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

CARLOS MARROQUIN, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

PACIFIC SPICE COMPANY, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 20STCV03659

Assigned for All Purposes to:
Honorable Amy D. Hogue
Department 7

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 (Carlos Marroquin); Declaration
of Eric Springer; and [Proposed] Order filed
concurrently herewith]

Hearing Date: September 1, 2022
Hearing Time: 11:00 a.m.
Hearing Place: Department 7

Complaint Filed: January 29, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 1, 2022, at 11:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Amy D. Hogue in Department 7 of the Los Angeles County
3 Superior Court, located at 312 North Spring Street, Los Angeles, California 90012 (Spring Street
4 Courthouse), Plaintiff Carlos Marroquin (“Plaintiff”) will and hereby moves for an order:

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

27 ///

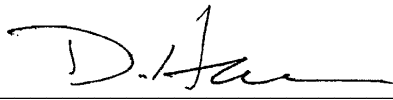
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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, and 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 the Proposed Class Representative (Carlos Marroquin); 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: May 27, 2022

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$850,000.00 proposed
3 wage-and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all
4 individuals who have previously been or currently are employed by Pacific Spice Company, Inc.
5 (“Defendant”) as hourly or non-exempt employees in the State of California at any time during
6 the Class Period, whether directly or through a staffing agency (“Class” and “Class Members”).
7 The Class Period is the time period from August 3, 2016, to January 11, 2022 (“Class Period”).
8 At the time of this filing, the number of Class Members provided by Defendant is estimated to be
9 eight hundred thirty-two (832).

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
11 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
12 proposed settlement of \$850,000.00 – with an average Individual Settlement Share currently
13 estimated to be between \$574.53 and \$569.91 – is well within the range of reasonableness. Class
14 Counsel is convinced that the proposed Settlement is in the best interests of the Class Members
15 based on the negotiations and a detailed knowledge of the issues present in this action.

16 **II. BACKGROUND**

17 On November 23, 2020, Plaintiff, a former hourly-paid, non-exempt employee of
18 Defendant, provided written notice to the California Labor and Workforce Development Agency
19 (“LWDA”) and Defendant of the specific provisions of the Labor Code he contends Defendant
20 violated and the theories supporting his contentions. (Declaration of Douglas Han (“Han Dec.”),
21 ¶ 10.)

22 On January 29, 2021, after the requisite sixty-five (65) day notice period for the Private
23 Attorneys General Act of 2004 (“PAGA”) expired, Plaintiff filed a wage-and-hour class action
24 lawsuit against Defendant in the Superior Court of California, County of Los Angeles, entitled
25 *Marroquin v. Pacific Spice Company, Inc.*, Case Number 21STCV03659. (Han Dec., *supra*, at ¶
26 11.) Specifically, Plaintiff alleged nine (9) causes of action for violation of various sections of the
27 California Labor Code, including Labor Code section 2698, *et seq.* (PAGA), and California
28 Business & Professions Code. (*Ibid.*)

1 Plaintiff and Defendant (the “Parties”) attended mediation on Plaintiff’s claims with
2 mediator Jeffrey A. Ross on January 11, 2022. (Han Dec., *supra*, at ¶ 12.) With the help of the
3 mediator, the Parties were able to reach an agreement on settlement of the action. (*Ibid.*)

4 **III. INVESTIGATION/ LITIGATION HISTORY**

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

6 After Plaintiff filed his wage-and-hour class action lawsuit, the Parties met and conferred
7 and agreed to engage in an informal exchange of information and attend mediation. (Han Dec.,
8 *supra*, at ¶ 14.)

9 Prior to the mediation on January 11, 2022, the Parties conducted significant investigation
10 and discovery of the relevant facts and law. (Han Dec., *supra*, at ¶ 15.) Specifically, Defendant
11 produced employee handbooks, evidencing its wage-and-hour policies, practices, and procedures,
12 a random sampling of time and pay records, and information and data relating to the size and
13 scope of the Class and permitting Plaintiff to understand the number of workweeks and pay
14 periods in the Class Period and PAGA Period, respectively. (*Ibid.*) Class Counsel also interviewed
15 Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

16 Based upon the information provided by Defendant and interviews Class Counsel had
17 with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant: (a)
18 failed to provide employees with legally mandated rest and meal breaks; (b) failed to pay
19 employees for all hours worked; (c) failed to reimburse employees for necessary business
20 expenses; (d) issued noncompliant wage statements; and (e) is liable for waiting time penalties.
21 (Han Dec., *supra*, at ¶¶ 17-22.)

