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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

ALYSSA MENDOZA, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

OLDE THOMPSON, LLC, a California
limited liability company; OT HOLDINGS
CORPORATION d/b/a OLDE THOMPSON
HOLDINGS CORPORATION, a Delaware
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 56-2021-00554385-CU-OE-VTA

Assigned for All Purposes to:
Honorable Benjamin F. Coats
Department 43

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: 2665918]

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

Hearing Date: September 26, 2022
Hearing Time: 8:30 a.m.
Hearing Place: Department 43

Complaint Filed: May 17, 2021
FAC Filed: September 10, 2021
SAC Filed: June 15, 2022
Trial Date: None Set

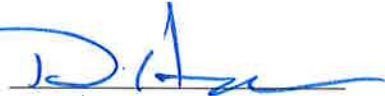
1 **PLEASE TAKE NOTICE** that on September 26, 2022 at 8:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Benjamin F. Coats in Department 43 of the Ventura
3 County Superior Court (Hall of Justice), located at 800 South Victoria Avenue, Ventura, California
4 93003, Plaintiffs Alyssa Mendoza and Gerardo Quiroz (“Plaintiffs,” “Plaintiff Mendoza,” and
5 “Plaintiff Quiroz”) will and hereby do move 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 Class and Representative
8 Action Settlement Agreement (“Settlement Agreement,” “Settlement,” or
9 “Agreement”), attached as **Exhibit 2** to the Declaration of Douglas Han, including,
10 and not limited to, the means of allocation and distribution of funds, the allocations
11 for payments under the Labor Code Private Attorneys General Act of 2004
12 (“PAGA”), Class Counsel Fees Payment, Class Counsel Litigation Expenses
13 Payment, Class Representative Service Payments, and Administration Expenses;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the Class Representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Settlement of Class and Representative Action
18 (“Class Notice”) attached as **Exhibit A** to the Agreement;
- 19 • Directing the mailing of the proposed Class Notice with a postage-paid return
20 envelope to the proposed Class;
- 21 • Approving the proposed deadlines for the settlement administration process;
- 22 • Approving CPT Group, Inc. 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 Class Counsel Fees Payment, Class Counsel
26 Litigation Expenses Payment, Class Representative Service Payments,
27 Administration Expenses, and approval of the allocation of the PAGA Civil
28 Penalties Payment.

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

5
6 Dated: August 23, 2022

JUSTICE LAW CORPORATION

7
8
9 By: 

Douglas Han

Attorneys for Plaintiffs

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$900,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all individuals who are
4 or previously were employed by Defendants Olde Thompson, LLC, OT Holdings Corporation,
5 and Olde Thompson Holdings Corporation (“Defendants”) in California as hourly or non-exempt
6 employees at any time during the period beginning March 9, 2018 to March 12, 2022 (“Class,”
7 “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be four hundred nine (409). (Declaration of Douglas Han In Support of Plaintiffs’
9 Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On March 9, 2021, Plaintiff Mendoza, a former employee of Defendants, provided written
12 notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendants.
13 (Han Decl., *supra*, at ¶ 10.) On May 17, 2021, Plaintiff Mendoza filed a representative PAGA
14 action in the Superior Court of California, County of Ventura. (*Ibid.*)

15 On September 10, 2021, Plaintiff Mendoza filed a First Amended Complaint updating the
16 wage-and-hour allegations. (Han Decl., *supra*, at ¶ 11.)

17 The Parties then remotely attended mediation with the mediator Lisa Klerman on March
18 11, 2022, resulting in the settlement of this matter. (Han Decl., *supra*, at ¶ 12.)

19 In line with the settlement, Plaintiff Mendoza then filed a Second Amended Complaint on
20 June 15, 2022 adding Plaintiff Quiroz as a plaintiff and adding several wage-and-hour class action
21 causes of action. (Han Decl., *supra*, at ¶ 13.)

22 **III. INVESTIGATION/ LITIGATION HISTORY**

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

24 After initiating this lawsuit, both Parties engaged in discovery. (Han Decl., *supra*, at ¶ 15.)
25 Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one
26 (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*)
27 Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of
28 information and then remotely attend mediation. (*Ibid.*)

1 Defendants produced a random sample of the timekeeping and payroll data, personnel
2 records, wage statements, hundreds of pages of policies and practices related to the claims in this
3 matter, and relevant aggregate data points. (Han Decl., *supra*, at ¶ 16.) In addition, Class Counsel
4 interviewed several Class Members. (*Ibid.*)

5 Based upon the information provided by Defendants and interviews Class Counsel had
6 with Class Members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide
7 employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours
8 worked; (3) failed to include non-discretionary bonuses in employees’ regular rates of pay for
9 purposes of overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse
10 employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is
11 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-26.)

