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

THOMAS TESENE, individually, on behalf
of other members of the general public
similarly situated, and on behalf of aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA");

Plaintiff,

v.

CFR RINKENS, LLC, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: RG21113141

Assigned for All Purposes to:
Honorable Tara Desautels
Department 16

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**

[Reservation ID: 317228455960]

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

Hearing Date: January 18, 2023
Hearing Time: 2:30 p.m.
Hearing Place: Department 16

Complaint Filed: September 20, 2021
FAC Filed: August 19, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 18, 2023 at 2:30 p.m., or as soon as the matter
2 may be heard, before the Honorable Tara Desautels in Department 16 of the Alameda County
3 Superior Court (Rene C. Davidson Courthouse), located at 1225 Fallon St., Oakland, California
4 94612, Plaintiff Thomas Tesene (“Plaintiff”) will, and hereby does, move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation of Class Action Settlement
7 and Release of Claims (“Settlement Agreement,” “Settlement,” or “Agreement”),
8 attached as **Exhibit 2** to the declaration of Douglas Han, including, and not limited
9 to, the means of allocation and distribution of funds, the allocations for payments
10 under the Private Attorneys General Act of 2004 (“PAGA”), Class Counsel Fees
11 Payment, Class Counsel Litigation Expenses Payment, Class Representative
12 Payment, and Settlement Administrator Payment;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the class representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Class Notice attached as **Exhibit A** to the [Proposed]
17 Order Preliminarily Approving Class Action Settlement and Setting Hearing for
18 Final Approval of Settlement;
- 19 • Approving the Request for Exclusion form attached as **Exhibit B** to the [Proposed]
20 Order Preliminarily Approving Class Action Settlement and Setting Hearing for
21 Final Approval of Settlement;
- 22 • Directing the mailing of the proposed Class Notice and Request for Exclusion form
23 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
24 to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and settlement administration
26 process;
- 27 • Approving CPT Group Class Action Administrators as the Settlement
28 Administrator; and

- Scheduling a hearing to consider whether to grant final approval of the Settlement Agreement, at which time the Court will also consider whether to grant final approval of the requests for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Payment, Settlement Administrator Payment, and PAGA Payment.

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

Dated: October 19, 2022

JUSTICE LAW CORPORATION

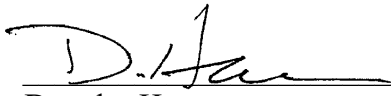
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$400,000 wage-and-hour
3 class action and representative PAGA settlement by Plaintiff on behalf of himself and all hourly-
4 paid, non-exempt employees who, during the period of time from July 1, 2018, through September
5 1, 2022, have previously been or currently are employed in California by Defendant CFR
6 Rinkens, LLC (“Defendant”), as an hourly-paid, non-exempt employee (“Class” and “Class
7 Period”). At the time of this filing, the number of Class Members confirmed by Defendant is
8 estimated to be two hundred fourteen (214). (Declaration of Douglas Han In Support of Plaintiff’s
9 Motion For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On July 12, 2021, Plaintiff provided written notice to the California Labor and Workforce
12 Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

13 On September 20, 2021, Plaintiff filed a representative PAGA action in the Superior Court
14 of California, County of Alameda. (Han Decl., *supra*, at ¶ 11.)

15 On July 19, 2022, the Parties remotely attended mediation with mediator Lynn Frank,
16 Esq., which eventually resulted in the settlement of this matter. (Han Decl., *supra*, at ¶ 12.)

17 On August 19, 2022, Plaintiff filed his First Amended Complaint that added several wage-
18 and-hour class action causes of action. (Han Decl., *supra*, at ¶ 13.)

19 **III. INVESTIGATION/ LITIGATION HISTORY**

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

21 After filing this case, the Parties engaged in discovery, investigation, and negotiations.
22 The Parties then met and conferred, agreed to engage in an informal exchange of information,
23 and eventually attended mediation to settle this matter. (Han Decl., *supra*, at ¶ 15.)

