

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

CAMERON CONTRERAS, 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 (“PAGA”);

Plaintiff,

v.

ELECTRONIC ARTS INC., a Delaware
corporation; PRO UNLIMITED, INC., a
New York corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 21-CIV-00458

Assigned for All Purposes to:
Honorable V. Raymond Swope
Department 23

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); and [Proposed] Order filed
concurrently herewith]

Hearing Date: October 24, 2022
Hearing Time: 3:00 p.m.
Hearing Place: Department 23

Complaint Filed: January 28, 2021
FAC Filed: February 23, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 24, 2022 at 3:00 p.m., or as soon as the matter
2 may be heard, before the Honorable V. Raymond Swope in Department 23 of the San Mateo
3 County Superior Court, located at 400 County Center, Redwood City, California 94063, Plaintiff
4 Cameron Contreras (“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’ Settlement Agreement, attached as **Exhibit 2**
7 to the declaration of Douglas Han, including, and not limited to, the means of
8 allocation and distribution of funds, the allocations for payments under the Labor
9 Code Private Attorneys General Act of 2004 (“PAGA”), Class Counsel Attorneys’
10 Fees, Litigation Costs, Incentive Award, and Administrative Costs;
- 11 • Conditionally certifying the proposed Class for settlement purposes only;
- 12 • Appointing Plaintiff as the Class Representative;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the proposed Notice of Class Action Settlement (“Notice”) attached as
15 **Exhibit 1** to the Proposed Order concurrently filed herewith;
- 16 • Approving the Exclusion or Opt-Out Request Form (“Request for Exclusion
17 Form”) attached as **Exhibit 2** to the Proposed Order concurrently filed herewith;
- 18 • Directing the mailing of the proposed Notice and Request for Exclusion Form
19 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
20 to the proposed Settlement Class;
- 21 • Approving the deadlines for the notice and settlement administration process;
- 22 • Approving Simpluris, Inc. (“Simpluris”) as Settlement Administrator; and
- 23 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
24 Agreement, at which time the Court will also consider whether to grant Final
25 Approval of the requests for the Class Counsel Attorneys’ Fees, Litigation Costs,
26 Incentive Award, Administrative Costs, and PAGA Payment.

27 ///

28 ///

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

6 Dated: August 26, 2022

JUSTICE LAW CORPORATION

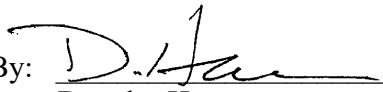
7
8 By: 
9 Douglas Han
Attorneys for Plaintiff
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 Leading to the Settlement	11
ii.	The Settlement Agreement Was Reached as a Result of Arm’s-length Negotiations	11
iii.	The Settlement Agreement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement Agreement	12
i.	Deductions from the Settlement Agreement.....	12
ii.	Calculation of the Settlement Payments	12
iii.	Notice to the Settlement 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	14
a.	Class Action Settlements Are Subject to Court Review	14
b.	The Proposed Settlement Agreement Is a Reasonable Compromise of Claims ..	15
i.	The Settlement Amount of \$250,000 Is Fair and Reasonable	16
ii.	The PAGA Payment of \$25,000 Is Reasonable.....	17
c.	Discount Analysis Justifies the Settlement Agreement	18
d.	Conditional Certification of the Settlement Class Is Appropriate	19
i.	The Proposed Settlement Class Is Ascertainable and Sufficiently Numerous.....	19

1	ii.	The Settlement Class Members Share a Well-defined Community of	
2		Interest.....	20
3	1.	Common Issues Predominate.....	20
4	2.	Plaintiff’s Claims Are Typical of the Class Claims.....	21
5	3.	Plaintiff Is Adequate to Represent the Settlement Class	21
6	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
7		this Controversy	21
8	e.	The Settlement Agreement Is Fair, Reasonable, and Adequate.....	22
9	f.	Notice to Settlement Class Members Complies with California Rules of	
10		Court, Rule 3.769(f).....	22
11	V.	CONCLUSION.....	22

TABLE OF AUTHORITIES

Cases

Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal.App.4th 121 16

Amaro v. Anaheim Arena Management, LLC

(2021) 69 Cal.App.5th 521 14

Bartold v. Glendale Federal Bank

(2000) 81 Cal.App.4th 816 19

In re Beef Industry Antitrust Litigation

(5th Cir. 1979) 607 F.2d 167 15

Boyd v. Bechtel Corp.

