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

NICOLE MENDOZA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

ALLIED SALES AND DISTRIBUTION,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 20STCV31836

Assigned for All Purposes to:
Honorable Elihu M. Berle
Department 6

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); Declaration of Proposed Class
Representative (Tony Nunley); and [Proposed]
Order filed concurrently herewith]

Hearing Date: September 21, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 6

Complaint Filed: August 20, 2020
FAC Filed: September 1, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 21, 2022, at 9:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Elihu M. Berle in Department 6 of the Los Angeles
3 County Superior Court, located at 312 North Spring Street, Los Angeles, California 90012
4 (Spring Street Courthouse), Plaintiff Nicole Mendoza and Plaintiff Tony Nunley (collectively,
5 “Plaintiffs”) will and hereby moves for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation of Settlement and Release
8 of Class Action (“Stipulation of Settlement,” “Settlement Agreement,” or
9 “Settlement”), attached as **Exhibit 2** to the Declaration of Douglas Han, including,
10 and not limited to, the means of allocation and distribution of funds, and the
11 allocations for penalties under the California Labor Code Private Attorneys
12 General Act of 2004 (“PAGA”), Attorneys’ Fees and Costs, the Enhancement
13 Award, and Administration Costs;
- 14 • Conditionally certifying the proposed Settlement Class for settlement purposes
15 only;
- 16 • Appointing Plaintiffs as the Class Representatives;
- 17 • Appointing Justice Law Corporation as Class Counsel;
- 18 • Approving the proposed Notice of Class Action and PAGA Settlement (“Notice”)
19 attached as **Exhibit A** to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Notice with a postage-paid return envelope
21 to the proposed Settlement Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the
25 Claims Administrator; and
- 26 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
27 Agreement, at which time the Court will also consider whether to grant Final
28

1 Approval of the requests for Attorneys' Fees and Costs, the Enhancement Award,
2 and the Administration Costs, and approval of the allocation for PAGA penalties.

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

8
9 Dated: July 25, 2022

JUSTICE LAW CORPORATION

10
11 By: 
12 Douglas Han
13 Shunt Tatavos-Gharajeh
14 Lizette Rodriguez
15 *Attorneys for Plaintiffs*

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$400,000.00 proposed
3 wage-and-hour class action settlement by Plaintiffs on behalf of themselves and on behalf of all
4 current and former non-exempt direct and temporary staffing agency employees who worked at
5 Allied Sales and Distribution, Inc. (“Defendant”) in California at any time during the Class Period
6 (“Settlement Class” and “Class Members”). The Class Period is the time period from April 6,
7 2016, through February 28, 2022 (“Class Period”). At the time of this filing, the number of Class
8 Members provided by Defendant is estimated to be two hundred seventy-nine (279).

9 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
10 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
11 proposed settlement of \$400,000.00 – with an average settlement payment currently estimated to
12 be between \$638.59 and \$655.20 – is well within the range of reasonableness. Class Counsel is
13 convinced that the proposed Settlement is in the best interests of the Class Members based on the
14 negotiations and a detailed knowledge of the issues present in this action.

15 **II. BACKGROUND**

16 On August 20, 2020, Plaintiff Nicole Mendoza filed the Action entitled *Nicole Mendoza*
17 *v. Allied Sales and Distribution, Inc.*, Case No. 20STCV31836, in the Superior Court of
18 California, County of Los Angeles, on behalf of herself and all others similarly situated. The
19 operative complaint in this Action alleges claims including: (a) failure to pay overtime wages; (b)
20 failure to provide rest and meal periods and/or pay premiums; (c) failure to pay minimum wages;
21 (d) failure to timely pay wages; (e) non-compliant wage statements; (f) unreimbursed business
22 expenses; (g) violation of California Bus. & Prof. Code sections 17200, *et seq* (Declaration of
23 Douglas Han (“Han Dec.”), ¶ 10.)

24 Pursuant to Labor Code section 2699.3, subd.(a), on January 29, 2021, Plaintiff Tony
25 Nunley provided written notice to the LWDA and Defendant of the specific provisions of the
26 Labor Code he contends were violated and the theories supporting his contentions. (Han Dec.,
27 *supra*, at ¶ 11.) Plaintiffs believe that on or about April 5, 2021, the requisite sixty-five (65) day
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1 notice period for the Private Attorneys General Act of 2004 (“PAGA”) expired, and the LWDA
2 did not take any action to investigate or prosecute the matter. (Han Dec., *supra*, at ¶ 12.)