24 Prior to mediation, Defendant produced hundreds of documents relating to its policies,
25 practices, and procedures. (Han Decl., *supra*, at ¶ 16.) Plaintiff also reviewed time records, pay
26 records, and information relating to the size and scope of the Class and the PAGA Group. (*Ibid.*)
27 Plaintiff also interviewed putative class members who worked for Defendant. (*Ibid.*)

28 ///

1 Based upon the information provided by Defendant and interviews with non-exempt
2 employees, Plaintiff contends – and Defendant denies – Defendant: (a) failed to provide
3 employees with legally mandated meal and rest breaks and pay applicable premium wages;
4 (b) failed to pay employees for all hours worked; (c) failed to incorporate non-discretionary
5 bonuses when calculating employees’ regular rates of pay; (d) failed to reimburse employees for
6 necessary business expenses; (e) issued noncompliant wage statements; and (f) is liable for
7 waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

9 **i. The Parties Attended Mediation Which Ultimately Led to the**
10 **Settlement Agreement**

11 The Parties agreed to remotely attend a mediation with experienced wage-and-hour
12 mediator Lynn Frank, Esq., on July 19, 2022. (Han Decl., *supra*, at ¶ 26.) During the mediation,
13 the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits
14 of the Parties’ claims and defenses versus the benefits of settlement. (*Ibid.*) Under the auspices
15 of the mediator, the Parties reached a settlement, the terms of which were memorialized in the
16 Settlement the Parties now seek Preliminary Approval. (*Id.* at ¶ 26; Exhibits 2, 4.)

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

18 At the mediation, the Parties’ counsel engaged in extensive arm’s-length settlement
19 negotiations until an agreement was reached. (Han Decl., *supra*, at ¶ 40.) Though cordial and
20 professional, the settlement negotiations have always been adversarial and non-collusive. (*Ibid.*)

21 Plaintiff and Class Counsel believe in the merits of the case but recognize the expense and
22 length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶ 41.)
23 Plaintiff and Class Counsel considered the uncertainty and risk of further litigation, potential
24 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the foregoing,
25 Plaintiff and Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and
26 reasonable and is in the best interest of Class Members. (*Ibid.*)

27 ///

28 ///

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

2 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties
3 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
4 research, and discovery. (Han Decl., *supra*, at ¶ 42.) The information produced by Defendant
5 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
6 (*Ibid.*) This case has reached the stage where “the Parties certainly have a clear view of the
7 strengths and weaknesses of their cases” sufficient to support the Settlement. (*Ibid.*; *Boyd v.*
8 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

10 **i. Deductions from the Settlement**

11 The Parties agreed this action be settled and compromised for the non-reversionary total
12 sum of \$400,000 (“Maximum Settlement Amount”) which includes the: (1) Class Counsel Fees
13 Payment of \$133,333.33; (2) Class Counsel Litigation Expenses Payment of up to \$20,000;
14 (3) Class Representative Payment of up to \$10,000; (4) Settlement Administrator Payment,
15 estimated not to exceed \$7,750; and (5) PAGA Payment of \$50,000. (Han Decl., *supra*, at ¶ 27.)

16 **ii. Calculation of the Class Members’ Settlement Shares**

17 After all Court-approved deductions from the Maximum Settlement Amount, it is
18 estimated that \$178,916.67 (“Net Settlement Amount”) will be distributed to Participating Class
19 Members, resulting in a gross *average* Settlement Share of \$836.06. (Han Decl., *supra*, at ¶ 28.)

20 The Settlement Administrator will calculate and disburse the Settlement Shares and
21 PAGA Payment Shares using the formula set forth in the Settlement Agreement. (Han Decl.,
22 *supra*, at ¶¶ 29-30.)

23 **iii. The Allocation of 15% to Wages and 85% to Penalties and Interest Is**
24 **Justified Under the Claims of this Action**

25 Fifteen percent (15%) of each Settlement Share shall represent unpaid wages and the
26 remaining eighty-five percent (85%) of each Settlement Share shall represent penalties and
27 interest. (Han Decl., *supra*, at ¶ 29.)

