

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

ADAN CARLOS, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

MARICH CONFECTIONERY COMPANY,
INC., a California corporation; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CU-21-00215

Assigned for All Purposes to:
Honorable J. Omar Rodriguez
Department 1

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); Declaration of Leonard Spelt;
Declaration of Diane Ortiz; and [Proposed]
Order filed concurrently herewith]

Hearing Date:
Hearing Time:
Hearing Place: Department 1

Complaint Filed: November 2, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on _____ at _____, or as soon as the matter may be
2 heard, before the Honorable J. Omar Rodriguez in Department 1 of the San Benito County Superior
3 Court located at 450 Fourth Street Hollister, California 95023, Plaintiff Adan Carlos (“Plaintiff”)
4 will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
7 Agreement,” “Settlement,” or “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;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action Settlement and Hearing
14 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
15 Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the proposed deadlines for the settlement administration process;
- 19 • Approving Phoenix Class Action Administration Solutions as the Administrator;
20 and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, Class Representative Service Payment, and
25 Administration Expenses Payment, and approval of the allocation of the Private
26 Attorney General Act of 2004 (“PAGA”) Penalties.

27 ///

28 ///

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

6
7 Dated: June 1, 2023

JUSTICE LAW CORPORATION

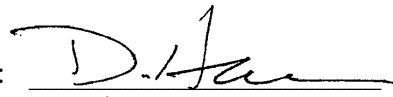
8
9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	13
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	The <i>Cy Pres</i> Recipient Is Appropriate	14
vi.	Release of Claims	15
d.	Counsel for Both Parties Are Experienced in Similar Litigation	16
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review	16
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	17
i.	The Settlement Amount of \$310,000 Is Fair and Reasonable	17
ii.	The PAGA Penalties of \$10,000 Is Reasonable	18
c.	Discount Analysis Justifies the Settlement	19
d.	Conditional Certification of the Class Is Appropriate	20
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	21
ii.	Class Members Share a Well-defined Community of Interest	21

1	1.	Common Issues Predominate.....	22
2	2.	Plaintiff’s Claims Are Typical of the Class Claims.....	22
3	3.	Plaintiff Is Adequate to Represent the Class.....	23
4	4.	Class Action is Superior for the Fair and Efficient Adjudication	
5		of this Controversy	23
6	e.	The Settlement Is Fair, Reasonable, and Adequate	23
7	f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	24
8	V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	18
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	15
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	21
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	16
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1024	22
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	21, 22
<i>City of Detroit v. Grinnell Corporation</i>	
(2d Cir. 1974) 495 F.2d 448.....	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	22
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	18
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	16, 23
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	22
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	21

<u>Cases</u>	<u>Page(s)</u>
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	16
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	18
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	21
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009, No. 08-00844 EDL) 2009 U.S. Dist. LEXIS 33900	19
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	16
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
185042.....	22
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	17
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	21
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234	20
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	17
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	19
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	18, 20, 21
<i>In re Tableware Antitrust Litig.</i>	
(N.D.Cal. 2007) 484 F.Supp.2d 1059	20

	<u>Cases</u>	<u>Page(s)</u>
--	---------------------	-----------------------

	<i>Thurman v. Bayshore Transit Mgmt.</i> (2012) 203 Cal.App.4th 1112	18
	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	16
	<i>Walsh v. IKON Solutions, Inc.</i> (2007) 148 Cal.App.4th 1440	18

	<u>Rules</u>	
--	---------------------	--

	California Rules of Court, Rule 3.769	16
	California Rules of Court, Rule 3.769 (f)	24
	California Rules of Court, Rule 3.769 (g).....	16
	Federal Rule 23	16

	<u>Statutes</u>	
--	------------------------	--

	Business & Professions Code § 17200	18
	Code of Civil Procedure § 382.....	20, 23
	Code of Civil Procedure § 384.....	14
	Code of Civil Procedure § 384 (a).....	14
	Code of Civil Procedure § 384 (b).....	14
	Code of Civil Procedure § 877.6.....	17
	Code of Civil Procedure § 1542.....	15
	Labor Code § 201.....	18
	Labor Code § 202.....	18
	Labor Code § 203.....	18
	Labor Code § 204.....	18
	Labor Code § 210.....	18
	Labor Code § 218.5.....	18
	Labor Code § 221.....	18
	Labor Code § 226(a)	18