3 On September 2, 2021, Plaintiff Nicole Mendoza filed a First Amended Complaint against
4 Defendant in the Los Angeles County Superior Court, adding Plaintiff Tony Nunley and a cause
5 of action for violation of Labor Code sections 2698, *et seq.* (PAGA) seeking civil penalties
6 (“FAC”). The First Amended Complaint is the operative complaint in the Action (“Operative
7 Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to
8 comply with the laws identified in the Operative Complaint and denies any and all liability for
9 the causes of action alleged. (Han Dec., *supra*, at ¶ 13.)

10 Plaintiffs and Defendant (the “Parties”) attended mediation on Plaintiffs’ claims with
11 mediator Deborah C. Saxe, Esq. on April 14, 2022. (Han Dec., *supra*, at ¶ 14.) Following a
12 “mediator’s proposal,” the Parties eventually reached an agreement on the settlement of the
13 action. (Han Dec., *supra*, at ¶ 16.))

14 **III. INVESTIGATION/ LITIGATION HISTORY**

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

16 After Plaintiff Mendoza filed her wage-and-hour class action lawsuit, the Parties engaged
17 in both formal and informal discovery. (Han Dec., *supra*, at ¶ 15.) Plaintiff propounded one (1)
18 set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for
19 admissions, and one (1) set of requests for production of documents. (*Ibid.*) Thereafter, the Parties
20 met and conferred and agreed to an informal exchange of information and to attend mediation.
21 (*Ibid.*)

22 Prior to the mediation, and both before and after the lawsuit was filed, the Parties
23 conducted significant investigation and discovery of the relevant facts and law. Specifically,
24 Defendant produced employee handbooks and other documents evidencing its wage-and-hour
25 policies, practices, and procedures, a random sampling of time and pay records, and information
26 and data relating to the size and scope of the Settlement Class and permitting Plaintiff to
27 understand the number of workweeks and pay periods in the Class Period and the relevant time
28 period for Plaintiff’s PAGA claim, respectively. (Han Dec., *supra*, at ¶ 14.) Class Counsel also

interviewed Class Members who worked for Defendant throughout the Class Period. (Han Dec., *supra*, at ¶ 14.) Plaintiffs’ investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

Based upon the information provided by Defendant and interviews Class Counsel had with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant: (a) failed to provide employees with legally mandated rest and meal breaks; (b) failed to pay employees for all hours worked; (c) failed to reimburse employees for necessary business expenses; (d) issued noncompliant wage statements; and (e) is liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 20-25.)

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 Settlement and Release

During the Parties’ mediation on April 14, 2022, the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the Parties’ claims and defenses versus the benefits of settlement. (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 Preliminary Approval of. (*Ibid.*; 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 ¶ 43.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation on April 14, 2022, both Parties’ counsel conducted extensive arm’s-length settlement negotiations until an agreement was ultimately reached by all Parties. (*Ibid.*)

Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense and length of additional proceedings necessary to continue the litigation against Defendant. (Han Dec., *supra*, at ¶ 44.) Plaintiff and Class Counsel have also considered the uncertainty and risk of

1 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
2 (Han Dec., *supra*, at ¶ 44.) Based on the foregoing, Plaintiff and Class Counsel believe the
3 Settlement is a fair, adequate, and reasonable settlement, and is in the Class Members' best
4 interests. (*Ibid.*)

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

6 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
7 of Plaintiff's claims and Defendant's defenses before reaching the Settlement and engaged in
8 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
9 45.) The Settlement was only possible following significant investigation and evaluation of
10 Defendant's relevant policies and procedures and the data Defendant produced for the putative
11 class. (*Ibid.*) Furthermore, this case has also reached the stage where "the Parties certainly have
12 a clear view of the strengths and weaknesses of their cases" sufficient to support the
13 reasonableness, adequacy, and fairness of the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal.
14 1979) 485 F.Supp. 610, 617.)

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

16 **i. Deductions from the Settlement**

17 The Parties have agreed (subject to and contingent upon the Court's approval) that this
18 action be settled and compromised for the non-reversionary total sum of \$400,000.00 ("Gross
19 Fund Value"), which includes, subject to Court approval: (a) attorneys' fees to Class Counsel in
20 an amount not to exceed \$133,333.33 (one-third (1/3) of the Gross Fund Value); (b) a cost award
21 to Class Counsel in an amount currently estimated at \$14,710.22, but not to exceed \$20,000.00,
22 for reimbursement of litigation costs and expenses;¹ (c) the Enhancement Award to Plaintiffs in
23 the amount of \$10,000.00, each, for their service as the Class Representatives; (d) Administration
24 Costs to Phoenix, the Claims Administrator, in an amount not to exceed \$8,500.00; and (e) the

