

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
JASON ROTHMAN (SBN 304961)
ARSINÉ GRIGORYAN (SBN 319517)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Plaintiff

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

MARIO CEJA, individually, on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

SILVERGATE BANK, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 37-2020-00016207-CU-OE-CTL

Honorable Ronald F. Frazier
Department C-65

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF
CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

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

Hearing Date: December 3, 2021
Hearing Time: 8:30 a.m.
Hearing Place: Department C-65

Complaint Filed: May 26, 2020
FAC Filed: May 20, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 3, 2021 at 8:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Ronald F. Frazier in Department C-65 of the San
3 Diego County Superior Court, located at 330 West Broadway, San Diego, California 92101,
4 Plaintiff Mario Ceja (“Plaintiff”) will and hereby moves for an order:

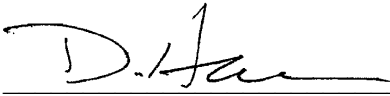
- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation of Class Action Settlement
7 (“Settlement” or “Settlement Agreement”), attached as **“EXHIBIT 2”** to the
8 Declaration of Douglas Han, including, and not limited to, the means of allocation
9 and distribution of funds, and the allocations for penalties under the California
10 Labor Code Private Attorneys General Act of 2004 (“PAGA”), Attorneys’ Fees
11 and Costs, the Class Representative Enhancement Payment, and the Settlement
12 Administration Costs;
- 13 • Conditionally certifying the proposed Settlement Class for settlement purposes
14 only;
- 15 • Appointing Plaintiff as the Class Representative;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
18 attached as **“Exhibit A”** to the Settlement Agreement;
- 19 • Directing the mailing of the proposed Class Notice with a postage-paid return
20 envelope to the proposed Settlement Class;
- 21 • Approving the proposed deadlines for the notice and Settlement Administration
22 process;
- 23 • Approving CPT Group, Inc. (“CPT Group”) as the Settlement Administrator; and
- 24 • Scheduling a hearing to consider whether to grant Final Approval of the
25 Settlement Agreement, at which time the Court will also consider whether to
26 grant Final Approval of the requests for Attorneys’ Fees and Costs, the Class
27 Representative Enhancement Payment, the Settlement Administration Costs, and
28 the PAGA 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: October 22, 2021

JUSTICE LAW CORPORATION

7
8
9 By:



Douglas Han

Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$390,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and former
4 hourly-paid non-exempt employees of Defendant Silvergate Bank (“Defendant”) (excluding
5 those employees who have already signed severance agreements) who worked in California
6 during the Class Period (or if any such person is incompetent, deceased, or unavailable due to
7 military service, the person’s legal representative or successor in interest evidenced by
8 reasonable verification) (“Class Members” or “Settlement Class”). The Class Period is the time
9 period from May 26, 2016, through June 30, 2021 (“Class Period”). At the time of this filing, the
10 number of Class Members confirmed by Defendant is two hundred thirty-one (231).
11 (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.)

12 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
13 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
14 proposed settlement of \$390,000 is well within the ballpark of reasonableness. Class Counsel is
15 convinced that the proposed Settlement is in the best interests of the Class Members based on the
16 negotiations and a detailed knowledge of the issues present in this action.

17 **II. BACKGROUND**

18 Founded in 1988, Defendant is a Federal Reserve member bank and the leading provider
19 of innovative financial infrastructure solutions and services for the growing digital currency
20 industry. (Han Dec., *supra*, at ¶ 10.)

21 On May 26, 2020, Plaintiff, a former employee of Defendant, filed a wage-and-hour class
22 action lawsuit in the Superior Court of California, County of San Diego. Specifically, Plaintiff’s
23 complaint alleged a single cause of action for violation of California Business & Professions
24 Code sections 17200, *et seq.* (Han Dec., *supra*, at ¶ 11.)

25 The Parties attended mediation on Plaintiff’s claims on April 1, 2021. Under the auspices
26 of the mediator Marc Feder, Esq., the Parties were eventually able to reach an agreement on the
27 settlement of the action. (Han Dec., *supra*, at ¶ 12.)