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 226.3.....	18
Labor Code § 226.7.....	18
Labor Code § 246.....	18
Labor Code § 510.....	18
Labor Code § 512(a).....	18
Labor Code § 558.....	18
Labor Code § 1174(d).....	18
Labor Code § 1194.....	18
Labor Code § 1197.....	18
Labor Code § 1197.1.....	18
Labor Code § 1198.....	18
Labor Code § 2800.....	18
Labor Code § 2802.....	18

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$310,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and former non-
4 exempt employees (directly hired only) of Defendant Marich Confectionary Company, Inc.
5 (“Defendant”) within the State of California at any time during the period from May 6, 2017 to
6 June 25, 2023 or the date of preliminary approval, whichever date is earlier (“Class,” “Class
7 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be five hundred eighty-nine (589), which was confirmed by Defendant. (Declaration
9 of Douglas Han In Support of Plaintiff’s Motion for Preliminary Approval of Class Action
10 Settlement (“Han Decl.”), ¶¶ 7-8.)

11 **II. BACKGROUND**

12 On August 24, 2021, Plaintiff, a former employee of Defendant, provided written notice to
13 the California Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl.,
14 *supra*, at ¶ 9; Exhibit 3.)

15 On November 2, 2021, Plaintiff filed a wage-and-hour class action lawsuit Defendant in
16 the Superior Court of California, County of San Benito, alleging nine (9) causes of action,
17 including violation of PAGA. (Han Decl., *supra*, at ¶ 10; Exhibit 4.)

18 After engaging in extensive discovery, investigations, and negotiations, the Parties
19 remotely attended mediation with the mediator Paul Grossman on March 27, 2023. (Han Decl.,
20 *supra*, at ¶ 11.) Under the auspices of the mediator after a full day of mediation, the Parties reached
21 a settlement. (*Ibid.*)

22 **III. INVESTIGATION/ LITIGATION HISTORY**

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

24 Plaintiff and Defendant propounded form interrogatories, special interrogatories, requests
25 for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 13.) The Parties
26 responded to the formal discovery requests. (*Ibid.*) Plaintiff also took the depositions of
27 Defendant’s Persons Most Qualified while Defendant took Plaintiff’s deposition. (*Ibid.*)
28 Thereafter, the Parties met and conferred and agreed to engage in an informal exchange of

1 information and then eventually attended mediation. (Han Decl., *supra*, at ¶ 13.)

2 Prior to the mediation, Defendant produced several documents relating to its policies,
3 practices, and procedures. (Han Decl., *supra*, at ¶ 14.) As part of Defendant’s production, Plaintiff
4 also reviewed time records, pay records, and information relating to the size and scope of the Class.
5 (*Ibid.*) Defendant also produced documents pertaining to its present financial condition and the
6 financial hardships it has been experiencing in recent years. (*Ibid.*) Putative class members were
7 also interviewed to attain a better understanding of the extent and frequency of the alleged day-to-
8 day violations. (*Ibid.*)

9 Based on the information provided by Defendant and interviews with putative class
10 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
11 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
12 failed to include non-discretionary bonuses in employees’ regular rate of pay for purposes of
13 overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse employees
14 for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for
15 waiting time penalties. (Han Decl., *supra*, at ¶¶ 16-23.)

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

17 **i. The Parties Attended Mediation Which Led to the Settlement**

18 The Parties attended mediation with an experienced mediator on March 27, 2023. (Han
19 Decl., *supra*, at ¶ 24.) During the mediation, the Parties discussed Defendant’s current financial
20 condition and the financial hardships it has been experiencing in recent years. (*Ibid.*) Under the
21 auspices of the mediator, the Parties reached a settlement, the terms were memorialized in the
22 Settlement Agreement. (*Id.* at ¶ 24; Exhibits 2, 5.)

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

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

28 ///

1 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
3 *supra*, at ¶ 28.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
4 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff
5 and Class Counsel also considered Defendant’s present financial condition, financial hardships it
6 has been experiencing in recent years, and its ability to fund a settlement. (*Ibid.*) Based on the
7 foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable
8 settlement and is in the best interests of Class Members. (*Ibid.*)

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

10 The Parties investigated and evaluated the strengths and weaknesses of the Parties’ claims
11 and defenses before reaching the Settlement and engaged in research and discovery to support the
12 Settlement. (Han Decl., *supra*, at ¶ 29.) The Settlement was only possible following significant
13 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
14 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
15 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
16 of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han
17 Decl., *supra*, at ¶ 29; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