25 ¹ The final amount of actual litigation costs will be provided to the Court in conjunction
26 with Plaintiff's motion for final approval. (Han Dec., *supra*, at ¶ 29.) At that time, Plaintiff will
27 ask the Court to approve the amount of these costs. (*Ibid.*) If Plaintiff's actual litigation costs
28 exceed \$20,000.00, Plaintiff will only seek reimbursement in the amount of \$20,000.00. (*Ibid.*) If
the amount awarded is less than the amount requested by Class Counsel for Attorneys' Fees and
Costs, the difference shall become part of the Net Fund Value and be available for distribution to
all Class Members who do not timely opt out from this Settlement ("Qualified Claimants"). (*Ibid.*)

1 PAGA Payment of \$40,000.00, seventy-five percent (75%) of which (\$30,000.00) will be paid to
2 the LWDA and twenty-five percent (25%) of which (\$10,000.00) will be distributed among the
3 PAGA Representative Group on a pro rata basis. (Han Dec., *supra*, at ¶ 28.)

4 **ii. Calculation of the Class Members' Settlement Payments**

5 After all Court-approved deductions from the Gross Fund Value, it is estimated that
6 between \$178,166.67 and \$183,456.45 ("Net Fund Value") will be distributed to Class Members
7 – with an average gross settlement payment estimated to be between \$638.59 and \$655.20.² (Han
8 Dec., *supra*, at ¶ 30.)

9 Each Qualified Claimant's settlement payment will be apportioned as twenty percent
10 (20%) wages and eighty percent (80%) penalties and interest. (Han Dec., *supra*, at ¶ 31.) The
11 portion treated as wages will be subject to IRS Form W-2 reporting and, therefore, normal payroll
12 taxes and withholdings will be deducted pursuant to state and federal law, and Defendant will
13 make all required payroll tax contributions (e.g., FICA, FUTA). (*Ibid.*) Contingent upon a
14 Qualified Claimant cashing his/her settlement payment, the portion of the payment representing
15 wages will be reported to the IRS and the Qualified Claimant under the Qualified Claimant's
16 name and Social Security number on an IRS Form W-2, and the portion of the payment
17 representing penalties and interest will be reported to the IRS and the Qualified Claimant under
18 the Qualified Claimant's name and Social Security number on an IRS Form 1099 to the extent
19 required by law. (*Ibid.*) Defendant will pay the employer's share of payroll taxes, which will be
20 paid separate and in addition to the Gross Fund Value. (*Ibid.*) The Claims Administrator will be
21 responsible for calculating the payments, issuing the payments and any required tax reporting
22 forms, and for communicating this information to Defendant and Class Counsel. (*Ibid.*) Upon
23 completion of its calculation of payments, the Claims Administrator will provide the Parties with
24 a report listing the amount of all payments to be made to each Qualified Claimant. (*Ibid.*) Proof
25 of payment will be filed with the Court and provided to the Parties' counsel. (*Ibid.*)

26 ///

27 _____
28 ² \$178,166.67 (Net Fund Value) / 279 (Class Members) = \$638.59; \$183,456.45 (Net Fund Value) / 279 (Class Members) = \$655.20.

1 The Claims Administrator will pay each Qualified Claimant his/her pro-rata share of the
2 Net Fund Value. (Han Dec., *supra*, at ¶ 32.) Each Qualified Claimant’s settlement payment will
3 be determined by dividing the entire Net Fund Value by the total number of workweeks for all
4 Class Members combined during the Class Period. (*Ibid.*) The resulting amount will be the
5 Workweek Amount. (*Ibid.*) Plaintiff and each Qualified Claimant will receive a pro-rata value
6 equal to the number of workweeks worked during the Class Period multiplied by the Workweek
7 Amount. (*Ibid.*)

8 The Claims Administrator will also pay each PAGA Representative Group member
9 his/her pro-rata share of the PAGA Payment. (Han Dec., *supra*, at ¶ 33.) Each PAGA
10 Representative Group member’s settlement payment will be based on the number of workweeks
11 he/she worked during the period between April 6, 2019, through February 28, 2022. (*Ibid.*)

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

13 Within twenty-one (21) calendar days after the latter of the Court issuing an order granting
14 preliminary approval of the Settlement or Court approval of settlement notice to the Settlement
15 Class, Defendant will provide the Class Data List to the Claims Administrator. (Han Dec., *supra*,
16 at ¶ 35.) Within ten (10) calendar days after receipt of the Class Data List, the Claims
17 Administrator will send Class Members, by first-class mail to their last known address, the
18 approved Notice of Pendency of Class Action (“Notice”) in both English and Spanish. (*Id.* at ¶
19 36.) Class Members and PAGA Representative Group members are not required to submit a claim
20 form to receive payment under the Settlement Agreement. (*Ibid.*)