28 ///

1 The allocation of wages, penalties, and interest indicated above was based on the realistic
2 exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages.
3 (Han Decl., *supra*, at ¶ 69.) Plaintiff added the realistic exposure for rest break premiums and
4 meal break premiums ($\$25,684.07 + \$3,489.98 = \$29,174.05$). (*Ibid.*) Plaintiff then added the
5 $\$29,174.05$ to the low end realistic exposure for unpaid wages due to off-the-clock work and
6 underpaid overtime wages, premium wages, and sick leave ($\$29,174.05 + \$38,531.57 +$
7 $\$11,155.78 = \$78,861.40$). (*Ibid.*) The realistic exposure of $\$78,861.40$ Plaintiff can expect to
8 receive if he were to prevail at trial for meal and rest break premiums, low end unpaid wages due
9 to off-the-clock work, and underpaid overtime wages, premium wages, and sick leave represents
10 almost fifteen percent (14.76%) of the low end realistic exposure of the maximum total exposure
11 and PAGA penalties ($\$78,861.40 \div \$534,346.28 = 0.14758 \times 100 = 14.76\%$). (*Ibid.*)

12 **iv. Notice to the Class**

13 Within twenty-one (21) days after the Motion for Preliminary Approval is granted,
14 Defendant will provide to the Settlement Administrator the Class Members' Data. (Han Decl.,
15 *supra*, at ¶ 31.) Within fourteen (14) days after receiving the Class Members' Data, or as soon
16 thereafter as it is able to do so, the Settlement Administrator will mail the Notice Packet to all
17 identified Class Members via first-class U.S. Mail. (*Ibid.*)

18 **v. Distribution of Funds**

19 The Maximum Settlement Amount will be funded in the manner and timeline set forth in
20 the Settlement Agreement. (Han Decl., *supra*, at ¶ 32.) The funds represented by settlement
21 checks remaining uncashed for more than one hundred and eighty (180) calendar days after
22 issuance shall be voided and transmitted to Legal Aid at Work ("LAAW"), for use in the County
23 of Los Angeles. (*Id.* at ¶ 33.)

24 **vi. The Cy Pres Recipient is Appropriate**

25 LAAW satisfies the policy of the State of California "to ensure that the unpaid cash residue
26 and unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
27 possible, in a manner designed either to further the purposes of the underlying class action or
28 causes of action, or to promote justice for all Californians." (Code Civ. Proc., § 384(a); Han Decl.,

1 *supra*, at ¶ 34.) The Code of Civil Procedure further states:

2 [T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid
3 residue or unclaimed or abandoned class member funds, plus any interest that has accrued
4 thereon, to nonprofit organizations or foundations to support projects that will benefit the
5 class or similarly situated persons, or that promote the law consistent with the objectives
6 and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit
7 organizations providing civil legal services to the indigent.

8 (Code Civ. Proc., § 384 (b); Han Decl., *supra*, at ¶ 34.)

9 LAAW directly satisfies the legislature's purpose and goal under Code of Civil Procedure
10 section 384. (Han Decl., *supra*, at ¶ 35.) There can be no doubt LAAW is the type of non-profit
11 organization the legislature had in mind when drafting and amending Code of Civil Procedure
12 section 384. (*Ibid.*) The Parties are not affiliated with and do not have any financial interest in
13 LAAW. (*Ibid.*) Specifically, Plaintiff and Class Counsel have no affiliation with or have any
14 interest pertaining to LAAW. (*Ibid.*)

15 **vii. Release of Claims**

16 As of the date of the Judgment, each Participating Class Member, and without the need to
17 manually sign a release document, shall release the Released Parties from all causes of action and
18 claims that were alleged in this case or reasonably could have been alleged based on the facts and
19 legal theories contained in this case. (Han Decl., *supra*, at ¶ 36.)