19 **i. Deductions from the Settlement**

20 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
21 for the non-reversionary total sum of \$310,000 (“Gross Settlement Amount”) which includes: (1)
22 Class Counsel Fees Payment up to \$108,500 (35% of the Gross Settlement Amount); (2) Class
23 Counsel Litigation Expenses Payment up to \$25,000; (3) Class Representative Service Payment
24 up to \$10,000; (4) Administration Expenses Payment up to \$15,000; (5) PAGA Penalties up to
25 \$10,000; and (6) settlement credit of \$24,175.29. (Han Decl., *supra*, at ¶ 25.)

26 ///

27 ///

28 ///

1 **ii. Calculating Settlement Payments**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$117,324.71 (“Net Settlement Amount”) will be paid to all Class Members who do not submit
4 valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”).
5 (Han Decl., *supra*, at ¶ 26.)

6 Participating Class Member will receive a proportionate share of the Net Settlement
7 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
8 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
9 to the settlement of wages claims and eighty percent (80%) to the settlement of claims for interests
10 and penalties. (*Id.* at § C(2)(d)(i).) Class Members who have previously already received a
11 payment from Defendant with respect to claims covered by the Settlement will receive a credit for
12 their prior amount received, which will be subtracted from their checks. (*Id.* at § C(2)(d)(iii).)

13 In addition, the PAGA Penalties that is paid to each Aggrieved Employee shall be
14 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
15 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees’ portion of the PAGA Penalties will be
16 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

17 **iii. Notice to the Class**

18 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
19 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
20 ¶ 24; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
21 Class Data, the Administrator will send to all Class Members identified in the Class Data the Class
22 Notice via first-class USPS mail. (*Id.* at § G(4)(c).)

23 **iv. Distribution of Funds**

24 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
25 in the Settlement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed
26 settlement checks will be paid to the *cy pres* recipient San Benito County Youth Alliance
27 (“SBCYA”). (*Id.* at § D(3)(c).)

28 ///

1 **v. The *Cy Pres* Recipient Is Appropriate**

2 SBCYA satisfies the policy of California “to ensure that the unpaid cash residue and
3 unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
4 possible, in a manner designed either to further the purposes of the underlying class action or
5 causes of action, or to promote justice for all Californians.” (Code Civ. Proc., § 384(a).) The Code
6 of Civil Procedure further states:

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

11 (Code Civ. Proc., § 384 (b).)

12 SBCYA directly satisfies the legislature’s purpose and goal under Code of Civil Procedure
13 section 384. SBCYA is a nonprofit organization that strives to create thriving and equitable
14 communities with its mission being to provide innovative and culturally relevant services that
15 strengthen and enrich youth, families, and the community. (See Declaration of Diane Ortiz.)
16 SBCYA’s services include after school programs (to provide students and families opportunities
17 to engage with and be members of a greater community), youth support services (that transform
18 lives and help the youth grow and cultivate their strengths and life purpose), and community
19 outreach (that provide resources and information that connect youths to pathways of opportunity).
20 (*Ibid.*) These programs and services are in targeted schools and neighborhoods in South Santa
21 Clara and San Benito Counties. (*Ibid.*) There can be no doubt SBCYA is the type of non-profit
22 organization the legislature had in mind when drafting and amending section 384. (*Ibid.*) The
23 Parties are also not affiliated with and do not have any financial interest in SBCYA.

24 ///

25 ///

26 ///

1 **vi. Release of Claims**

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

7 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
8 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
9 Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on
10 behalf of themselves and their former and present representatives, agents, attorneys, heirs,
11 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
12 (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § E(3).)

13 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
14 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
15 Plaintiff and their former and present spouses, representatives, agents, attorneys, heirs,
16 administrators, successors, and assigns generally release and discharge Released Parties from all
17 claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*, at ¶
18 24; Exhibit 2, *supra*, at § E(1).) Plaintiff expressly waives and relinquishes the provisions, rights,
19 and benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

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

28 ///

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

2 Both Parties' counsel are experienced in wage-and-hour employment law and class actions.
3 (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
4 of employees for Labor Code violations and are experienced and qualified to evaluate the class
5 claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This
6 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
7 their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.)

8 **IV. ARGUMENT**

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

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

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

16 ...

