

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

ANNA M. ANDRADE-SALINAS,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiff,

v.

CLAREMONT RETIREMENT
MANAGEMENT SERVICES, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 34-2021-00294807-CU-OE-GDS

Assigned for All Purposes to:
Honorable Lauri A. Damrell
Department 28

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**

[Reservation ID 294807-001]

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Tom May; and
[Proposed] Order filed concurrently herewith]

Hearing Date: August 18, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 28

Complaint Filed: February 18, 2021
FAC Filed: May 22, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 18, 2023 at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Lauri A. Damrell in Department 28 of the Sacramento County
3 Superior Court (Gordon D. Schaber Sacramento County Courthouse) located at 720 9th Street,
4 Sacramento, California 95814, Plaintiffs Anna M. Andrade-Salinas and Wisdom Kunitz
5 (“Plaintiffs,” “Plaintiff Andrade-Salinas,” and “Plaintiff Kunitz”) will and hereby do move for an
6 order:

- 7 • Granting Preliminary Approval of the class action settlement described herein and
8 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
9 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
10 declaration of Douglas Han, including, and not limited to, the means of allocation
11 and distribution of funds;
- 12 • Conditionally certifying the Class for settlement purposes only;
- 13 • Appointing Plaintiffs as the class representatives;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the Court Approved Notice of Class Action Settlement and Hearing
16 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
17 Settlement Agreement;
- 18 • Directing the mailing of the Class Notice with a postage-paid return envelope to
19 the Class;
- 20 • Approving the proposed deadlines for the settlement administration process;
- 21 • Approving Phoenix Class Action Administration Solutions as the Administrator;
22 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 Fees Payment, Class Counsel
26 Litigation Expenses Payment, Class Representative Service Payments, and
27 Administration Expenses Payment, and approval of the allocation of the Private
28 Attorney General Act of 2004 (“PAGA”) Penalties.

1 Pursuant to Local Rule 1.06(A), the court will make a tentative ruling on the merits of this
2 matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings
3 for the department may be downloaded off the court's website. If the party does not have online
4 access, they may call the dedicated phone number for the department as referenced in the local
5 telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the
6 hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00
7 p.m. the court day before the hearing, no hearing will be held.

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

13
14 Dated: July 24, 2023

JUSTICE LAW CORPORATION

15
16 By: 

Douglas Han
Shunt Tatavos-Gharajeh
Talía Lux
Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	12
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	Release of Claims	13
d.	Counsel for Both Parties Are Experienced in Similar Litigation	14
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review.....	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	15
i.	The Settlement Amount of \$500,000 Is Fair and Reasonable	16
ii.	The PAGA Penalties of \$20,000 Is Reasonable	17
c.	Discount Analysis Justifies the Settlement.....	18
d.	Conditional Certification of the Class Is Appropriate	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	19
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	20

2.	Plaintiffs’ Claims Are Typical of the Class Claims.....	20
3.	Plaintiffs Are Adequate to Represent the Class.....	21
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	21
e.	The Settlement Is Fair, Reasonable, and Adequate	22
f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
V.	CONCLUSION.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Acosta v. TransUnion, LLC</i>	
(C.D. Cal. 2007) 240 F.R.D. 564	19
<i>Aguiar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	15
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant Corp. v. Superior Court</i>	
(2012) 53 Cal.4th 1004	20
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	20
<i>Detroit v. Grinnell Corp.</i>	
(2d Cir. 1974) 495 F.2d 448.....	19
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	17
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	15, 22
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S. Dist. LEXIS.....	20

<u>Cases</u>	<u>Page(s)</u>
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106.....	19
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	20
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	17
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	19
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	17
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905.....	15
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S. Dist.	
LEXIS 185042	20
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	15, 16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	20
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	15, 16
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	17