21 **iv. Distribution of Funds**

22 No later than five (5) calendar days after the Effective Date, Defendant will issue to the
23 Claims Administrator the payment of the Gross Fund Value and the employer-side taxes for the
24 Qualified Claimants’ wage payments. (Han Dec., *supra*, at ¶ 37.) No later than ten (10) calendar
25 days after receiving the payment from Defendant, the Claims Administrator will mail settlement
26 checks to Qualified Claimants and make payments for Attorneys’ Fees and Costs, the PAGA
27 Payment – including settlement payments to PAGA Representative Group members and the
28 payment to the LWDA, and Plaintiff’s Enhancement Award. (*Id.* at ¶ 38.)

1 Qualified Claimants and PAGA Representative Group members will have one hundred
2 eighty (180) days after mailing by the Claims Administrator to cash their settlement checks. (Han
3 Dec., *supra*, at ¶ 39.) Should there remain any residual from the Gross Fund Value after all
4 payments are made under the Settlement Agreement, for example, if any settlement checks remain
5 uncashed more than one hundred eighty (180) calendar days after mailing, all uncashed settlement
6 checks shall be sent to the California State Controller’s Unclaimed Property Fund in the name of
7 the Class Member. (*Ibid.*)

8 **v. Release of Claims**

9 Upon final approval by the Court, in exchange for the consideration set forth in the
10 Settlement Agreement, the Settlement Class and each Class Member (with the exception of those
11 who submit a request for exclusion) will release Defendant and the Releasees from the Released
12 Class Claims arising on or before February 28, 2022 (“Released Class Claims”). (Han Dec.,
13 *supra*, at ¶ 40; Exhibit 2, *supra*, at ¶¶ 1.34 and 11.1.)

14 Upon final approval by the Court, in exchange for the Enhancement Award in an amount
15 not to exceed \$10,000.00, and in recognition of his work and efforts in obtaining the benefits for
16 the Settlement Class and undertaking the risk of paying litigation costs in the event this matter
17 had not successfully resolved, Plaintiff will fully release and discharge Defendant and the
18 Releasees from the Named Plaintiff’s Released Claims (“Named Plaintiff’s Released Claims”).
19 (Han Dec., *supra*, at ¶ 41; Exhibit 2, *supra*, at ¶¶ 1.34, 11.3.)

20 The Released Parties include Defendant and its officers, directors, managers, owners,
21 executives, partners, employees, shareholders, agents, attorneys, and any other successors,
22 assigns, or legal representatives and any of Allied Sales and Distribution, Inc.’s former and
23 present parents, subsidiaries, successors, and affiliates, and their officers, directors, managers,
24 owners, executives, partners, employees, shareholders, agents, attorneys, and any other
25 successors, assigns, or legal representatives (“Released Parties”). (Han Dec., *supra*, at ¶ 42;
26 Exhibit 2, *supra*, at ¶ 1.35.)

27 ///

28 ///

1 With regard 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
3 of 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
5 in this case are acceptable because they are limited to the scope of the allegations contained in the
6 Complaint and that will be contained in the First Amended Complaint. Moreover, the released
7 claims are ““based on *the identical factual predicate* as that underlying the claims in the settled
8 class action.”” (*Ibid.*) In other words, the released claims do not ““go beyond the scope of the
9 allegations in the operative complaint”” (*Ibid.*)

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

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

17 **IV. ARGUMENT**

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

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

23 ³ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the
24 number of objectors – is not determinable until the Notice has been provided to the Class
25 Members, and they have had an opportunity to respond. This information will be provided to the
26 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

27 ⁴ 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, 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 . . .

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

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

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

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

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

1 **i. The Gross Fund Value of \$400,000 Is Fair and Reasonable**

2 The proposed Settlement was only possible following significant investigation and
3 evaluation of Defendant’s relevant policies and procedures and the data Defendant produced for
4 the putative class, as referenced in Section III above, which permitted Class Counsel to engage in
5 a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 45.)

6 This investigation and evaluation informed Plaintiff’s central theories of liability. (Han
7 Dec., *supra*, at ¶ 46.) Plaintiff’s claims are predicated on Defendant’s alleged: (a) failure to pay
8 overtime wages; (b) failure to provide compliant rest and meal breaks and pay applicable
9 premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
10 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor
11 Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code section
12 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiff’s theories of liability. (*Id.* at ¶ 46.)

