* Individual Class Payment estimated at \$1,708.80. (Han Decl., *supra*, at ¶ 26.)

22 Participating Class Members will receive a proportionate share of the Net Settlement
23 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
24 Exhibit 2, *supra*, at § 3.2.4.) Individual Class Payments will be allocated twenty percent (20%) to
25 the settlement of wages claims and eighty percent (80%) to the settlement of claims for interests
26 and penalties. (*Id.* at § 3.2.4.1.)

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1 In addition, the PAGA Penalties that are paid to each Aggrieved Employee shall be
2 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
3 Exhibit 2, *supra*, at § 3.2.5.1.) Aggrieved Employees' portion of the PAGA Penalties will be
4 allocated as one hundred percent (100%) penalties. (*Id.* at § 3.2.5.2.)

5 **iii. Notice to the Class**

6 Not later than fifteen (15) days after the Court grants Preliminary Approval of the
7 Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 24;
8 Exhibit 2, *supra*, at § 4.2.) No later than fourteen (14) days after receiving the Class Data, the
9 Administrator will send to all Class Members identified in the Class Data, via first-class United
10 States Postal Service mail, the Class Notice with a Spanish translation. (*Id.* at § 7.4.2.)

11 **iv. Distribution of Funds**

12 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
13 in the Settlement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ 4.3. 4.4.) Uncashed settlement
14 checks will be paid to the California Controller's Unclaimed Property Fund. (*Id.* at § 4.4.3.)

15 **v. Release of Claims**

16 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
17 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
18 Participating Class Members, on behalf of themselves and their respective former and present
19 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
20 Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 5.2.)

21 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
22 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
23 Non- Participating Class Members who are Aggrieved Employees are deemed to release, on behalf
24 of themselves and their respective former and present representatives, agents, attorneys, heirs,
25 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
26 (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 5.3.)

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Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 5.1.)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

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

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1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.¹
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

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

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

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

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

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28 ¹ The California Supreme Court has also authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

10 **i. The Settlement Amount of \$2,750,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the additional information and the
13 data Defendant produced for the Class, as referenced in Section III above, permitting Class
14 Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl.,
15 *supra*, at ¶ 29.)

16 The claims are predicated on the purported: (1) failure to properly calculate and pay
17 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
18 consistently and properly pay applicable premium wages and/or failure to pay applicable
19 premiums at the correct rate of pay; (4) failure to timely pay wages; (5) failure to issue compliant
20 wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8)
21 violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 30.)
22 Defendant vehemently denies the theories of liability and any and all damages. (*Id.* at ¶ 31.)

23 While Plaintiff believes the case is suitable for certification, which Defendant denies,
24 uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 32.) As the
25 California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
26 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions
27 following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of
28

wage-and-hour claims.² (Han Decl., *supra*, at ¶ 32.) As a result, Plaintiff’s calculations for potential damages were discounted.

ii. The PAGA Penalties of \$75,000 Are Reasonable

According to Plaintiff, the provisions of the Labor Code potentially triggering PAGA penalties in this case include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 41.) Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a strong argument it would be unjust to award maximum PAGA penalties given the law’s current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 41; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Based on Defendant’s arguments, and without stacking and limited to the initial violation, PAGA penalties would be limited to at least **\$72,200** (722 employees x \$100 penalty for initial violation) (or lower) on the low end and **\$433,200** (722 employees x \$100 penalty for initial violation x 6 theories of recovery) on the higher end. (Han Decl., *supra*, at ¶¶ 42-44.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 45.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$75,000 to PAGA civil penalties was reasonable given the fact Defendant is also paying an additional \$2,675,000 in the class settlement. (*Ibid.*) When 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 reasonable.³ (*Ibid.*)

² (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, (2007) 171 P.3d 545 [not cited as precedent, but rather for 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].)

³ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,

Considering Defendant’s defenses, supporting evidence, and its position that the case is not suitable for class treatment nor manageable on any representative class or PAGA basis, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, Plaintiff calculated the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$13,179,412.93** on the low end and around **\$14,561,479.48** on the high end. (Han Decl., *supra*, at ¶ 46.)

Category	Plaintiff’s Potential Exposure Assessment	Certification Risk	Merits Risk	Plaintiff’s Realistic Exposure Assessment
Rest Break Premiums	\$3,490,137.99	70%	60%	\$418,816.56
Meal Break Premiums	\$33,368.40	60%	50%	\$6,673.68
Overtime/Minimum Wage: Off-the-Clock Work	\$2,764,133.10 to \$4,146,199.65	50%	50%	\$691,033.28 to \$1,036,549.91
Overtime/Minimum Wage: Regular Rate	\$819,429.44	30%	40%	\$344,160.37
Unreimbursed Business Expenses	\$782,140	20%	70%	\$187,713.60
Wage Statement Penalty	\$2,418,700	50%	50%	\$604,675
Waiting Time Penalty	\$2,871,504	50%	50%	\$717,876
MAXIMUM TOTAL EXPOSURE	\$13,179,412.93 to \$14,561,479.48⁴			\$2,970,948.49 to \$3,316,465.12⁵

Thus, Plaintiff assesses, and Defendant disputes, that his realistic recovery for this case is **\$2,970,948.49** on the low end and **\$3,316,465.12** on the high end. (Han Decl., *supra*, at ¶ 54.) The Gross Settlement Amount is about nineteen percent (18.89%) of the maximum potential exposure and around eighty-three percent (82.92%) of the maximum realistic exposure at trial, which is an

579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

⁴ (Han Decl., *supra*, at ¶¶ 33-40.)