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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 During the Parties' mediation on January 11, 2022, the Parties discussed the risks of
5 continued litigation, the likelihood of certification, and the merits of the Parties' claims and
6 defenses versus the benefits of settlement. (Han Dec., *supra*, at ¶ 24.) With the assistance of the
7 mediator, the Parties were able to reach an agreement on settlement, the terms of which were
8 memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval of.
9 (*Ibid.*; Exhibit 2.)

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

11 The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
12 *supra*, at ¶ 42.) Though cordial and professional, the settlement negotiations have always been
13 adversarial and non-collusive in nature. (*Ibid.*) At the mediation on January 11, 2022, both Parties'
14 counsel conducted extensive arm's-length settlement negotiations. (*Ibid.*) As a result, an
15 agreement was ultimately reached by all Parties. (*Ibid.*)

16 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
17 and length of additional proceedings necessary to continue the litigation against Defendant. (Han
18 Dec., *supra*, at ¶ 43.) Plaintiff and Class Counsel have also considered the uncertainty and risk of
19 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
20 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
21 adequate, and reasonable settlement, and is in the Class Members' best interests. (*Ibid.*)

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 of Plaintiff's claims and Defendant's defenses before reaching the Settlement and engaged in
4 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
5 44.) The Settlement was only possible following significant investigation and evaluation of
6 Defendant's relevant policies and procedures and the data Defendant produced for the putative
7 class. (*Ibid.*) Furthermore, this case has also reached the stage where "the Parties certainly have
8 a clear view of the strengths and weaknesses of their cases" sufficient to support the
9 reasonableness, adequacy, and fairness of the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal.
10 1979) 485 F.Supp. 610, 617.)

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

12 **i. Deductions from the Settlement**

13 The Parties have agreed (subject to and contingent upon the Court's approval) that this
14 action be settled and compromised for the non-reversionary total sum of \$850,000.00 ("Gross
15 Settlement Amount"), which includes, subject to Court approval: (a) the Attorney Fee Award to
16 Class Counsel in an amount not to exceed \$283,333.33 (one-third (1/3) of the Gross Settlement
17 Amount); (b) the Cost Award to Class Counsel in an amount currently estimated at \$17,665.53,
18 but not to exceed \$20,000.00, for reimbursement of litigation costs and expenses;¹ (c) the Class
19 Representative Enhancement Payment to Plaintiff in the amount of \$10,000.00 for his service as
20 the Class Representative; (d) Administration Costs to Simpluris, the Settlement Administrator, in
21 an amount currently estimated at \$10,995.00, but not to exceed \$12,500.00; and (e) the PAGA
22 Payment of \$50,000.00, seventy-five percent (75%) of which (\$37,500.00) will be paid to the
23 LWDA and twenty-five percent (25%) of which (\$12,500.00) will be distributed to the Eligible

24 _____
25 ¹ The final amount of actual litigation costs will be provided to the Court in conjunction
26 with Plaintiff's motion for final approval. (Han Dec., *supra*, at ¶ 26.) At that time, Plaintiff will
27 ask the Court to approve the amount of these costs. (*Ibid.*) If Plaintiff's actual litigation costs
28 exceed \$20,000.00, Plaintiff will only seek reimbursement in the amount of \$20,000.00. (*Ibid.*) If
the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee
Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and
be available for distribution to all Class Members who do not submit valid and timely requests to
exclude themselves from this Settlement ("Participating Class Members"). (*Ibid.*)

Aggrieved Employees on a pro-rata basis. (Han Dec., *supra*, at ¶ 25.)

**ii. Calculation of the Class Members' Individual Settlement Shares and
the Eligible Aggrieved Employees' Individual PAGA Payments**

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that between \$478,006.14 and \$474,166.67 ("Net Settlement Amount") will be distributed to Class Members – with an average gross Individual Settlement Share estimated to be between \$574.53 and \$569.91.² (Han Dec., *supra*, at ¶ 27.)