28 ///

1 In line with the Parties' agreement to settle the Action, on April 29, 2021, Plaintiff
2 provided written notice to the California Labor and Workforce Development Agency ("LWDA")
3 and Defendant of the specific provisions of the Labor Code he contends were violated and the
4 theories supporting his contentions. On May 20, 2021, Plaintiff filed a First Amended Complaint
5 that added several wage-and-hour causes of action. Plaintiff intends to file a Second Amended
6 Complaint that will add additional factual allegations supporting the causes of action alleged in
7 the First Amended Complaint. (Han Dec., *supra*, at ¶¶ 13-15.)

8 **III. INVESTIGATION/ LITIGATION HISTORY**

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

10 After Plaintiff filed his wage-and-hour class action complaint, both Parties engaged in
11 discovery. After Defendant responded to Plaintiff's discovery, the Parties proceeded to meet and
12 conferred regarding this discovery. (Han Dec., *supra*, at ¶ 17.)

13 Prior to the mediation with Marc Feder on April 1, 2021, and both before and after the
14 Action was filed, the Parties conducted significant investigation and discovery of the facts and
15 law. This included Defendant producing time and wage data for the years 2016 to 2021 and
16 personnel records. This allowed the Parties to determine size and scope of the Settlement Class
17 and the number of workweeks and pay periods in the Class Period. (Han Dec., *supra*, at ¶ 18.)

18 Based upon the above mentioned discovery, Plaintiff contends – and Defendant denies –
19 that Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2)
20 did not pay employees for all hours worked; (3) failed to include non-discretionary bonus pay
21 and incentive pay in employees' regular rates of pay for overtime compensation; (4) did not
22 reimburse employees for all business expenses; and (5) is liable for issuing noncompliant wage
23 statements and for waiting time penalties. (Han Dec., *supra*, at ¶¶ 20-25.)

24 Defendant has denied all Plaintiff's contentions in their entirety. Specifically, Defendant
25 has argued that: (1) it provided employees with compliant meal and rest breaks; (2) it paid
26 employees for all hours worked; (3) it properly calculated and paid overtime; (4) it reimbursed
27 all reasonable business expenses; and (5) it has not intentionally failed to comply with California
28 labor laws. (Han Dec., *supra*, at ¶ 26.)

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

2 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
3 **Stipulation and Settlement Agreement**

4 The Parties agreed to go to mediation with experienced wage-and-hour mediator, Marc
5 Feder, Esq that took place on April 1, 2021. During the mediation, the Parties discussed the risks
6 of continued litigation, risks of certification, and risks on the merits of the claims versus the
7 benefits of settlement. Under the auspices of the mediator, the Parties were able to reach an
8 agreement on a settlement of the Action, the terms of which were memorialized in the Settlement
9 Agreement that the Parties now seek Preliminary Approval. (Han Dec., *supra*, at ¶ 27.)

10 **ii. The Settlement Was Reached Because of Arm's-Length Negotiations**

11 The Settlement Agreement was reached because of arm's-length negotiations. Though
12 cordial and professional, the settlement negotiations have been adversarial and non-collusive in
13 nature. At the mediation, counsel for the Parties conducted extensive arm's-length settlement
14 negotiations until an agreement was ultimately reached by all Parties. (Han Dec., *supra*, at ¶ 30.)

15 Plaintiff and Class Counsel believe in the merits of the case but also recognize the
16 expense, length, and uncertainty of continued proceedings necessary to continue the litigation
17 against Defendant through class certification, trial, and any possible appeals. Plaintiff and Class
18 Counsel have conducted extensive settlement negotiations, including formal mediation on April
19 1, 2021. (Han Dec., *supra*, at ¶ 31.)

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

21 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
22 before reaching the proposed settlement and engaged in sufficient investigation, research, and
23 discovery. The proposed settlement was only possible following significant discovery and
24 evaluation of Defendant's relevant policies and procedures, as well as the data they produced for
25 the putative class. Furthermore, this case has reached the stage where "the Parties certainly have
26 a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement.
27 (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 32.)

