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

JASFER NEPOMUCENO and DANIELLE
WINKLE, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”);

Plaintiffs,

v.

PORTFOLIO RECOVERY ASSOCIATES,
LLC, a Delaware limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2021-00006651-CU-OE-CTL
[Consolidated with Case No. 37-2021-
00006737-CU-OE-CTL]

Assigned for All Purposes to:
Honorable Richard S. Whitney
Dept. C-68

CLASS ACTION

**PLAINTIFFS’ 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: August 26, 2022
Hearing Time: 10:30 a.m.
Hearing Place: Department C-68

Complaint Filed: February 16, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 26, 2022, at 10:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Richard S. Whitney in Department C-68 of the San Diego
3 County Superior Court, located at 330 West Broadway San Diego, California 92101, Plaintiffs
4 Jasfer Nepomuceno and Danielle Winkle (“Plaintiffs”) will and hereby move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation of Class Action and PAGA
7 Settlement (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as
8 **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds, the allocations for payments under
10 the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Attorney Fee
11 Award, Cost Award, Class Representative Enhancement Payment, and
12 Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiffs as the Class Representatives;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as **Exhibit A** to the Agreement;
- 18 • Directing the mailing of the proposed Class Notice (collectively known as the
19 “Class Notice”) to the proposed Class;
- 20 • Approving the proposed deadlines for the notice and settlement administration
21 process;
- 22 • Approving CPT Group, Inc. (“CPT Group”) as the 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 Attorney Fee Award, the Cost Award, the Class
26 Representative Enhancement Payment, the Administration Costs, and approval of
27 the allocation of the PAGA Payment.

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: May 13, 2022

JUSTICE LAW CORPORATION

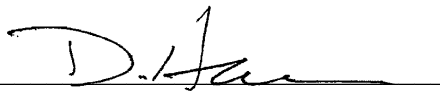
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8 By: 
9 Douglas Han
10 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$850,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and on behalf of all non-
4 exempt hourly-paid employees who worked for Defendant Portfolio Recovery Associates, LLC
5 within the State of California at any time during the period from February 16, 2017 through the
6 date of preliminary approval of the settlement (“Class” and Class Period”) but specifically
7 excluding any individual(s) who filed their own separate action as named plaintiff alleging the
8 same or similar claims being released herein. At the time of this filing, the number of Class
9 Members is estimated to be one hundred twenty (120). (Declaration of Douglas Han In Support of
10 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶ 9.)

11 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths and
12 vulnerabilities of the class claims alongside Defendant Portfolio Recovery Associates, LLC’s
13 (“Defendant”) potential liability exposure, this proposed Settlement of \$850,000 is well within the
14 range of reasonableness. Class Counsel and Plaintiffs are convinced that the proposed Settlement
15 is in the best interests of the Class Members based on the negotiations and detailed knowledge of
16 the issues present in this action.

17 **II. BACKGROUND**

18 On December 11, 2020, Plaintiffs, former employees of Defendant, provided written notice
19 to the California Labor and Workforce Development Agency (“LWDA”) and Defendant of the
20 specific provisions of the Labor Code they contend were violated and the theories supporting their
21 contentions. (Han Dec., *supra*, at ¶ 11.) On February 16, 2021, Plaintiffs a filed a wage-and-hour
22 class action lawsuit, against Defendant in the Superior Court of California, County of San Diego,
23 Case No. 37-2021-00006737-CU-OE-CTL, alleging the following causes of action: (1) violation
24 of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of Labor Code sections
25 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor Code section 226.7
26 (unpaid rest period premiums); (4) violation of Labor Code sections 1194 and 1197 (unpaid
27 minimum wages); (5) violation of Labor Code sections 201 and 202 (final wages not timely paid);
28 (6) violation of Labor Code section 226(a) (noncompliant wage statements); (7) violation of Labor

Code sections 2800 and 2802 (unreimbursed business expenses); and (8) violation of Business & Professions Code section 17200, *et seq.* (the “Class Action”). (Han Dec., *supra*, at ¶ 12.) On February 16, 2021, Plaintiffs also filed a representative PAGA (Private Attorneys General Act of 2004) action, pursuant to Labor Code section 2698, *et seq.*, against Defendant in the Superior Court of California, County of San Diego, Case No. 37-2021-00006737-CU-OE-CTL (the “PAGA Action”) (Han Dec., *supra*, at ¶ 13.)

On March 9, 2022, the Parties attended a mediation session with mediator David Rotman, Esq. on the claims alleged in both the Class Action and PAGA Action. Under the auspices of the mediator, the Parties were eventually able to reach an agreement on settlement of the action. (Han Dec., *supra*, at ¶ 15.)

III. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of in each case. (Han Dec., *supra*, at ¶ 17.) Defendant responded to Plaintiffs’ discovery requests. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of information and then attend mediation. (*Ibid.*)

Prior to the mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after this case was filed. (Han Dec., *supra*, at ¶ 18.) Specifically, Defendant produced voluminous documents relating to their policies, practices, and procedures. (*Ibid.*) As part of Defendant’s production, Class Counsel also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Class Counsel also interviewed several dozens of Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

Based upon the information provided by Defendant and interviews Class Counsel had with non-exempt employees, Plaintiffs contends – and Defendant denies – that Defendant: (a) failed to provide employees with legally mandated meal and rest breaks; (b) failed to pay employees for all hours worked; (c) failed to include non-discretionary bonuses and/or commissions in employees’ regular rates of pay for purposes of overtime compensation; (d) failed to reimburse employees for

necessary business expenses; (e) issued non-compliant wage statements; and (f) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 19-25.)

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

i. The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation of Class Action and PAGA Settlement

The Parties agreed to go to mediation with an experienced wage-and-hour mediator, David Rotman, Esq., on March 9, 2022. (Han Dec., *supra*, at ¶ 27.) With the assistance of the mediator, the Parties were eventually able to reach an agreement on settlement, the terms of which were memorialized in the Settlement Agreement that the Parties now seek approval. (*Id.* at ¶ 27; Exhibit 2.)

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

The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec., *supra*, at ¶ 31.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was reached. (*Ibid.*)

Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant. (Han Dec., *supra*, at ¶ 32.) Plaintiffs and Class Counsel have also considered the inherent uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays of such litigation. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement, and is in the Class's best interests. (*Ibid.*)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of Plaintiffs' claims and Defendant's defenses before reaching the Settlement and engaged in sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶ 33.) The Settlement was only possible following significant investigation and evaluation of Defendant's relevant policies and procedures, as well as the data Defendant produced. (*Ibid.*) Furthermore, this case has also reached the stage where "the Parties certainly have a clear view of

the strengths and weaknesses of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Dec., *supra*, at ¶ 33; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Gross Settlement Amount

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action is settled and compromised for the non-reversionary total sum of \$850,000 (“Gross Settlement Amount”), which includes, subject to Court approval: (a) the Attorney Fee Award to Class Counsel of 35% of the Gross Settlement Amount; (b) the Cost Award to Class Counsel of \$25,000 for litigation costs and expenses; (c) the Class Representative Enhancement Payment of \$10,000 to Plaintiff; (d) Administration Costs to CPT Group, the Settlement Administrator, of \$10,000; and (e) the PAGA Payment of \$50,000 to the LWDA and Eligible Aggrieved Employees. (Han Dec., *supra*, at ¶ 28.)

ii. Calculation of the Class Members’ Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated that \$447,500 (“Net Settlement Amount”) will be distributed to Class Members – with an average gross Individual Settlement Share estimated at \$3,729.¹ (Han Dec., *supra*, at ¶ 30.)

The Settlement Administrator will pay an Individual Settlement Share from the Net Settlement Amount to each Participating Class Member in accordance with the formula listed in the Agreement. (Settlement Agreement §III.I.1.a.) Individual Settlement Shares will be apportioned as follows: twenty-five percent (25%) for wages, twenty-five percent (25%) for civil or statutory penalties, twenty-five percent (25%) for statutory or other non-wage damages and twenty-five percent (25%) for interests. (Settlement Agreement §III.I.2.) Defendant’s share of the payroll taxes will be paid separately from the Gross Settlement Amount.

Furthermore, the Settlement Administrator will pay a portion of the PAGA Payment of \$12,500 to each Eligible Aggrieved Employee in accordance with the formula listed in the Agreement. (Settlement Agreement §III.I.1.b.)

¹ \$447,500 (Net Settlement Amount) / 120 (Class Members) = \$3,729.

1 **iii. Notice to the Class**

2 Within twenty-eight (28) calendar days after entry of the Preliminary Approval Order,
3 Defendant shall deliver to the Settlement Administrator the Class Data. (Settlement Agreement
4 §III.M.2.) Within twenty-one (21) calendar days from receipt of the Class Data, the Settlement
5 Administrator will mail the Class Notice to all identified Class Members via first-class regular
6 U.S. Mail. (*Ibid.*) Class Members are not required to submit a claim form to receive their Individual
7 Settlement Shares.

8 **iv. Distribution of Funds**

9 The Settlement will be funded pursuant to the timeline and manner set forth in the
10 Agreement. (Settlement Agreement §III.J.2.) Uncashed settlement checks will be mailed to the
11 California State Controller's Unclaimed Property Division in accordance with California
12 Unclaimed Property Law so that the Participating Class Member will have his or her Individual
13 Settlement Share available to him or her per the applicable claim procedure to request that money
14 from the State of California. (Settlement Agreement §III.J.5.)