(N.D.Cal. 1979) 485 F.Supp.610 12

Brinker Restaurant Corporation v. Superior Court

(2012) 53 Cal.4th 1024 20

Capitol People First v. Department of Developmental Services

(2007) 155 Cal.App.4th 676 20

Carrington v. Starbucks Corp.

(2018) 30 Cal.App.5th 504 17

City of Detroit v. Grinnell Corporation

(2d Cir. 1974) 495 F.2d 448..... 18

Classen v. Weller

(1983) 145 Cal.App.3d 27 21

Dunbar v. Albertson's Inc.

(2006) 141 Cal.App.4th 1422 16

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 14, 22

Espinoza v. Galardi South Enters.

(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS..... 20

1	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
2	(2008) 169 Cal.App.4th 1524	20
3	<i>Green v. Obledo</i>	
4	(1981) 29 Cal.3d 126	14
5	<i>Harris v. Superior Court</i>	
6	(2007) 154 Cal.App.4th 164	16
7	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
8	(2001) 89 Cal.App.4th 908	19
9	<i>Hopson v. Hanesbrands Inc.</i>	
10	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	17
11	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
12	(1981) 452 U.S. 905	15
13	<i>Jones v. JGC Dallas LLC</i>	
14	(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
15	185042	20
16	<i>Kullar v. Foot Locker Retail, Inc.</i>	
17	(2008) 168 Cal.App.4th 116	15
18	<i>Linder v. Thrifty Oil Co.</i>	
19	(2000) 23 Cal.4th 429	19
20	<i>Linney v. Cellular Alaska Partnership</i>	
21	(9th Cir. 1998) F.3d 1234	18
22	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
23	(2010) 186 Cal.App.4th 399	15
24	<i>Nordstrom Com. Cases</i>	
25	(2010) 186 Cal.App.4th 576	17
26	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
27	(2004) 34 Cal.4th 319	16, 19, 20
28		

In re Tableware Antitrust Litig.

(N.D.Cal. 2007) 484 F.Supp.2d 1059 18

Thurman v. Bayshore Transit Mgmt.

(2012) 203 Cal.App.4th 1112 17

Vasquez v. Superior Court

(1971) 4 Cal.3d 800 14

Walsh v. IKON Solutions, Inc.

(2007) 148 Cal.App.4th 1440 16

Rules

Federal Rule 23 14

Rule 3.769 14

Rule 3.769 (f)..... 22

Rule 3.769 (g) 14

Statutes

Business & Professions Code § 17200 16

Code of Civil Procedure § 382..... 19, 22

Code of Civil Procedure § 877.6..... 15

Code of Civil Procedure § 1542..... 13

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..... 17

Labor Code § 226 (a) 17

Labor Code § 226.3..... 17

Labor Code § 226.7..... 17

1	Labor Code § 510.....	17
2	Labor Code § 512 (a)	17
3	Labor Code § 558.....	17
4	Labor Code § 1174 (d).....	17
5	Labor Code § 1194.....	17
6	Labor Code § 1197.....	17
7	Labor Code § 1197.1.....	17
8	Labor Code § 1198.....	17
9	Labor Code § 2800.....	17
10	Labor Code § 2802.....	17
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$250,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and on behalf of any and all
4 individuals who were employed by PRO Unlimited, Inc. (“PRO”) and provided services in the
5 Competitive Gaming Group at Electronic Arts, Inc. (“EA”) (collectively, known as “Defendants”) in the State of California at any time during the January 28, 2017 through March 30, 2022
6 (“Settlement Class,” “Settlement Class Members,” and “Release Period”). At the time of this
7 filing, the number of Settlement Class Members is estimated to be one hundred forty (140), which
8 was confirmed by PRO. (Declaration of Douglas Han In Support of Plaintiff’s Motion for
9 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

11 **II. BACKGROUND**

12 On November 23, 2020, Plaintiff, a former employee of PRO who provided services at EA,
13 provided written notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendants. (Han Decl., *supra*, at ¶ 9.) On January 28, 2021, Plaintiff filed a representative
14 PAGA in the Superior Court of California, County of San Mateo. (*Ibid.*)

15 The Parties remotely attended mediation on December 1, 2021 with the mediator Jeffrey
16 Krivis, resulting in a settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 10.)