⁵ (*Id.* at ¶¶ 47-53.)

1 excellent settlement. (Han Decl., *supra*, at ¶ 54.)

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

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

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

19 Plaintiff contends – and Defendant denies – the Class is ascertainable and numerous as to
20 make it impracticable to join all Class Members, and there are common questions of law and fact
21 that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*,
22 at ¶ 55.) Plaintiff contends the claims are typical of the claims of the Class, and Class Counsel will
23 fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff asserts the prosecution of
24 separate actions by individual Class Members would create the risk of inconsistent or varying
25 adjudications. (*Ibid.*)

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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 Plaintiff contends this case involves approximately nine hundred seventy-seven (977)
10 Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 56;
11 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed
12 class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

23 **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 alleged common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 57.) Plaintiff contends – and Defendant denies – all Class Members
9 were subject to the same or similar employment practices, policies, and procedures described in
10 detail above. (*Ibid.*)

11 **2. Plaintiff's Claims Are Typical of the Class Claims**

12 Typical claims rely on legal theories and facts that are substantially like those of other class
13 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

14 Plaintiff is a former hourly-paid, non-exempt employee of Defendant and alleges he and Class
15 Members were employed by the same company and were injured by the common policies and
16 practices related to the claims described above. (Han Decl., *supra*, at ¶ 58; Declaration of Victor
17 Acosta Re Adequacy In Support of Motion for Preliminary Approval (“Acosta Decl.”), ¶¶ 2-8, 12-
18 15.) Defendant disputes all these allegations. Nonetheless, Plaintiff seeks relief for these claims
19 and derivative claims on behalf of all Class Members. (Han Decl., *supra*, at ¶ 58; Acosta Decl.,
20 *supra*, at ¶¶ 2-8, 12-15.) Thus, Plaintiff contends the claims arise from the same employment
21 practices and are based on the same legal theories applicable to the Class. (Han Decl., *supra*, at ¶
22 58; Acosta Decl., *supra*, at ¶¶ 2-8, 12-15.)

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

24 Plaintiff contends he has proven to be an adequate class representative. (Han Decl., *supra*,
25 at ¶ 59; Acosta Decl., *supra*, at ¶¶ 9-11, 16-21.) Plaintiff contends he has conducted himself
26 diligently and responsibly in representing the Class in this litigation, understands the fiduciary
27 obligations, and contends he has actively participated in the prosecution of this case. (Han Decl.,
28 *supra*, at ¶ 59; Acosta Decl., *supra*, at ¶¶ 9-11, 16-21.) Plaintiff spent time in meetings and

1 conferences with Class Counsel to provide them with a complete understanding of the work
2 experience and environment. (Han Decl., *supra*, at ¶ 59; Acosta Decl., *supra*, at ¶¶ 9-11, 16-21.)
3 Plaintiff contends he has no interest averse to the interests of the other Class Members. (Han Decl.,
4 *supra*, at ¶ 59; Acosta Decl., *supra*, at ¶¶ 9-11, 16-21.)

5 **4. Class Action Is Superior for the Fair and Efficient Adjudication**
6 **of this Controversy**

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

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

15 In deciding whether to approve a proposed class action settlement under Code of Civil
16 Procedure section 382, the Court must find a proposed settlement is “fair, adequate and
17 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
18 settlement is presumed fair under the following circumstances: (1) parties reached settlement after
19 arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
20 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
21 objectors is small. (*Id.* at p. 1802.)

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

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

24 If the court has certified the action as a class action, notice of the final approval hearing
25 must be given to class members in the manner specified by the court. The notice must
26 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.

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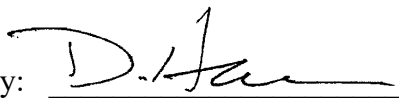
1 The Class Notice meets all these requirements. The Class Notice advises Class Members
2 of their right to participate in the Settlement, how and when to object to or opt-out of the
3 Settlement, and date, time, and location of the Final Approval Hearing.

4 **V. CONCLUSION**

5 Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class
6 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
7 should be conditionally certified for settlement purposes, and Class Notice should be approved.

8
9 Dated: May 11, 2023

JUSTICE LAW CORPORATION

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11 By: 
12 Douglas Han
13 *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 manderson@justicelawcorp.com

On May 11, 2023, I served the foregoing document described as

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA 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: **Acosta v. Trojan Battery Company, LLC, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-809854-20**
Court Case No.: 21STCV02804
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 May 11, 2023, at Pasadena, California.



Mariah Anderson