Each Participating Class Member's Individual Settlement Share will be apportioned as twenty percent (20%) wages, forty percent (40%) interest, and forty percent (40%) penalties. (Han Dec., *supra*, at ¶ 28.) The Settlement Administrator will calculate and withhold the amount of the Participating Class Members' portion of normal payroll withholding taxes out of the portion of each Participating Class Member's Individual Settlement Share apportioned to wages. (*Ibid.*) The Settlement Administrator will also calculate the amount of Defendant's portion of payroll withholding taxes. (*Ibid.*) The Settlement Administrator will submit the calculation of the amount of Defendant's portion of payroll withholding taxes to Defendant for additional funding and will forward that amount along with each Participating Class Member's Individual Settlement Share withholdings to the appropriate taxing authorities. (*Ibid.*) Defendant will pay its portion of payroll withholding taxes at the same time Defendant funds the entire Gross Settlement Amount in accordance with the terms of the Settlement Agreement. (*Ibid.*)

Each Eligible Aggrieved Employee's Individual PAGA Payment will be apportioned as one hundred percent (100%) penalties and shall be subject to all authorized and required withholdings other than the tax withholdings customarily made from employees' wages and shall be reported by IRS 1099 Forms. (Han Dec., *supra*, at ¶ 31.) Eligible Aggrieved Employees will be responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments and will be solely responsible for any penalties or other obligations resulting from their personal tax reporting of Individual PAGA Payments. (*Ibid.*)

² \$478,006.14 (Net Settlement Amount) / 832 (Class Members) = \$574.53; \$474,166.67 (Net Settlement Amount) / 832 (Class Members) = \$569.91.

1 The Settlement Administrator will pay each Participating Class Member the Participating
2 Class Member's pro-rata share of the Net Settlement Amount. (Han Dec., *supra*, at ¶ 29.) Each
3 Participating Class Member's Individual Settlement Share will be calculated according to the
4 formula listed in the Settlement Agreement. (*Ibid.*)

5 The Settlement Administrator will also pay each Eligible Aggrieved Employee the
6 Eligible Aggrieved Employee's pro-rata share of the PAGA Payment. (Han Dec., *supra*, at ¶ 30.)
7 Each Eligible Aggrieved Employee's Individual PAGA Payment will be calculated according to
8 the formula listed in the Settlement Agreement. (*Ibid.*)

9 **iii. Notice to the Class**

10 Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant
11 shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 33.) Within
12 fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement
13 Administrator, the Settlement Administrator will mail the Notice Packets, in both English and
14 Spanish, to all identified Class Members via first-class regular U.S. mail. (*Id.* at ¶ 34.) Class
15 Members and Eligible Aggrieved Employees are not required to submit a claim form to receive
16 their Individual Settlement Shares and Individual PAGA Payments. (*Ibid.*)

17 **iv. Distribution of Funds**

18 Defendant shall \$850,000.00 needed to pay the entire Gross Settlement Amount, as well
19 as Defendant's share of employer-side payroll taxes, by wiring the funds to the Settlement
20 Administrator by the later of the following: (i) January 11, 2023; (ii) fourteen (14) calendar days
21 after the date the Final Approval of the Settlement can no longer be appealed; or, (iii) if there are
22 no objectors and no plaintiff in intervention at the time the Court grants Final Approval of the
23 Settlement, fourteen (14) calendar days after the date the Court enters judgment granting Final
24 Approval of the Settlement. (Han Dec., *supra*, at ¶ 35.) Within fourteen (14) calendar days after
25 the Settlement Administrator receives the entire Gross Settlement Amount, the Settlement
26 Administrator shall calculate and disburse all payments due under the Settlement Agreement. (*Id.*
27 at ¶ 36.)

28 ///

1 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
2 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
3 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 37.) If any
4 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
5 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or
6 not deposited by the expiration of the 90-day period after mailing the reminder notice, the
7 Settlement Administrator will, within two hundred (200) calendar days after the checks are
8 initially mailed, pay the amount of the Individual Settlement Share or Individual PAGA Payment
9 (as applicable) to the California State Controller’s Unclaimed Property Division in accordance
10 with California Unclaimed Property Law so that the Participating Class Member and/or Eligible
11 Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA
12 Payment available to him or her per the applicable claim procedure to request that money from
13 the State of California. (*Ibid.*)

14 **v. Release of Claims**

15 As of the Effective Final Settlement Date, in exchange for the consideration set forth in
16 the Settlement Agreement, Plaintiff and the Participating Class Members release the Released
17 Parties from the Released Claims for the Class Period (“Released Claims”). (Han Dec., *supra*, at
18 ¶ 38; Exhibit 2, *supra*, at §§ I (Q), I (KK), I (LL), III (J).)