17 In line with the settlement, Plaintiff submitted an amended written notice to the LWDA
18 and Defendants on January 25, 2022. (Han Decl., *supra*, at ¶ 11.) Afterwards, on February 23,
19 2022, Plaintiff filed a First Amended Complaint that added eight (8) causes of action. (*Ibid.*)

21 **III. INVESTIGATION/ LITIGATION HISTORY**

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

23 After Plaintiff initiated this case, both Parties engaged in discovery. (Han Decl., *supra*, at
24 ¶ 13.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories,
25 one (1) set of requests for admissions, and one (1) set of requests for production of documents.
26 (*Ibid.*) Thereafter, the Parties met and conferred, agreed to engage in an informal exchange of
27 information, and agreed to remotely attend mediation. (*Ibid.*)

28 ///

1 Prior to the mediation, the Parties conducted significant investigation and discovery of the
2 facts and law both before and after this case was filed. (Han Decl., *supra*, at ¶ 14.) Specifically,
3 Defendants produced hundreds of documents relating to their policies, practices, and procedures.
4 (*Ibid.*) As part of Defendants’ production, Class Counsel reviewed time records, pay records, and
5 information relating to the size and scope of the Settlement Class. (*Ibid.*) Class Counsel also
6 interviewed several dozens of Settlement Class Members. (*Ibid.*)

7 Based upon the information provided by Defendants and interviews Class Counsel
8 conducted, Plaintiff contends – and Defendants deny – Defendants: (a) failed to provide employees
9 with legally mandated meal and rest breaks; (b) failed to pay employees for all hours worked; (c)
10 failed to reimburse employees for necessary business expenses; (d) issued noncompliant wage
11 statements; and (e) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 16-22.)

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

13 **i. The Parties Attended Mediation Leading to the Settlement**

14 The Parties agreed to go to mediation with experienced wage-and-hour mediator Jeffrey
15 Krivis on December 1, 2021. (Han Decl., *supra*, at ¶ 23.) The Parties reached a settlement via a
16 mediator’s proposal, the terms of which were memorialized in the Settlement Agreement that the
17 Parties now seek Preliminary Approval of. (*Id.* at ¶ 23; Exhibit 2.)

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

20 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Decl.,
21 *supra*, at ¶ 35.) Though cordial and professional, the settlement negotiations have always been
22 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
23 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

24 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
25 and length of continued proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
26 36.) Plaintiff and Class Counsel considered the inherent uncertainty and risk of further litigation,
27 the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*) Based on the
28 foregoing, Plaintiff and Class Counsel believe the Settlement Agreement is a fair, adequate, and

1 reasonable settlement, and is in the Settlement Class’s best interests. (Han Decl., *supra*, at ¶ 36.)

2 **iii. The Settlement Agreement Is the Result of Thorough Investigation and**
3 **Discovery**

4 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
5 the Parties’ claims and defenses before reaching the Settlement Agreement and engaged in
6 sufficient investigation, research, and discovery. (Han Decl., *supra*, at ¶ 37.) The Settlement
7 Agreement was only possible following significant investigation and evaluation of Defendants’
8 relevant policies and procedures, as well as the data Defendants produced. (*Ibid.*) Furthermore,
9 this case has also reached the stage where “the Parties certainly have a clear view of the strengths
10 and weaknesses of their cases” sufficient to support the Settlement Agreement’s reasonableness,
11 adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

12 **c. Terms of the Proposed Settlement Agreement**

13 **i. Deductions from the Settlement Agreement**

14 The Parties agreed (subject to and contingent upon the Court’s approval) this action be
15 settled and compromised for the non-reversionary total sum of \$250,000 (“Settlement Proceeds”)
16 which includes: (1) Class Counsel Attorneys’ Fees to Class Counsel of \$83,333.33 (1/3 of the
17 Settlement Proceeds); (2) Litigation Costs to Class Counsel of up to \$20,000; (3) Incentive Award
18 to Plaintiff of \$10,000; (4) Administrative Costs to Simpluris of up to \$10,000; and (e) PAGA
19 Payment of \$25,000. (Han Decl., *supra*, at ¶ 24.)