15 **v. Release of Claims**

16 As of the Effective Final Settlement Date and upon fully funding the settlement, all Class
17 Members, who do not submit a timely and valid request for exclusion, will be bound by a release
18 of all claims and causes of action falling under the definition of Released Claims for the Class
19 Period. Participating Class Members agree not to sue or otherwise make a claim against any of the
20 Released Parties for any of the Released Claims ("Released Claims"). (Settlement Agreement
21 §III.N.)

22 As of the Effective Final Settlement Date and upon fully funding the settlement, the LWDA
23 and each Eligible Aggrieved Employee, including Plaintiffs, individually and on behalf of their
24 heirs, executors, administrators, representatives, attorneys, successors, and assigns hereby
25 voluntarily and knowingly is barred from bringing any, and all claims seeking civil penalties under
26 the California Labor Code predicated on the PAGA Claims asserted in the Actions, during the
27 PAGA Timeframe against Defendant and Released Parties. (Settlement Agreement §III.O.)

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1 As of the Effective Final Settlement Date, and in exchange for the Class Representative
2 Enhancement Payment to the Plaintiffs in an amount not to exceed \$10,000, in recognition of their
3 work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment
4 of costs if this matter had not successfully resolved, Plaintiffs provides a general release of claims
5 for themselves and their spouse, heirs, successors and assigns. Plaintiffs' Release of Claims also
6 includes a waiver of Civil Code section 1542. (Settlement Agreement §III.P.)

7 With regards to class action releases, ““[A] court may release not only those claims alleged
8 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
9 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
10 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases in
11 this case are acceptable because they are limited to the scope of the allegations in the Complaint.
12 Moreover, the released claims are ““all causes of action and factual or legal theories that were
13 alleged in the Consolidated Complaint or reasonably could have been alleged based on the facts
14 and legal theories contained in the Consolidated Complaint for the Class Period.”” (Settlement
15 Agreement §I.FF.) In other words, the released claims do not go beyond the scope of the
16 Consolidated Complaint.

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

18 Counsel for both Parties are experienced in wage-and-hour employment law and class
19 actions. (Han Dec., *supra*, at ¶¶ 2-8; Exhibits 1.) Class Counsel have prosecuted numerous cases
20 on behalf of employees for Labor Code violations and, thus, are experienced and qualified to
21 evaluate the class claims, the settlement versus trial on a fully informed basis, and the viability of
22 the defenses. (*Ibid.*) These experiences instructed Class Counsel on the risks and uncertainties of
23 further litigation and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

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26 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
27 the Notice of Class Action and PAGA Settlement has been provided to the Class and they have
28 had an opportunity to respond. This information will be provided to the Court in conjunction with
the Motion for Final Approval of Class Action Settlement.

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.³
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.

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

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

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

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27 ³ The California Supreme Court has also authorized California’s trial courts to use Federal
28 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, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

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

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

12 The Settlement was possible following significant investigation and evaluation of
13 Defendant's relevant policies and procedures, as well as the data Defendant produced for the
14 putative class, as referenced in Section III above, which permitted Class Counsel to engage in a
15 comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 33.)

16 Plaintiffs' claims are predicated on Defendant's purported: (a) failure to pay all wages
17 owed; (b) failure to provide meal and rest breaks and pay applicable premiums; (c) failure to pay
18 minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements;
19 (f) failure to reimburse business expenses; (g) violation of Labor Code section 2698, et seq.
20 (PAGA); and (h) violation of Business & Professions Code sections 17200, et seq. (Han Dec.,
21 *supra*, at ¶ 34.) Defendant denies Plaintiffs' theories of liability. (*Id.* at ¶ 35.)

22 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
23 to certification are always present. (Han Dec., *supra*, at ¶ 36.) As the California Supreme Court
24 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
25 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
26
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1 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.⁴
2 (*Ibid.*) These factors led Plaintiffs to discount calculations of potential damages.

3 **ii. The PAGA Payment of \$50,000 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, 221, 226(a), 226.3, 226.7,
6 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802. (Han Dec., *supra*, at ¶ 44.)
7 Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
8 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained, in
9 addition to its strong arguments against the underlying claims, it had a strong argument that it
10 would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*;
11 *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30%
12 under this authority].) Defendant argued that without stacking and limited to the initial violation,
13 the PAGA penalties would be limited to **\$6,200** (62 employees x \$100 initial violations) on the
14 low end and **\$37,200** (62 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec.,
15 *supra*, at ¶¶ 46-47.)