20 As of the date of the Judgment, each PAGA Group Member, and without the need to
21 manually sign a release document, shall release the Released Parties and California for claims for
22 civil penalties pursuant to PAGA based upon all causes of action and claims that were alleged in
23 this case or reasonably could have been alleged based on the facts and legal theories contained in
24 this case, and/or the LWDA Exhaustion Letter. (Han Decl., *supra*, at ¶ 37.)

25 Plaintiff, individually and on behalf of Plaintiff's heirs, executors, administrators,
26 representatives, attorneys, successors and assigns knowingly and voluntarily releases and forever
27 discharges Plaintiff's Released Parties, the fullest extent permitted by law, of and from any and
28 all claims, known and unknown, asserted and unasserted, which Plaintiff has or may have against
the Plaintiff's Released Parties as of the date of execution of the Settlement Agreement. (Han

Decl., *supra*, at ¶ 38.) Plaintiff also expressly waives and relinquishes all rights and benefits of section 1542 of the Civil Code, without exception. (*Ibid.*)

With regard 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.’” (*Ibid.*) 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

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. (*Ibid.*) Consequently, Class Counsel are experienced and qualified to evaluate the class claims, the advantages, and disadvantages of settlement versus trial, and the viability of the defenses. (*Ibid.*)¹

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, 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, 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 (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 consider “all
9 the 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.” (*Kullar*, at p. 129;
19 see also *Munoz*, at p. 409.)

20 In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to
21 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
22 that of the attorneys.” (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 133.)
23 Finally, *Kullar* does not require an explicit statement of the maximum amount the class could
24 recover if the plaintiff prevailed on all his claims, provided there is a record that allows “an
25 understanding of the amount that is in controversy and the realistic range of outcomes of the
26 litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p.
27 409.) Put differently, “as the court does when it approves a settlement as in good faith under Code
28 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 Maximum Settlement Amount of \$400,000 Is Fair and Reasonable**

2 The Settlement was only possible following significant investigation and evaluation of
3 Defendant's relevant policies and procedures and the data produced, as referenced in Section
4 III(b)(iii) above, permitting Class Counsel to engage in a comprehensive analysis of liability and
5 potential damages. (Han Decl., *supra*, at ¶ 42.)

6 This investigation and evaluation informed Plaintiff's central theories of liability.
7 Plaintiff's claims are predicated on Defendant's alleged: (1) failure to properly calculate and pay
8 overtime wages and sick leave; (2) failure to provide meal and rest breaks and pay applicable
9 premiums; (3) failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue
10 compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA;
11 and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶
12 43.) Defendant continues to deny Plaintiff's theories. (*Id.* at ¶ 44.)

13 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
14 to certification are always present. (Han Decl., *supra*, at ¶ 45.) 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 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores,*
17 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (Han
18 Decl., *supra*, at ¶ 47.) These factors led Plaintiff to discount the calculations of potential damages.

19 **ii. The PAGA Civil Penalties Total of \$50,000 Is Reasonable**

20 The provisions of the Labor Code potentially triggering PAGA penalties in this case
21 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
22 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl.,
23 *supra*, at ¶ 54.) Defendant asserted, regardless of the results of the underlying causes of action,

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].)

PAGA penalties are not mandatory but permissive and discretionary. (Han Decl., *supra*, at ¶ 54.) Defendant maintained, in addition to the strong arguments against the underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties given the law’s unsettled state. (*Ibid.*; see *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$12,300** (123 PAGA Group members x \$100 initial violations) on the low end and **\$86,100** (123 employees x \$100 x 7 theories of recovery) on the high end. (*Id.* at ¶¶ 55-58.)

Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 59.) Many of the causes of action brought were duplicative of the statutory claims, such as Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was debatable whether the Court would award the maximum penalties. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based on a rate of **\$21.11** per pay period [$\$50,000 \div 2,369$ pay periods in PAGA date range = **\$21.11**], given the fact Defendant is paying an additional \$350,000 in the class settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁵ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$400,000 is reasonable, adequate, and fair.