20 **ii. Calculation of the Settlement Payments**

21 After all Court-approved deductions from the Settlement Proceeds, the currently estimated
22 \$101,666.67 (“Net Settlement Amount”) will be distributed to Settlement Class Members who
23 have not timely opted-out (“Participating Class Members”) – with an *average* gross Settlement
24 Payment estimated at \$726.19. (Han Decl., *supra*, at ¶ 25.)

25 Each Participating Class Member will receive a proportionate share of the Net Settlement
26 Amount that will be calculated by the Settlement Administrator in accordance with the formula
27 set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 26.) The Settlement Payments to
28 Participating Class Members are deemed to be comprised of eighty percent (80%) penalties and

1 interest and twenty percent (20%) wages. (Han Decl., *supra*, at ¶ 26.)

2 The Settlement Administrator shall pay PAGA Group Members according to his or her
3 proportional share of the twenty-five percent (25%) of the PAGA Payment (\$6,250) using the
4 formula set forth the Settlement Agreement. (Han Decl., *supra*, at ¶ 27.) The PAGA Payment to
5 PAGA Group Members are deemed to be non-wages. (*Ibid.*)

6 **iii. Notice to the Settlement Class**

7 Defendants will provide the Class Data to the Settlement Administrator, within ten (10)
8 business days of the Preliminary Approval Date. (Han Decl., *supra*, at ¶ 29.) Within ten (10)
9 business days of receiving the Class Data and having updated the list through the National Change
10 of Address Database, the Settlement Administrator will send Notice Packet by first-class U.S. mail
11 to the last known address for each Settlement Class Member. (*Ibid.*)

12 **iv. Distribution of Funds**

13 The Settlement Agreement will be funded pursuant to the timeline and manner set forth in
14 the Settlement Agreement. (Han Decl., *supra*, at ¶ 30.) Uncashed settlement checks will be paid
15 to the California State Controller's Office under the unclaimed property laws in the name of the
16 Settlement Class Member. (*Ibid.*)

17 **v. Release of Claims**

18 Upon the Effective Date of Settlement Agreement and the complete funding of the
19 Settlement Proceeds, each Participating Class Member shall be deemed to have released the
20 Released Parties of the Released Claims. (Han Decl., *supra*, at ¶ 31.)

21 Upon the Effective Date of Settlement Agreement and the complete funding of the
22 Settlement Proceeds, each PAGA Group Member shall be deemed to have released the Released
23 Parties of the release set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 32.)

24 Upon signing the Settlement Agreement and in exchange for the consideration promised
25 thereunder, Plaintiff shall provide a general release for the Released Parties as set forth in the
26 Settlement Agreement. Plaintiff also agrees to waive and relinquish all rights and benefits he may
27 have under section 1542 of the Civil Code, or any similar statute or law of any other jurisdiction.
28 (Han Decl., *supra*, at ¶ 33.)

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

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

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

16 **IV. ARGUMENT**

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

18 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
19 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
20 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
21 preliminary approval of class settlements:

22 ///

24 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
25 notice is provided to the Class, and they have had an opportunity to respond. This information will
be provided to the Court in conjunction with the Motion for Final Approval.

26 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
27 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
28 (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 (a) A settlement or compromise of an entire class action, or a cause of action in
2 a class action, or as to a party, requires the approval of the court after
3 hearing.

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

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

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

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

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

///

1 **i. The Settlement Amount of \$250,000 Is Fair and Reasonable**

2 The Settlement Agreement was possible following significant investigation and evaluation
3 of Defendants' relevant policies and procedures, as well as the data Defendants produced for the
4 putative settlement class, as referenced in Section III above, which permitted Class Counsel to
5 engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 37.)