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

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

25 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
26 the Class Notice has been provided to the Class, and they have had an opportunity to respond. This
27 information will be provided to the Court in conjunction with the Motion for Final Approval of
28 Class Action Settlement.

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

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

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

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

19 **i. The Settlement Amount of \$310,000 Is Fair and Reasonable**

20 The Settlement Agreement was only possible following significant investigation and
21 evaluation of the relevant policies and procedures, as well as the data Defendant produced for the
22 Class and documents pertaining to Defendant’s present financial condition and recent financial
23 hardships, as referenced in Section III above, permitting Class Counsel to engage in a
24 comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 29.)

25 ///

26 ///

27 ///

1 The claims are predicated on the purported: (1) failure to properly calculate and pay
2 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
3 properly pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue
4 compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA;
5 and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶
6 30.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 31.)

7 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
8 certification are always present. (Han Decl., *supra*, at ¶ 32.) 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.*) Thus, the calculations for potential damages were discounted.

13 **ii. The PAGA Penalties of \$10,000 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, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510,
16 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 41.)
17 Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties are
18 not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a strong
19 argument it would be unjust to award maximum PAGA penalties given the law's current unsettled
20 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 41; *Thurman v. Bayshore Transit Mgmt.*
21 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore,
22 Defendant argued without stacking and limited to the initial violation, the PAGA penalties would
23 be limited to about **\$37,400** (374 employees x \$100 penalty for initial violation) on the low end
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].)

\$261,800 (374 employees x \$100 penalty for initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 42-44.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 45.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$10,000 to PAGA civil penalties was reasonable given the fact Defendant is also paying an additional \$300,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (Han Decl., *supra*, at ¶ 45.)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$4,544,078.06** on the low end and around **\$4,883,223.02** on the high end. (Han Decl., *supra*, at ¶ 46.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$359,868.83	75%	65%	\$31,488.52
Meal Break Premiums	\$82,715	65%	65%	\$10,132.59
Overtime/Minimum Wage: Off-the-Clock Work	\$677,908 to \$1,017,052.96	65%	55%	\$106,770.51 to \$160,185.84
Overtime/Minimum Wage: Regular Rate	\$31,006.23	35%	55%	\$9,069.32
Unreimbursed Business Expenses	\$235,180	35%	75%	\$38,216.75
Wage Statement Penalty	\$1,496,000	75%	65%	\$130,900
Waiting Time Penalty	\$1,661,400	75%	65%	\$145,372.50
MAXIMUM TOTAL EXPOSURE	\$4,544,078.06 to \$4,883,223.02⁵			\$471,950.19 to \$525,365.52⁶

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

⁵ (Han Decl., *supra*, at ¶¶ 33-40.)

⁶ (*Id.* at ¶¶ 47-53.)

1 Thus, the realistic recovery for this case is about **\$471,950.19** on the low end and
2 **\$525,365.52** on the high end. (Han Decl., *supra*, at ¶ 54.) The Gross Settlement Amount is about
3 six percent (6.35%) of the maximum potential exposure and around fifty-nine (59.01%) of the
4 maximum realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering
5 Defendant’s present financial condition and the financial hardships it has been experiencing in
6 recent years. (Han Decl., *supra*, at ¶ 54.)

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

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

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

24 The Class is ascertainable and numerous as to make it impracticable to join all Class
25 Members, and there are common questions of law and fact that predominate over any questions
26 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 55.) Plaintiff contends the claims
27 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
28 interests of the Class. (*Ibid.*) Plaintiff also asserts the prosecution of separate actions by individual

Class Members would create the risk of inconsistent or varying adjudications. (Han Decl., *supra*, at ¶ 55)

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 approximately five hundred eighty-nine (589) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 56; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

///

///

///

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

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 57.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

///
///
///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 59.) Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff also has 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. Plaintiff contends the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are also current employees, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

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

/ / /

/ / /

/ / /

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

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

The Class Notice meets all these requirements. The Class Notice advises Class Members of their right to participate in the Settlement, how and when to object to or request exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

V. CONCLUSION

Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for settlement purposes, and Class Notice should be approved.

Dated: June 1, 2023

JUSTICE LAW CORPORATION

By: D. Han
Douglas Han
Attorneys for Plaintiff

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

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On June 1, 2023, 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: **Carlos v. Marich Confectionery Company, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-842409-21**
Court Case No.: CU-21-00215
San Benito 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 June 1, 2023, at Pasadena, California.



Bitty Minnis-Lemley