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

2 **i. The Proposed Settlement is for \$390,000**

3 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
4 action be settled and compromised for the non-reversionary total sum of \$390,000 (“Maximum
5 Settlement Amount”) which includes, subject to Court approval: (a) attorneys’ fees to Class
6 Counsel in an amount not to exceed \$136,500 (35% of the Maximum Settlement Amount) to
7 compensate Class Counsel; (b) payment to Class Counsel for actual litigation costs in an amount
8 not to exceed \$20,000; (c) Class Representative Enhancement Payment in the amount of \$10,000
9 to Plaintiff; (d) Settlement Administration Costs to CPT Group, the Settlement Administrator, in
10 an amount not to exceed \$9,000; and (e) PAGA Payment of \$20,000, seventy-five percent (75%)
11 of which (\$15,000) will be paid to the LWDA and twenty-five percent (25%) of which (\$5,000)
12 will be included in the Net Settlement Amount and distributed to Settlement PAGA Members as
13 described in the Agreement. (Settlement Agreement at ¶¶ 2, 7, 12-13, 18, 29, 33-36; attached as
14 Exhibit 2 to Han Dec.)

15 **ii. Calculation of the Settlement Payments to Class Members**

16 After all Court-approved deductions from the Maximum Settlement Amount, it is
17 estimated that \$199,500 (“Net Settlement Amount”) will be distributed to Class Members – with
18 an average Individual Settlement Payment estimated at \$863.64¹. (Han Dec., *supra*, at ¶ 28.)

19 All Individual Settlement Payments will be allocated as: (a) twenty percent (20%) as
20 wages and (b) eighty percent (80%) as penalties and interests. (Settlement Agreement at ¶ 54.)

21 Individual Settlement Payments will be calculated and apportioned from the Net
22 Settlement Amount based on the number of Workweeks a Class Member worked during the
23 Class Period as a non-exempt employee in California. To determine Class Member’s estimated
24 “Individual Settlement Payment,” the Settlement Administrator will use the following formula:

25 The Net Settlement Amount will be divided by the aggregate total number of
26 Workweeks, resulting in the Workweek Value. Each Class Member’s “Individual
27 Settlement Payment” will be calculated by multiplying each individual Class
28 Member’s total number of Workweeks by the Workweek Value. (Settlement
Agreement at ¶ 37.)

¹ \$199,500 (Net Settlement Amount) / 231 (Class Members) = \$863.64.

1 Individual Settlement Payments will be calculated and apportioned from the PAGA
2 Payment amount based on the number of Pay Periods a PAGA Member worked during the
3 PAGA Period as a non-exempt employee in California. To determine PAGA Members estimated
4 “Individual Settlement Payment,” the Settlement Administrator will use the following formula:

5 The PAGA Payment amount’s portion allocated to the PAGA Period will be divided by
6 the aggregate total number of Pay Periods within the PAGA Period, resulting in the Pay
7 Period Value. Each PAGA Member’s “Individual Settlement Payment” will be calculated
by multiplying each individual PAGA Member’s total number of Pay Periods by the Pay
Period Value. (Settlement Agreement at ¶ 38.)

8 **iii. Notice to the Class**

9 Within twenty (20) business days of entry of the Court’s Order Granting Preliminary
10 Approval, Defendant will provide the Class List to the Settlement Administrator. Within ten (10)
11 business days after receiving the Class List from Defendant, the Settlement Administrator will
12 mail a Notice of Class Action Settlement to all Class Members via regular First-Class U.S. Mail.
13 The submission of claim forms is not required. (Settlement Agreement at ¶¶ 41-42.)

14 **iv. Distribution of Funds**

15 No later than within thirty (30) business days after the Effective Date, Defendant will
16 deposit the Maximum Settlement Amount of \$390,000 into a Qualified Settlement Fund
17 administered by the Settlement Administrator. Also, within thirty (30) calendar days of the
18 Effective Date, and after Defendant has fully funded the Qualified Settlement Fund with the
19 Maximum Settlement Amount, the Settlement Administrator will issue payments to: (i) all Class
20 Members who have not submitted a valid and timely Request for Exclusion, including any Class
21 Member whose notice was returned as undeliverable; (ii) all PAGA Members; (iii) Plaintiff; (iv)
22 Class Counsel; (v) the LWDA; and (vi) itself. (Settlement Agreement at ¶¶ 32, 51.)