13 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
14 to certification are always present. (Han Dec., *supra*, at ¶ 48.) As the California Supreme Court
15 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
16 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
17 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour
18 claims.⁵ (*Ibid.*) These factors led Plaintiff to discount calculations of potential damages.

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25 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440
[affirming decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006)
141 Cal.App.4th 1422 [affirming denial of certification].)

1 **ii. The PAGA Payment of \$40,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
4 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*,
5 at ¶ 56.) Defendant asserts that, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains
7 that, in addition to its strong arguments against the underlying claims, it had a strong argument
8 that it would be unjust to award maximum PAGA penalties given the law’s current unsettled state.
9 (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by
10 30% under this authority].) Defendant argued that without stacking and limited to the initial
11 violation, the PAGA penalties would be limited to **\$12,800.00** (128 employees x \$100 initial
12 violations) on the low end and **\$76,800.00** (128 employees x \$100 x 6 theories of recovery) on
13 the high end. (Han Dec., at ¶ 59.)

14 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
15 (Han Decl., *supra*, at ¶ 61.) Many of the causes of action brought were duplicative of the statutory
16 claims such as violations of Labor Code sections 201, 202, 203, 204, 218.5, 226.3, 226.7, 510,
17 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$25,000.00 to PAGA
18 civil penalties was reasonable based on a rate of **\$7.85** per pay period [\$40,000.00 ÷ 5,094 pay
19 periods in PAGA date range = **\$7.85**], given the fact that Defendant is also paying an additional
20 \$555,000.00 in the Settlement.⁶ (*Ibid.*) When PAGA penalties are negotiated in good faith and
21 “there is no indication that [the] amount was the result of self-interest at the expense of other
22 Class Members,” such amounts are generally considered reasonable.⁷ (*Ibid.*)

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24 ⁶ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25
26 to \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁷ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”).)

Considering Defendant's defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$400,000.00 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$1,610,291.87** on the low end and **\$1,692,901.86** on the high end. (Han Dec., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$140,712.75	70%	60%	\$25,231.09
Meal Break Premiums	\$205,501.91	60%	50%	\$41,100.38
Overtime/Minimum Wage: Off-the-Clock Work	\$165,110.00 to \$247,720.00	50%	50%	\$41,277.50 to \$61,930.00
Unreimbursed Business Expenses	\$55,800.00	30%	70%	\$11,718.00
Wage Statement Penalty	\$492,000.00	60%	50%	\$98,400.00
Waiting Time Penalty	\$551,167.20	60%	50%	\$110,233.44
MAXIMUM TOTAL EXPOSURE	\$1,610,291.87 to \$1,692,901.86			\$327,960.41 to \$348,612.91

Based on this analysis, the realistic recovery for this case is **\$327,960.41** on the low end and **\$348,612.91** on the high end. (Han Dec., *supra*, at ¶ 69.) The Gross Fund Value of \$400,000.00 is approximately one hundred and twenty-one percent (121.96%) of the minimum potential exposure and approximately one hundred fourteen (114.74%) of the maximum realistic exposure at trial, which is an excellent settlement.

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

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

13 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one
14 of 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 where the plaintiff identifies
17 “both [1] an ascertainable class and [2] a well-defined community of interest among class
18 members.” (*Ibid.*)

19 The proposed Settlement Class is ascertainable and numerous as to make it impracticable
20 to join all Class Members, and there are common questions of law and fact that predominate over
21 any questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 72.) Plaintiff
22 contends that as former hourly-paid, non-exempt employees of Defendant, his claims are typical
23 of the claims of the Settlement Class, and Class Counsel will fairly and adequately protect the
24 interests of the Settlement Class. (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate
25 actions by individual Class Members would create the risk of inconsistent or varying
26 adjudications. (*Ibid.*)

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1 **i. The Proposed Settlement Class Is Ascertainable and Sufficiently**
2 **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
7 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
8 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
9 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

10 This case involves approximately two hundred seventy-nine (279) Class Members. (Han
11 Dec., *supra*, at ¶ 71.) Thus, the Settlement Class is sufficiently numerous. (*Ibid.*)

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

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

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

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 Defendant and allege they and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to the claims described above. (Han Dec., *supra*, at ¶ 73.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal theories as those applicable to the Settlement Class. (*Ibid.*)

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Plaintiffs have proven to be adequate Class Representatives. (Han Dec., *supra*, at ¶ 74.) They have conducted themselves diligently and responsibly in representing the Settlement Class in this litigation, understands their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Further, Plaintiffs have no interest that is averse to the interests of the other Class Members. (*Ibid.*)

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

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

e. The Settlement Is Fair, Reasonable, and Adequate

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

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