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

13 **i. The Parties Attended Mediation Which Ultimately Led to the**
14 **Settlement Agreement**

15 The Parties remotely attended mediation with experienced wage-and-hour mediator, Lisa
16 Klerman, on March 11, 2022. (Han Decl., *supra*, at ¶ 27.) With the assistance of the mediator, the
17 Parties reached an agreement, the terms of which were memorialized in the Settlement Agreement
18 the Parties now seek Preliminary Approval of. (*Id.* at ¶ 27; Exhibit 2.)

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

20 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Decl.,
21 *supra*, at ¶ 37.) Though cordial and professional, the settlement negotiations have always been
22 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
23 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

24 Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense
25 and length of continued proceedings necessary to continue the litigation against Defendants. (Han
26 Decl., *supra*, at ¶ 38.) Plaintiffs and Class Counsel also considered the inherent uncertainty and
27 risk of further litigation, potential outcome, and difficulties and delays of such litigation. (*Ibid.*)
28 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. (Han Decl., *supra*, at ¶ 38.)

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

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of the Parties’ claims and defenses before reaching the Settlement and engaged in sufficient investigation, research, and discovery. (Han Decl., *supra*, at ¶ 39.) The Settlement was only possible following significant investigation and evaluation of Defendants’ relevant policies and procedures, as well as the data produced. (*Ibid.*) Furthermore, this case has 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. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (contingent upon the Court’s approval) this action be settled and compromised for the non-reversionary total sum of \$900,000 (“Gross Settlement Amount”) which includes: (1) Class Counsel Fees Payment of \$315,000 (35% of the Gross Settlement Amount); (2) Class Counsel Litigation Expenses Payment not to exceed \$20,000; (3) Class Representative Service Payments totaling \$15,000; (4) Administration Expenses not to exceed \$10,500; and (5) PAGA Civil Penalties Payment of \$50,000. (Han Decl., *supra*, at ¶ 28.)

ii. Calculating Class Members’ Individual Class Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$489,500 (“Net Settlement Amount”) will be distributed to Participating Class Members – with an *average* Individual Class Settlement Payment estimated at \$1,196.82. (Han Decl., *supra*, at ¶ 29.)

Individual Class Settlement Payments will be paid from the Net Settlement Amount and paid pursuant to the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 30.) The Settlement Administrator shall allocate twenty percent (20%) of each Participating Class Member’s Individual Class Settlement Payment to wages and eighty percent (80%) to penalties and interest. (*Ibid.*) The Settlement Administrator shall also pay each PAGA Member according to his or her proportional share of the \$12,500 of the PAGA Civil Penalties Payment allocated to

PAGA Members using the formula set forth the Agreement. (Han Decl., *supra*, at ¶ 30.)

iii. Notice to the Class

No later than twenty (20) days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendants will, to the extent possible, provide the Class Data List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 32.) Using best efforts to mail it as soon as possible, and in no event later than twenty-one (21) calendar days following receipt of the Class Data List, the Settlement Administrator will mail the Class Notice to all Class Members via first-class regular U.S. Mail. (*Ibid.*) All the Gross Settlement Amount will be disbursed pursuant to the Settlement without the need to submit a claim form, and none of the Gross Settlement Amount will revert to Defendants. (*Id.* at ¶ 31.)

iv. Distribution of Funds

The Settlement will be funded pursuant to the timeline and manner set forth in the Agreement. (Han Decl., *supra*, at ¶ 33.) Uncashed settlement checks will be mailed to the State of California’s Controller, Unclaimed Property Division. (*Ibid.*)

v. Release of Claims

As of the Effective Date, the Released Parties shall be entitled to a full and final accord, satisfaction, settlement, and release of the Released Class Claims for the Class Period from Participating Class Members, including Plaintiffs. (Han Decl., *supra*, at ¶ 34.) As of the Effective Date, all PAGA Members are bound by the Released PAGA Claims. (*Ibid.*)

As of the Effective Date, Plaintiffs shall provide a general release of claims for the Released Parties. (Han Decl., *supra*, at ¶ 35.) Plaintiffs also expressly waives and relinquishes the provisions, rights, and benefits of Civil Code section 1542. (*Ibid.*)

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

underlying the claims in the settled class action.””” (Amaro v. Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521, 537..) In other words, the released claims do not ““go beyond the scope of the allegations in the operative complaint””” (Ibid.)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties’ counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (Ibid.) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the Settlement.¹ (Ibid.)

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.

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, Plaintiffs cite Federal Rule 23 and federal case law in addition to California law.

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

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

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

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

23 **i. The Settlement Amount of \$900,000 Is Fair and Reasonable**

24 The Settlement was possible following significant investigation and evaluation of
25 Defendants’ relevant policies and procedures, as well as the data Defendants produced for the
26 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
27 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 39.)

28 ///

1 Plaintiffs' claims are predicated on Defendants' purported: (1) failure to properly calculate
2 and pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premium
3 wages; (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue
4 compliant wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code
5 section 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200,
6 *et seq.* (Han Decl., *supra*, at ¶ 40.) Defendants deny Plaintiffs' theories of liability. (*Id.* at ¶ 41.)