23 Any Individual Settlement Payment check not cashed within 120 calendar days will be
24 void. The funds from the uncashed checks shall be distributed by the Settlement Administrator to
25 the State Controller’s Unclaimed Property Fund. No later than ten (10) calendar days after the
26 expiration of the 120-day period, the Settlement Administrator shall deposit the total amounts
27 contained in the settlement checks, and all interest that has accrued, to the State Controller’s
28 Unclaimed Property Fund. (Settlement Agreement at ¶ 52.)

1 **v. Release of Claims**

2 In exchange for the Settlement, Plaintiff, all Class Members who do not submit a valid
3 and timely Request for Exclusion, and Aggrieved Employees will release the Released Parties of
4 any and all Released Claims and PAGA Released Claims that arose during the Class Period and
5 PAGA Period. The release is limited to the “claims . . . that were asserted or could have been
6 asserted based on the factual allegations made in the Action. . .” This is an acceptable scope of
7 the release in a class action. *See Amaro v. Anaheim Arena Mgmt.* (Sep. 28, 2021, G058371.)
8 Finally, Plaintiff, for himself, his heirs, successors and assigns, provides a general release of
9 claims. (Settlement Agreement at ¶¶ 20, 24-25, 63-65.)

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. Class Counsel has significant experience in litigating unpaid wages,
13 noncompliant meal period, and noncompliant rest period class actions. Class Counsel has
14 prosecuted numerous cases on behalf of employees for California Labor Code violations and
15 thus are experienced and qualified to evaluate the class claims, to evaluate settlement versus trial
16 on a fully informed basis, and to evaluate the viability of the defenses. This experience instructed
17 Class Counsel on the risks and uncertainties of further litigation and guided their determination
18 to endorse the proposed Settlement.² (Han Dec., *supra*, at ¶¶ 2-8, Exhibit 1.)

19 **IV. ARGUMENT**

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

21 California Rule of Court 3.769 requires court approval for class action settlements.³
22 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
23 settlement.” (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
24 motion for preliminary approval of class settlements:

25 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class
26 Action Settlement 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.

27 ³ The California Supreme Court also has authorized California’s trial courts to use Federal Rule 23 and cases
28 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, therefore, the Parties cite 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
2 in a class action, or as to a party, requires the approval of the court after
3 hearing.

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

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

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

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

19 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
20 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
21 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require an
22 explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all
23 his claims, provided there is a record that allows “an understanding of the amount that is in
24 controversy and the realistic range of outcomes of the litigation.” (*Munoz, supra*, 186
25 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a settlement as in
26 good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the
27 class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at
28 p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500).)

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1 **i. The Settlement Amount of \$390,000 Is Fair and Reasonable**

2 The proposed Settlement was possible following significant discovery and evaluation of
3 Defendant's relevant policies and procedures and the data Defendant produced for the putative
4 class as referenced in the Declaration of Douglas Han, which permitted Class Counsel to engage
5 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 32.)

6 This discovery informed Plaintiff's central theories of liability, which are predicated on
7 Plaintiff's claims that Defendant failed to pay overtime and minimum wages, failed to provide
8 meal and rest breaks and pay applicable premiums, failed to timely pay final wages, failed to
9 issue compliant wage statements, failed to reimburse business expenses, violated PAGA, and
10 violated the Business & Professions Code sections 17200, *et seq.* Defendant has vehemently
11 denied Plaintiff's theories of liability and asserted defenses (Han Dec., *supra*, at ¶¶ 33-34.)

12 Although Plaintiff believes the case is suitable for certification on the basis that there are
13 company-wide policies that Plaintiff contends violate California law and uniformly affect the
14 putative class members, uncertainties with respect to certification are always present. As the
15 California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class
16 certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On*
17 have reached different conclusions concerning certification of wage-and-hour claims.⁴ While
18 remaining confident in the strengths of his claims, all these factors led Plaintiff to discount the
19 following calculations of potential damage claims. (Han Dec., *supra*, at ¶ 35.)