19 As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved
20 Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators,
21 representatives, attorneys, successors and assigns, are hereby voluntarily and knowingly barred
22 from bringing any action for the PAGA Released Claims during the PAGA Period (“PAGA
23 Released Claims”). (Han Dec., *supra*, at ¶ 39; Exhibit 2, *supra*, at §§ I (Q), I (FF), III (K).) The
24 release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved
25 Employee submits a timely and valid request for exclusion. (Han Dec., at ¶ 39.)

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1 As of the Effective Final Settlement Date, in exchange for the Class Representative
2 Enhancement Payment in an amount not to exceed \$10,000.00, and in recognition of his work
3 and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of
4 costs in the event this matter had not successfully resolved, Plaintiff provides a general release of
5 claims for himself and any respective spouse, heirs, successors, and assigns. (Han Dec., *supra*, at
6 ¶ 40; Exhibit 2, *supra*, at § III (L).)

7 The Released Parties include Defendant and all staffing agencies used by Pacific Spice
8 Company, Inc. throughout the Class Period, including Kamran Staffing, Inc., Affluent Staffing,
9 LLC, Randstad Staffing, Opportunity Staffing, and Simplified Staffing (“Released Parties”). (Han
10 Dec., *supra*, at ¶ 41; Exhibit 2, *supra*, at § I (LL).)

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

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

21 Counsel for both Parties are particularly experienced in wage-and-hour employment law
22 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
23 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
24 qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial,
25 and the viability of the defenses. (*Ibid.*) Class Counsel’s experience also guided their
26 determination to endorse the proposed Settlement.³ (*Ibid.*)

27
28 ³ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the
number of objectors – is not determinable until the Notice has been provided to the Class

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.⁴
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 ...

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

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

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

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

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26 Members, and they have had an opportunity to respond. This information will be provided to the
27 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

28 ⁴ 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, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

1 for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar*, at p. 129;
2 see also *Munoz*, at p. 409.)

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

13 **i. The Settlement Amount of \$850,000 Is Fair and Reasonable**

14 The proposed Settlement was only possible following significant investigation and
15 evaluation of Defendant’s relevant policies and procedures and the data Defendant produced for
16 the putative class, as referenced in Section III above, which permitted Class Counsel to engage in
17 a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 44.)

18 This investigation and evaluation informed Plaintiff’s central theories of liability. (Han
19 Dec., *supra*, at ¶ 45.) Plaintiff’s claims are predicated on Defendant’s alleged: (a) failure to pay
20 overtime wages; (b) failure to provide compliant rest and meal breaks and pay applicable
21 premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
22 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor
23 Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code section
24 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiff’s theories of liability. (*Id.* at ¶ 46.)

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1 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Dec., *supra*, at ¶ 47.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour
6 claims.⁵ (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

7 **ii. The PAGA Payment of \$50,000 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, 203, 204, 218.5, 221, 226(a), 226.3,
10 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*,
11 at ¶ 56.) Defendant asserts that, regardless of the results of the underlying causes of action, PAGA
12 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains
13 that, in addition to its strong arguments against the underlying claims, it had a strong argument
14 that it would be unjust to award maximum PAGA penalties given the law's current unsettled state.
15 (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by
16 30% under this authority].) Defendant argued that without stacking and limited to the initial
17 violation, the PAGA penalties would be limited to **\$25,800.00** (258 employees x \$100 initial
18 violations) on the low end and **\$154,800.00** (258 employees x \$100 x 6 theories of recovery) on
19 the high end. (Han Dec., at ¶ 59.)

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25 ⁵ (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].)

1 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
2 (Han Decl., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the statutory
3 claims such as violations of Labor Code sections 201, 202, 203, 204, 218.5, 226.3, 226.7, 510,
4 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000.00 to PAGA
5 civil penalties was reasonable based on a rate of **\$9.81** per pay period [$\$50,000.00 \div 5,096$ pay
6 periods in PAGA date range = **\$9.81**], given the fact that Defendant is also paying an additional
7 \$800,000.00 in the Settlement.⁶ (*Ibid.*) When PAGA penalties are negotiated in good faith and
8 “there is no indication that [the] amount was the result of self-interest at the expense of other
9 Class Members,” such amounts are generally considered reasonable.⁷ (*Ibid.*)

10 Considering Defendant’s defenses, its supporting evidence, and its position that the case
11 is not suitable for class treatment, the settlement of \$850,000.00 is reasonable, adequate, and fair.