7 Although Plaintiffs believe the case is suitable for certification, uncertainties with respect
8 to certification are always present. (Han Decl., *supra*, at ¶ 42.) As the California Supreme Court
9 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
10 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
11 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
12 (*Ibid.*) These factors led Plaintiffs to discount calculations of potential damages.

13 **ii. The PAGA Civil Penalties Payment of \$50,000 Is Reasonable**

14 The provisions of the Labor Code potentially triggering PAGA penalties in this case
15 include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a),
16 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 52.) Defendants
17 assert, regardless of the results of the underlying causes of action, PAGA penalties are not
18 mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain, in addition to their
19 strong arguments against the underlying claims, they had a strong argument it would be unjust to
20 award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore*
21 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
22 Defendants argued without stacking and limited to the initial violation, the PAGA penalties would
23

24
25 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

1 be limited to **\$34,200** (342 employees x \$100 initial violations) on the low end and **\$239,400** (342
2 employees x \$100 x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 53-56.)

3 Plaintiffs also recognized the risk any PAGA award could be significantly reduced. (Han
4 Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory
5 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
6 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was
7 reasonable based on a rate of **\$4.09** per pay period [$\$50,000 \div 12,236$ pay periods in PAGA date
8 range = **\$4.09**], given the fact Defendants are also paying an additional \$850,000 in the class
9 settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication
10 that [the] amount was the result of self-interest at the expense of other Class Members,” such
11 amounts are generally considered reasonable.⁵ (*Ibid.*)

12 Considering Defendants’ defenses, its supporting evidence, and its position the case is not
13 suitable for class treatment, the Settlement of \$900,000 is reasonable, adequate, and fair.

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

15 Excluding the civil penalties, which could be completely discretionary, the total estimated
16 potential exposure, assuming certification and prevailing at trial, would be about **\$5,749,401.18**
17 on the low end and **\$6,224,237.65** on the high end. (Han Decl., *supra*, at ¶ 58.)

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

26 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,
28 “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
damages to the PAGA claims”.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,170,784.95	70%	60%	\$140,494.19
Meal Break Premiums	\$635,771.50	60%	60%	\$101,723.44
Overtime/Minimum Wage: Off-the-Clock Work	\$949,207.87 to \$1,424,044.34	60%	50%	\$189,841.57 to \$284,808.87
Overtime/Minimum Wage: Rounding	\$34,492.90	40%	40%	\$12,417.44
Overtime/Minimum Wage: Regular Rate	\$763,811.36	40%	50%	\$229,143.41
Unreimbursed Business Expenses	\$202,387	30%	70%	\$42,501.27
Wage Statement Penalty	\$1,214,100	60%	60%	\$194,256
Waiting Time Penalty	\$778,845.60	60%	60%	\$124,615.30
MAXIMUM TOTAL EXPOSURE	\$5,749,401.18 to \$6,224,237.65⁶			\$1,034,992.62 to \$1,129,959.92⁷

Based on this analysis, the realistic recovery for this case is **\$1,034,992.62** on the low end and **\$1,129,959.92** on the high end. (Han Decl., *supra*, at ¶ 67.) The Gross Settlement Amount of \$900,000 is approximately fourteen percent (14.46%) of the maximum potential exposure and about seventy-nine percent (79.65%) of the maximum realistic exposure at trial. (*Ibid.*)

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

⁶ (Han Decl., *supra*, at ¶¶ 43-51.)

⁷ (*Id.* at ¶¶ 59-66.)

significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The proposed Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 68.) Plaintiffs contend as former hourly-paid, non-exempt employees of Defendants, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves around four hundred nine (409) Class Members. (Han Decl., *supra*, at ¶ 69.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

11 **1. Common Issues Predominate**

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

23 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 70.) Plaintiffs contend all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs are former employees of Defendants and alleges they and the Class Members were employed by the same company and injured by Defendants' common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 71.) 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 Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate Class Representatives. (Han Decl., *supra*, at ¶ 72.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand their 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 their work environment and requirements. (*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 fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

/ / /

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

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

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

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

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

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

19 **V. CONCLUSION**

20 Plaintiffs submit the Settlement is in the Class’s best interests. Under the applicable class
21 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
22 should be conditionally certified for settlement purposes, and Class Notice should be approved.

23
24 Dated: August 23, 2022

JUSTICE LAW CORPORATION

25 
26 By: D. Han
27 Douglas Han
28 Attorneys for Plaintiffs

**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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is manderson@justicelawcorp.com

On August 24, 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: **Mendoza v. Olde Thompson LLC, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM-824930-21**
Court Case No.: 56-2021-00554385-CU-OE-VTA
Ventura 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 August 24, 2022, at Pasadena, California.



Mariah Anderson