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⁴(See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,
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 \$20,000 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, 246(1), 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. Defendant
5 asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not
6 mandatory but permissive and discretionary. Defendant also maintained that, in addition to its
7 strong arguments against the underlying claims, it had a strong argument that it would be unjust
8 to award maximum PAGA penalties given the law's unsettled state. (*Thurman v. Bayshore*
9 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 (reducing penalties by 30% under this authority).)
10 Plaintiff argued that without stacking and limited to the initial violation, PAGA penalties would
11 be limited to \$16,100 (161 employees x \$100 initial violation) on the low end and \$96,600 on the
12 high end based on six (6) major theories of recovery. (Han Dec., *supra*, at ¶¶ 43-47.)

13 Plaintiff also recognized the risk that any PAGA award could be significantly reduced.
14 Many of the causes of action brought were duplicative of the statutory claims such as violations
15 of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802.
16 Thus, the maximum penalties for each pay period are not justified. It was indeed arguable
17 whether the Court would award the maximum penalties under the law. Thus, allocating \$20,000
18 to PAGA civil penalties was reasonable based on a rate of \$3.29 per pay period [$\$20,000 \div 6,071$
19 Pay Periods in PAGA Date Range = \$3.29], given the fact that Defendant is also paying an
20 additional \$370,000 in the class settlement.⁵ Where PAGA penalties are negotiated in good faith
21 and "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.⁶ (Han Dec., *supra*, at ¶ 48.)

23 Considering Defendant's defenses, supporting evidence, and position that the Action is
24 not suitable for class treatment, the settlement amount of \$390,000 is reasonable and fair.

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

⁶ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24;
see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 ("[T]rial court did not abuse its discretion in
approving a settlement which does not allocate any damages to the PAGA claims.")).

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$2,926,361.30 on the low end and \$3,162,341.86 on the high end. (Han Dec., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$859,729.66	70%	60%	\$103,167.56
Meal Break Premiums	\$78,862.32	60%	50%	\$15,772.46
Overtime/Minimum Wage: Off-the-Clock	\$471,961.12 to \$707,941.68	60%	60%	\$75,513.78 to \$113,270.67
Overtime/Minimum Wage: Non-Discretionary Bonus Pay and Incentive Pay	\$40,327	40%	50%	\$12,098.10
Unreimbursed Business Expenses	\$114,944	30%	70%	\$24,138.24
Wage Statement Penalty	\$603,750	50%	50%	\$150,937.50
Waiting Time Penalty	\$756,787.20	50%	50%	\$189,196.80
MAXIMUM TOTAL EXPOSURE	\$2,926,361.30 to \$3,162,341.86⁷			\$570,824.44 to \$608,581.33⁸

Moreover, the realistic recovery for this case is approximately \$570,824.44 on the low end and \$608,581.33 on the high end. The Maximum Settlement Amount of \$390,000 is about twelve percent (12.33%) of the maximum potential exposure and sixty-four percent (64.08%) of the maximum realistic exposure at trial, which is a good settlement. (Han Dec., *supra*, at ¶ 57.)

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 1078, 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

⁷ Han Dec., *supra*, at ¶¶ 37-42.

⁸ *Id.*, at ¶¶ 50-56.

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

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

7 Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
8 of a common or general interest, of many persons, or when the parties are numerous, and it is
9 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
10 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
11 “both [1] an ascertainable class and [2] a well-defined community of interest among class
12 members.” (*Ibid.*)

13 The proposed Class is ascertainable and numerous as to make it impracticable to join all
14 Class Members, and there are common questions of law and fact that predominate over any
15 questions affecting any individual Class Member. Plaintiff contends that as an hourly-paid non-
16 exempt employee of Defendant, his claims are typical of the claims of the Class Members, and
17 Class Counsel will fairly and adequately protect the interests of the Settlement Class. Also,
18 Plaintiff asserts the prosecution of separate actions by individual Class Members would create
19 the risk of inconsistent or varying adjudications. (Han Dec., *supra*, at ¶ 58.)

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

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

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1 The Action involves two hundred thirty-one (231) Class Members. Thus, this Class is
2 sufficiently numerous. (Citing see *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
3 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former employees”
4 is sufficiently numerous).) (Han Dec., *supra*, at ¶ 59.)