6 Plaintiff's claims are predicated on Defendants' purported: (1) failure to pay overtime
7 wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay
8 minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
9 (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business
10 & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 38.)

11 Defendants deny Plaintiff's theories of liability. (Han Decl., *supra*, at ¶ 39.) Specifically,
12 Defendants contend they utilized legally compliant policies and procedures with respect to all
13 violations alleged by Plaintiff. (*Ibid.*) Defendants assert Plaintiff and Settlement Class Members
14 were paid for all hours worked, including any overtime, and were provided with the opportunity
15 to take legally compliant meal and rest breaks under California law. (*Ibid.*) Defendants also assert
16 Settlement Class Members were reimbursed for all necessary business expenses and were provided
17 with accurate and itemized wage statements. (*Ibid.*)

18 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
19 to certification are always present. (Han Decl., *supra*, at ¶ 40.) As the California Supreme Court
20 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
21 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
22 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
23 (*Ibid.*) Moreover, Defendants assert individualized issues would be necessary to resolve the claims

24 _____
25 ³ (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 at issue in this case and would preclude class certification. (Han Decl., *supra*, at ¶ 22.) These
2 factors led Plaintiff to discount calculations for potential damages.

3 **ii. The PAGA Payment of \$25,000 Is Reasonable**

4 The provisions of the Labor Code potentially triggering PAGA penalties in this case
5 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
6 226.7, 246(l), 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl.,
7 *supra*, at ¶ 48.) Defendants assert PAGA penalties are not mandatory but permissive and
8 discretionary. (*Ibid.*) Defendants also maintain, in addition to their strong arguments against the
9 underlying claims, they had a strong argument that it would be unjust to award maximum PAGA
10 penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203
11 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendants argued without
12 stacking and limited to the initial violation, the PAGA penalties would **\$13,400** (134 employees x
13 \$100 initial violations) on low end and **\$93,800** (134 employees x \$100 x 7 theories of recovery)
14 on high end. (Han Decl., *supra*, at ¶¶ 49-52.)

15 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
16 (Han Decl., *supra*, at ¶ 53.) Many of the causes of action brought were duplicative of the statutory
17 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
18 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$25,000 to PAGA civil penalties was
19 reasonable based on a rate of **\$8.74** per pay period [$\$25,000 \div 2,861$ pay periods in PAGA date
20 range = **\$8.74**], given the fact Defendants are also paying an additional \$225,000 in the class
21 settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication
22 that [the] amount was the result of self-interest at the expense of other Class Members,” such
23 amounts are generally considered reasonable.⁵ (*Ibid.*)

24
25 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
26 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
27 \$75 per violation and a total PAGA penalty of \$70,000,000].)

28 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,

c. Discount Analysis Justifies the Settlement Agreement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$1,963,479.34** on the low end and **\$2,041,510.09** on the high end. (Han Decl., *supra*, at ¶ 54.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$119,484.69	70%	60%	\$14,338.16
Meal Break Premiums	\$350,129.10	60%	60%	\$56,020.66
Overtime/Minimum Wage: Off-the-Clock Work	\$156,030.35 to \$234,061.10	60%	50%	\$31,206.07 to \$46,812.22
Unreimbursed Business Expenses	\$17,256	30%	70%	\$3,623.76
Wage Statement Penalty	\$274,700	60%	60%	\$43,952
Waiting Time Penalty	\$1,045,879.20	60%	60%	\$167,340.67
MAXIMUM TOTAL EXPOSURE	\$1,963,479.34 to \$2,041,510.09⁶			\$316,481.32 to \$332,087.47⁷

Based on this analysis, the realistic recovery for this case is **\$316,481.32** on the low end and **\$332,087.47** on the high end. (Han Decl., *supra*, at ¶ 61.) The Settlement Proceeds of \$250,000 is twelve percent (12.25%) of the maximum potential exposure and seventy-five percent (75.28%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*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

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

⁶ (Han Decl., *supra*, at ¶¶ 41-47.)

⁷ (*Id.* at ¶¶ 55-60.)

1 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
2 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
3 speculative measure of what might have been achieved by the negotiators”).) Nevertheless, this
4 settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a
5 significant recovery for the Settlement Class Members.