<u>Cases</u>	<u>Page(s)</u>
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	16, 19, 20
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	15
<i>Walsh v. IKON Office Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17
<u>Rules</u>	
California Rules of Court, Rule 3.769	15
California Rules of Court, Rule 3.769 (f)	22
California Rules of Court, Rule 3.769 (g).....	15
Federal Rule 23	15
<u>Statutes</u>	
Business & Professions Code § 17200	16
Code of Civil Procedure § 382.....	19, 22
Code of Civil Procedure § 384.....	13
Code of Civil Procedure § 877.6.....	16
Code of Civil Procedure § 1542.....	14
Labor Code § 201.....	17
Labor Code § 202.....	17
Labor Code § 203.....	17
Labor Code § 204.....	17
Labor Code § 218.5.....	17
Labor Code § 221.....	17
Labor Code § 226.3.....	17
Labor Code § 226.7.....	17

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 226 (a)	17
Labor Code § 246.....	17
Labor Code § 510.....	17
Labor Code § 512 (a)	17
Labor Code § 558.....	17
Labor Code § 1174 (d).....	17
Labor Code § 1194.....	17
Labor Code § 1197.....	17
Labor Code § 1197.1.....	17
Labor Code § 1198.....	17
Labor Code § 2800.....	17
Labor Code § 2802.....	17

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and all current and former hourly-
4 paid, non-exempt employees of Defendant Golden Pond, L.P. (“Defendant Golden Pond”) within
5 the State of California at any time during the period from February 18, 2017 to August 5, 2022,
6 excluding employees who signed *Pick-Up Stix* settlements (“Class,” “Class Members,” and “Class
7 Period”). At the time of this declaration, the number of Class Members is estimated to be six
8 hundred fifty-five (655), which was confirmed by Defendant Golden Pond and Defendant
9 Claremont Retirement Management Services, Inc. (“Defendant CRMS”) (collectively, known as
10 “Defendants”). (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary
11 Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

12 **II. BACKGROUND**

13 On December 11, 2020, Plaintiff Andrade-Salinas provided written notice to the California
14 Labor and Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

15 On February 18, 2021, Plaintiff Andrade-Salinas filed a wage-and-hour class action lawsuit
16 against Defendant CRMS in the Superior Court of California, County of Sacramento, alleging nine
17 (9) causes of action. (Han Decl., *supra*, at ¶ 11; Exhibit 4.)

18 After engaging in discovery, investigations, and negotiations, Plaintiff Andrade-Salinas
19 and Defendant CRMS attended mediation with the mediator Eve Wagner on November 1, 2022.
20 (Han Decl., *supra*, at ¶ 12.) This did not result in a settlement for this matter. (*Ibid.*)

21 On November 9, 2022, Plaintiff Andrade-Salinas amended the complaint by substituting
22 Defendant Golden Pond for the fictitious name in the complaint. (Han Decl., *supra*, at ¶ 13.)

23 After continued negotiations with the aid of mediator Eve Wagner, the Parties ultimately
24 reached a tentative settlement on or around April 14, 2023. (Han Decl., *supra*, at ¶ 14.)

25 In line with the settlement, on May 22, 2023, Plaintiff Andrade-Salinas filed a First
26 Amended Complaint that adjusted the “Class” and “Aggrieved Employees” definitions and added
27 Plaintiff Kunitz as a named plaintiff. (Han Decl., *supra*, at ¶ 15; Exhibit 5.)

28 ///

III. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiffs and Defendants propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents and responded to formal discovery requests. (Han Decl., *supra*, at ¶ 17.) The Parties then met and conferred and agreed to engage in an informal exchange of information and then eventually attended mediation. (*Ibid.*)

Prior to the mediation, Defendants produced several documents relating to their policies, practices, and procedures. (Han Decl., *supra*, at ¶ 18.) As part of Defendants' production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative class members were also located and interviewed to obtain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based on the information provided by Defendants and interviews with putative class members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to include non-discretionary bonuses in employees' regular rate of pay for purposes of overtime compensation and sick leave pay; (4) failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 20-27.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties attended mediation with an experienced mediator on November 1, 2022. (Han Decl., *supra*, at ¶ 28.) Under the auspices of the mediator, the Parties eventually reached a settlement, the terms were memorialized in the Settlement. (*Id.* at ¶ 28; Exhibits 2, 6.)