16 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
17 (Han Decl., *supra*, at ¶ 49.) Many of the causes of action brought were duplicative of the statutory
18 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
19 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was
20 reasonable based on a rate of **\$17.78** per pay period [$\$50,000 \div 2,811$ pay periods in PAGA date
21 range = **\$17.78**], given the fact that Defendant is also paying an additional \$800,000 in the class
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25 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

settlement.⁵ (Han Decl., *supra*, at ¶ 49.) 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 generally considered reasonable.⁶ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the Settlement of \$850,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

The total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$3,162,394.49**. (Han Dec., *supra*, at ¶ 50.)⁷ The discount analysis of each claim is outlined in Han Dec. ¶¶ 36-56, which is summarized in the chart below.

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$359,717.98	25%	25%	\$202,341.36
Meal Break Premiums	\$201,417.84	50%	25%	\$75,531.69
Overtime Wage: Off-the-Clock Work	\$307,889.07	60%	50%	\$61,577.81
Unreimbursed Business Expenses	\$118,880	30%	50%	\$46,608.00
Wage Statement Penalty	\$248,000	30%	25%	\$130,200
Waiting Time Penalty	\$252,489.60	30%	25%	\$132,557.04
PAGA Penalties	\$1,674,000			\$279,000
MAXIMUM TOTAL EXPOSURE	\$3,162,394.49			\$927,815.90

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

⁶ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, 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, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”.)

⁷ Defendant disputes Plaintiffs’ calculation of potential exposure as it assumes noncompliance, which Defendant expressly denies.

1 Based on this analysis, the realistic recovery for this case is **\$927,815.90**. The Gross
2 Settlement Amount of \$850,000 is about twenty-six percent (26%) of the maximum potential
3 exposure and approximately ninety-one percent (91%) of the maximum realistic exposure at
4 trial, which is an excellent settlement. (Han Dec., *supra*, at ¶ 57.)

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

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

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

23 The proposed Class is ascertainable and numerous as to make it impracticable to join all
24 Class Members, and there are common questions of law and fact that predominate over any
25 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 58.) Plaintiffs contend
26 that as a former hourly-paid, non-exempt employees of Defendant, their claims are typical of the
27 claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class.
28 (*Ibid.*) Also, Plaintiffs assert that the prosecution of separate actions by individual Class Members

1 would create the risk of inconsistent or varying adjudications. (Han Dec., *supra*, at ¶ 58.)

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

3 “Ascertainability is required in order to give notice to putative class members as to whom
4 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
5 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
6 by describing a set of common characteristics sufficient to allow a member of that group to identify
7 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
8 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
9 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

10 This case involves approximately one hundred twenty (120) Class Members. (Han Dec.,
11 *supra*, at ¶ 59.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine,*
12 *Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190
13 current and former employees” is sufficiently numerous].)

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

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

24 **1. Common Issues Predominate**

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

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

8 Plaintiffs assert common issues of fact and law predominate as to each of the claims
9 alleged. (Han Dec., *supra*, at ¶ 60.) Plaintiffs contend all Class Members were subject to the same
10 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

11 **2. Plaintiffs' 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.) Plaintiffs are former employees of
14 Defendant and allege they and the Class Members were employed by the same company and
15 injured by Defendant's common policies and practices related to the claims described above. (Han
16 Dec., *supra*, at ¶ 61.) Plaintiffs seek relief for these claims and derivative claims on behalf of all
17 Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are
18 based on the same legal theories as those applicable to the Class. (*Ibid.*)

19 **3. Plaintiffs Are Adequate to Represent the Class**

20 Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 62.)
21 Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this
22 litigation, understand their fiduciary obligations, and have actively participated in the prosecution
23 of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to
24 provide Class Counsel with a complete understanding of their work environment and requirements.
25 (*Ibid.*) Plaintiffs have no interest that is adverse to the interests of the other Class Members. (*Ibid.*)

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

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

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

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

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

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

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

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

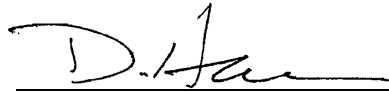
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1 **V. CONCLUSION**

2 Plaintiffs submit 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 settlement purposes only, and the Class Notice should be approved.

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7 Dated: May 13, 2022

JUSTICE LAW CORPORATION

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Douglas Han

Attorneys for Plaintiffs

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PROOF OF SERVICE
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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 16, 2022, I served the foregoing document described as

PLAINTIFFS' 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: **Nepomuceno, et al. v. Portfolio Recovery Associates, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-815147-20**
Court Case No.: 37-2021-00006651-CU-OE-CTL
San Diego 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 16, 2022, at Pasadena, California.



Mariah Anderson