5 **ii. The Class Members Share a Well-Defined Community of Interest**

6 The community of interest requirement “embodies three factors: (1) predominant
7 common questions of law or fact; (2) class representatives with claims or defenses typical of the
8 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drugs*,
9 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*
10 *mandate that class members have uniform or identical claims.*” (*Capitol People First v.*
11 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).)
12 Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to
13 assess whether that common behavior toward similarly situated plaintiffs renders class
14 certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The
15 application of each of these factors is discussed below.

16 **1. Common Issues Predominate**

17 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
18 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
19 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).) In
20 other words, courts determine whether the elements necessary to establish liability are
21 susceptible to common proof, even if the class members must individually prove their damages.
22 (*Brinker, supra*, 53 Cal.4th at p. 1024). These types of claims are regularly granted class
23 certification when the plaintiff can present evidence of common policies. (*See, e.g., Jones v.*
24 *JGC Dallas LLC* (N.D. Tex. 2014) Case No. 3:11-cv-02743 (certified collective action involving
25 190 dancers); *Espinoza v. Galardi South Enterprises Inc.* (S.D. Fla. 2016) Case No. 1:14-cv-
26 21244 (court certified class of dancers on state law claims).)

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28 ///

1 Plaintiff assert that common issues of fact and law predominate as to each of the claims
2 alleged by him. Plaintiff contends all hourly-paid non-exempt employees who worked for
3 Defendant during the Class Period were subject to the same or similar employment practices,
4 policies, and procedures, which are described in greater detail above. (Han Dec., *supra*, at ¶ 60.)

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

6 Typical claims rely on legal theories and facts that are substantially like other class
7 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff was an hourly-paid non-
8 exempt employee of Defendant and alleges that he and the Class Members were employed by the
9 same company and injured by Defendant's common policies and practices related to the issues
10 described above. Plaintiff seeks relief for these claims and derivative claims on behalf of all
11 Class Members. Thus, Plaintiff's claims arise from the same employment practices and are based
12 on the same legal theories applicable to the other Class Members. (Han Dec., *supra*, at ¶ 61.)

13 **3. Plaintiff Is Adequate to Represent the Class**

14 Plaintiff has proven to be an adequate Class Representative. He has conducted himself
15 diligently and responsibly in representing the Class Members in this litigation, understands his
16 fiduciary obligations, and has actively participated in the prosecution of this case. Plaintiff has
17 spent time meeting with counsel to provide counsel with a complete understanding of his work
18 environment and requirements. (Han Dec., *supra*, at ¶¶ 2-8, 62, Exhibit 1.)

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

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

28 ///

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
5 action settlement is presumed fair under the following circumstances: (1) the parties reached
6 settlement after arm’s-length negotiations; (2) investigation and discovery were sufficient to
7 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
8 and (4) the percentage of objectors is small. (*Id.* at p. 1802.) As the foregoing analysis shows,
9 all these elements are present here.

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

11 California Rule of Court, No. 3.769(f), provides:

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

18 The proposed Class Notice advises the Class Members of their right to participate in the
19 Settlement; how and when to object to or request exclusion from the Settlement; and the date,
20 time, and location of the Final Approval Hearing. (See Han Dec., *supra*; Exhibit A to Exhibit 2.)

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23 ///

1 **V. CONCLUSION**

2 Plaintiff submits the proposed Settlement is in the best interests of the Class Members, as
3 it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the
4 proposed Settlement should be preliminarily approved by the Court, the Class should be
5 conditionally certified for purposes of settlement only, and the Class Notice should be approved.

6
7 Dated: October 22, 2021

JUSTICE LAW CORPORATION

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Douglas Han

Attorneys for Plaintiff

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**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 mking@justicelawcorp.com

On October 22, 2021, I served the foregoing document described as

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT THEREOF**

for the following case: **Ceja v. Silvergate Bank**
LWDA/Court Case No.: **LWDA Case No.: CM-830809-21**
Court Case No.: 37-2020-00016207-CU-OE-CTL
San Diego County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

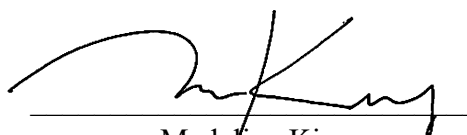
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 25, 2021, at Pasadena, California.



Madeline King