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

The Settlement was reached because of arm's-length negotiations. (Han Decl., *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 ultimately reached. (*Ibid.*)

1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
3 *supra*, at ¶ 32.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further
4 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
5 on the foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
6 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the Parties' claims
9 and defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 33.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
12 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where the Parties understand "the strength of the case; the reasonableness of the
14 settlement in light of the attendant risks of litigation, and in light of the best possible recovery"
15 sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han Decl., *supra*,
16 at ¶ 33; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court's approval) this action be settled and compromised
20 for the non-reversionary total sum of \$500,000 ("Gross Settlement Amount") which includes: (1)
21 Class Counsel Fees Payment not to exceed \$175,000 (35% of the Gross Settlement Amount); (2)
22 Class Counsel Litigation Expenses Payment not to exceed \$30,000; (3) Class Representative
23 Service Payments totaling \$20,000; (4) Administration Expenses Payment not to exceed \$15,000;
24 and (5) PAGA Penalties not to exceed \$20,000. (Han Decl., *supra*, at ¶ 29.)

25 **ii. Calculating Settlement Payments**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$240,000 ("Net Settlement Amount") will be paid to Participating Class Members – with a gross
28 *average* Individual Class Payment estimated at \$366.41. (Han Decl., *supra*, at ¶ 30.)

1 Participating Class Member will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28;
3 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated thirty percent (30%)
4 as wages, thirty percent (30%) as reimbursement, thirty percent (30%) as penalties, and ten percent
5 (10%) as interest. (*Id.* at § C(2)(d)(i).)

6 In addition, the PAGA Penalties that is paid to each Aggrieved Employee shall be
7 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28;
8 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA Penalties will be
9 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

10 **iii. Notice to the Class**

11 No later than ninety (90) calendar days after the Court grants Preliminary Approval of the
12 Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft
13 Excel spreadsheet. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § G(4)(a).) No later than
14 fourteen (14) calendar days after receiving the Class Data, the Administrator will send the Class
15 Notice via first-class USPS mail to all Class Members. (*Id.* at § G(4)(c).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
18 in the Settlement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed
19 settlement checks will be canceled and transmitted to the *cy pres* recipient Claremont House, Inc.
20 (*Id.* at §§ D(3)(a), D(3)(c).) Claremont House, Inc. is a proper *cy pres* recipient under Code of
21 Civil Procedure section 384. (See Declaration of Tom May.)

22 **v. Release of Claims**

23 Effective on the date when Defendant Golden Pond fully funds the entire Gross Settlement
24 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
25 Payments, all Participating Class Members, on behalf of themselves and their respective former
26 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
27 release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 28; Exhibit
28 2, *supra*, at § E(2).)

1 Effective on the date when Defendant Golden Pond fully funds the entire Gross Settlement
2 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
3 Payments, all Non-Participating Class Members, who are Aggrieved Employees, are deemed to
4 release, on behalf of themselves and their respective former and present representatives, agents,
5 attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released
6 PAGA Claims. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § E(3).)

7 Effective on the date when Defendant Golden Pond fully funds the entire Gross Settlement
8 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
9 Payments, Plaintiffs and their respective former and present spouses, representatives, agents,
10 attorneys, heirs, administrators, successors, and assigns generally release and discharge Released
11 Parties from Plaintiffs' Release. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at § E(1).) Plaintiffs
12 also expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of
13 the Civil Code. (*Id.* at § E(1)(a).)

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

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

23 Both Parties' counsel are experienced in wage-and-hour employment law and class actions.
24 (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
25 of employees for Labor Code violations and are experienced and qualified to evaluate the class
26 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
27
28

experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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

...

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

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been 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 of Class Action Settlement.

² The California Supreme Court has also authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

Kullar instructs the court is not to “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum amount the class could recover if plaintiff prevailed on all his claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under Code 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.)

i. The Settlement Amount of \$500,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the data Defendants produced for the Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 33.)

The claims are predicated on the purported: (1) failure to properly calculate and pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide meal and rest breaks and pay applicable premium wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements; (f) failure to reimburse business expenses; (g) violation of PAGA; and (h) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 34.) Defendants vehemently deny the theories of liability. (*Id.* at ¶ 35.)

While Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 36.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*

Stores, Inc. have reached different conclusions concerning certification of wage-and-hour claims.³ (Han Decl., *supra*, at ¶ 36.) Thus, the calculations for the potential damages were discounted.

ii. The PAGA Penalties of \$20,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 45.) Defendants asserts, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintains they had a strong argument it would be unjust to award maximum PAGA penalties given the law’s current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 45; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore, Defendants argued without stacking and limited to the initial violation, the PAGA penalties would be limited to about **\$33,000** (330 employees x \$100 penalty for initial violation) on the low end and **\$231,000** (330 employees x \$100 penalty for initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 46-48.)

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 49.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$20,000 to PAGA civil penalties was reasonable given the fact Defendants are also paying an additional \$480,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguiar 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].)

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

Considering Defendants’ defenses, supporting evidence, and position that the case is not suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$3,843,375.90** on the low end and around **\$3,976,737.90** on the high end. (Han Decl., *supra*, at ¶ 50.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$459,195.48	70%	60%	\$55,103.46
Meal Break Premiums	\$980,626.56	60%	60%	\$156,900.25
Overtime/Minimum Wage: Off-the-Clock Work	\$266,724 to \$400,086	60%	50%	\$53,344.80 to \$80,017.20
Overtime/Minimum Wage: Regular Rate	\$53,316.66	30%	40%	\$22,393
Unreimbursed Business Expenses	\$148,410	20%	70%	\$35,618.40
Wage Statement Penalty	\$379,500	60%	60%	\$60,720
Waiting Time Penalty	\$1,555,603.20	60%	60%	\$248,896.51
MAXIMUM TOTAL EXPOSURE	\$3,843,375.90 to \$3,976,737.90⁵			\$632,976.42 to \$659,648.82⁶

Thus, the realistic recovery for this case is about **\$632,976.42** on the low end and **\$659,648.82** on the high end. (Han Decl., *supra*, at ¶ 58.) The Gross Settlement Amount is about twelve percent (12.57%) of the maximum potential exposure and around seventy-five percent (75.80%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

///

///

///

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

⁵ (Han Decl., *supra*, at ¶¶ 37-44.)

⁶ (*Id.* at ¶¶ 51-57.)

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594
3 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
4 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
5 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
6 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska*
7 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in
8 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
9 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
10 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
11 if Plaintiffs prevailed at trial and provides a significant recovery for Class Members.

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

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

18 The Class is ascertainable and numerous as to make it impracticable to join all Class
19 Members, and there are common questions of law and fact that predominate over any questions
20 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 59.) Plaintiffs contend the claims
21 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
22 interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual
23 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

25 “Ascertainability is required in order to give notice to putative class members as to whom
26 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
27 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
28 by describing a set of common characteristics sufficient to allow a member of that group to identify

1 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
2 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
3 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

4 This case involves about six hundred fifty-five (655) Class Members, meaning the Class is
5 sufficiently numerous. (Han Decl., *supra*, at ¶ 60; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
6 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former
7 employees” is sufficiently numerous].)

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

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

18 **1. Common Issues Predominate**

19 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
20 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
21 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts
22 determine whether the elements necessary to establish liability are susceptible to common proof,
23 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*
24 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
25 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC*
26 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
27 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
28 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court

certified class of dancers on state law claims].)

Plaintiffs assert common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 61.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiffs' Claims Are Typical of the Class Claims

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.)

Plaintiffs are former employees of Defendants and allege they and Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 62.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 63.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs have no interest 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. Plaintiffs contend 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 also current employees, Plaintiffs believe the fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

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

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

If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

V. CONCLUSION

Dated: July 24, 2023

JUSTICE LAW CORPORATION

By:

22

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 24, 2023, 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: **Andrade-Salinas v. Claremont Retirement, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-815143-20**
Court Case No.: 34-2021-00294807
Sacramento 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

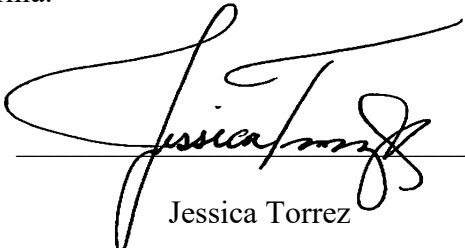
[X] BY ELECTRONIC SUBMISSION

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 July 24, 2023, at Pasadena, California.



Jessica Torrez