12 **c. Discount Analysis Justifies the Settlement**

13 Excluding the civil penalties, which could be discretionary, for the reasons stated, the total
14 estimated potential exposure, assuming certification and prevailing at trial, would be about
15 **\$4,411,777.92** on the low end and **\$4,572,982.32** on the high end. (Han Dec., *supra*, at ¶ 62.)

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24 ⁶ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
25 \$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].)

26 ⁷ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
28 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$242,716.24	60%	50%	\$48,543.25
Meal Break Premiums	\$252,538.39	50%	40%	\$75,761.52
Overtime/Minimum Wage: Off-the-Clock Work	\$322,216.89 to \$483,421.29	50%	50%	\$80,554.22 to \$120,855.32
Unreimbursed Business Expenses	\$93,184.00	30%	70%	\$19,568.64
Wage Statement Penalty	\$503,100.00	50%	60%	\$100,620.00
Waiting Time Penalty	\$2,998,022.40	50%	60%	\$599,604.48
MAXIMUM TOTAL EXPOSURE	\$4,411,777.92 to \$4,572,982.32⁸			\$924,652.11 to \$964,953.21⁹

Based on this analysis, the realistic recovery for this case is **\$924,652.11** on the low end and **\$964,953.21** on the high end. (Han Dec., *supra*, at ¶ 69.) The Gross Settlement Amount of \$850,000.00 is approximately nineteen percent (18.59%) of the maximum potential exposure and approximately eighty-eight percent (88.09%) of the maximum realistic exposure at trial. (*Ibid.*)

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

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⁸ (Han Dec., *supra*, at ¶¶ 51-55.)

⁹ (*Id.* at ¶¶ 63-68.)

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

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

8 The proposed Class is ascertainable and numerous as to make it impracticable to join all
9 Class Members, and there are common questions of law and fact that predominate over any
10 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 70.) Plaintiff contends
11 that as former hourly-paid, non-exempt employees of Defendant, his claims are typical of the
12 claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class.
13 (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate actions by individual Class Members
14 would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

16 “Ascertainability is required in order to give notice to putative class members as to whom
17 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
18 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
19 by describing a set of common characteristics sufficient to allow a member of that group to
20 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
21 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
22 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

23 This case involves approximately eight hundred thirty-two (832) Class Members. (Han
24 Dec., *supra*, at ¶ 71.) Thus, the Class is sufficiently numerous. (*Ibid.*)

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

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

12 **1. Common Issues Predominate**

13 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
14 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
15 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
16 other words, courts determine whether the elements necessary to establish liability are susceptible
17 to common proof, even if the class members must individually prove their damages. (*Brinker*
18 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
19 regularly granted class certification when the plaintiff can present evidence of common policies.
20 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
21 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
22 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
23 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

24 Plaintiff asserts common issues of fact and law predominate as to each of the claims
25 alleged. (Han Dec., *supra*, at ¶ 72.) Plaintiff contends all Class Members were subject to the same
26 or similar employment practices, policies, and procedures, described in detail above. (*Ibid.*)

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Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of Defendant and alleges he and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to the claims described above. (Hanson Dec., *supra*, at ¶ 73.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 74.) He 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. (*Ibid.*) 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. (*Ibid.*) Further, Plaintiff has no interest that is averse to the interests of the other Class Members. (*Ibid.*)

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

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

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

2 In deciding whether to approve a proposed class action settlement under Code of Civil
3 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
4 reasonable.” (*Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1801.) A proposed class action
5 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
6 after arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel
7 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
8 percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

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

11 If the court has certified the action as a class action, notice of the final approval
12 hearing must be given to class members in the manner specified by the court. The
13 notice must contain an explanation of the proposed settlement and procedures for
14 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.

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

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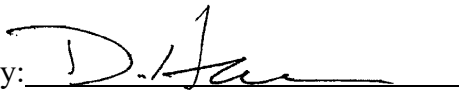
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1 **V. CONCLUSION**

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: May 27, 2022

JUSTICE LAW CORPORATION

8
9 By: 
10 Douglas Han
11 Shunt Tatavos-Gharajeh
12 Chancellor Nobles
13 *Attorneys for Plaintiff*
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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 27, 2022, I served the foregoing document described as

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

for the following case: **Marroquin v. Pacific Spice Company, Inc.**
 LWDA/Court Case No.: **LWDA Case No.: CM-813403-20**
Court Case No.: 21STCV03659
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 27, 2022, at Pasadena, California.

Maint Andauer

Mariah Anderson