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

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

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

2 Plaintiff calculated the maximum potential exposure and maximum realistic exposure to
3 be higher than the agreed-upon Maximum Settlement Amount. (Han Decl., *supra*, at ¶¶ 46-53,
4 60, 68.) This was after considering the strengths and weaknesses of the Parties claims and
5 defenses and applying the necessary discounts. (*Id.* at ¶¶ 61-67.)

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

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

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

23 The Class is ascertainable and numerous as to make it impracticable to join all Class
24 Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*,
25 at ¶ 70.) Plaintiff contends his claims are typical of the claims of the Class, and Class Counsel
26 will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiff asserts the
27 prosecution of separate actions by individual Class Members would create the risk of inconsistent
28 or varying adjudications. (*Ibid.*)

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

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

9 This case involves about two hundred fourteen (214) Class Members, meaning the Class
10 is sufficiently numerous. (Han Decl., *supra*, at ¶ 71.) Class Members will be identified by
11 Defendant through a review of Defendant’s employment records. (*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.*,
16 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*
17 *mandate that class members have uniform or identical claims.*” (*Capitol People First v.*
18 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).)
19 Rather, courts focus on the defendant’s internal policies and “pattern and practice . . . in order to
20 assess whether that common behavior toward similarly situated plaintiffs renders class
21 certification appropriate.” (*Ibid.*)

22 **1. Common Issues Predominate**

23 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
24 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First, supra*,
25 155 Cal.App.4th at p. 690 (emphasis added).) Courts determine whether the elements necessary
26 to establish liability are susceptible to common proof, even if the class members must individually
27 prove their damages. (*Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th
28 1024.) These types of claims are granted class certification when the plaintiff can present evidence

of common policies. (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *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.*)

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

Typical claims rely on legal theories and facts substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee of Defendant and alleges he 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 Decl., *supra*, at ¶ 73.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate representative. (Han Decl., *supra*, at ¶ 74.) Plaintiff conducted himself diligently and responsibly in representing the Class, understands his fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Furthermore, Plaintiff has no adverse interest to that of the Class. (*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. Because some Class Members are current employees, Plaintiff believes the fear of retaliation further supports the superiority of class-wide relief as this fear deters 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 a proposed settlement is “fair, adequate and
4 reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class
5 action settlement is presumed fair under the following circumstances: (1) 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) 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 Notice Packet meets all these requirements. The proposed Notice Packet advises the
16 Class Members of their right to participate in the Settlement, how and when to object to or request
17 exclusion from the Settlement, and the date, time, and location of the Final Approval Hearing.

18 **V. CONCLUSION**

19 Plaintiff submits the Settlement is in the best interests of the Class. Plaintiff further
20 submits the Settlement should be preliminarily approved, the Class should be conditionally
21 certified for purposes of settlement only, and the Notice Packet should be approved.

22
23 Dated: October 19, 2022

JUSTICE LAW CORPORATION

24
25 By: 
26 Douglas Han
27 Attorneys for Plaintiff
28



Superior Court of Alameda County Public Portal

Make a Reservation

Tesene VS CFR Rinkens, LLC

Case Number: RG21113141 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2021-09-20 Location: Rene C. Davidson Courthouse - Department 16

Reservation

Case Name: Tesene VS CFR Rinkens, LLC	Case Number: RG21113141
Type: Motion re: (Preliminary Approval of Class Action Settlement)	Status: RESERVED
Filing Party: Thomas Tesene (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 16
Date/Time: 01/18/2023 2:30 PM	Number of Motions: 1
Reservation ID: 317228455960	Confirmation Code: CR-QCR92IUO8SYHRFYWX

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX1109	Authorization: 04105G
Payment Date: 1969-12-31	

Print Receipt

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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 manderson@justicelawcorp.com

On October 19, 2022, 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: **Tesene v. CFR Rinkens, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-837570-21**
Court Case No.: RG21113141
Alameda 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 19, 2022, at Pasadena, California.



Mariah Anderson