6 **d. Conditional Certification of the Settlement Class Is Appropriate**

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

12 The proposed Settlement Class is ascertainable and numerous as to make it impracticable
13 to join all Settlement Class Members, and there are common questions of law and fact that
14 predominate over any questions affecting any individual Settlement Class Member. (Han Decl.,
15 *supra*, at ¶ 62.) Plaintiff contends, as a former employee of PRO who provided services at EA, his
16 claims are typical of the claims of the Settlement Class, and Class Counsel will fairly and
17 adequately protect the interests of the Settlement Class. (*Ibid.*) In addition, Plaintiff asserts the
18 prosecution of separate actions by individual Settlement Class Members would create the risk of
19 inconsistent or varying adjudications. (*Ibid.*)

20 **i. The Proposed Settlement Class Is Ascertainable and Sufficiently**
21 **Numerous**

22 “Ascertainability is required in order to give notice to putative class members as to whom
23 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
24 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
25 by describing a set of common characteristics sufficient to allow a member of that group to identify
26 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
27 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
28 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

1 This case involves approximately one hundred forty (140) Settlement Class Members.
2 (Han Decl., *supra*, at ¶ 63.) Thus, the Settlement Class is sufficiently numerous. (*Ibid.*; *Ghazaryan*
3 *v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of
4 “as many as 190 current and former employees” is sufficiently numerous].)

5 **ii. The Settlement Class Members Share a Well-defined Community of**
6 **Interest**

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

16 **1. Common Issues Predominate**

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

28 ///

1 Plaintiff asserts common issues of fact and law predominate as to each of the claims
2 alleged. (Han Decl., *supra*, at ¶ 64.) Plaintiff contends all Settlement Class Members were subject
3 to the same or similar employment policies and practices described in detail above. (*Ibid.*)

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

5 Typical claims rely on legal theories and facts that are substantially like those of other class
6 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of
7 PRO who provided services at EA and alleges he and Settlement Class Members were employed
8 by the same company and injured by Defendants' common policies and practices related to the
9 claims described above. (Han Decl., *supra*, at ¶ 65.) Plaintiff seeks relief for these claims and
10 derivative claims on behalf of the Settlement Class. (*Ibid.*) Plaintiff's claims arise from the same
11 employment practices and are based on the same theories applicable to Settlement Class. (*Ibid.*)

12 **3. Plaintiff Is Adequate to Represent the Settlement Class**

13 Plaintiff has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶ 66.)
14 Plaintiff conducted himself diligently and responsibly in representing the Settlement Class in this
15 litigation, understands his fiduciary obligations, and actively participated in the prosecution of this
16 case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide Class
17 Counsel with a complete understanding of his work environment and requirements. (*Ibid.*)
18 Plaintiff has no interest averse to the interests of the other Settlement Class Members. (*Ibid.*)

19 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 20 **of this Controversy**

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

27 ///

28 ///

1 **e. The Settlement Agreement 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.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
5 settlement is presumed fair under the following circumstances: (1) parties reached settlement after
6 arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
7 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
8 objectors is small. (*Id.* at p. 1802.) All these elements are present here.

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

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

12 If the court has certified the action as a class action, notice of the final approval
13 hearing must be given to class members in the manner specified by the court. The
14 notice must contain an explanation of the proposed settlement and procedures for
15 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.

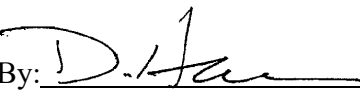
16 The Notice Packet meets all these requirements. The Notice Packet advises the Settlement
17 Class Members of their right to participate in the settlement; how and when to object to or request
18 exclusion; and the date, time, and location of the final approval hearing.

19 **V. CONCLUSION**

20 Plaintiff submits the proposed Settlement Agreement should be preliminarily approved by
21 the Court, the Settlement Class should be conditionally certified for purposes of settlement only,
22 and the Notice Packet should be approved.

23
24 Dated: August 26, 2022

JUSTICE LAW CORPORATION

25 By: 
26 Douglas Han
27 Attorneys for Plaintiff
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

PROOF OF SERVICE