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

ADAM LOERA, MIGUEL DIAZ, DAVID
STARR, SUDIPA BISTA and RICK
ZURLO, 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");

Plaintiffs,

v.

TRUGREEN, INC., a Delaware corporation;
TRUGREEN LIMITED PARTNERSHIP, a
Delaware limited partnership; and DOES 1
through 100, inclusive;

Defendants.

Case No.: STK-CV-UOE-2022-0005745

Assigned for All Purposes to:
Honorable Barbara Kronlund
Department 10D

CLASS ACTION

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

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

Hearing Date:
Hearing Time: 9:00 a.m.
Hearing Place: Department 10D

Complaint Filed: July 11, 2022
FAC Filed: September 1, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on _____, and at 9:00 a.m., or as soon as the
2 matter may be heard before the Honorable Barbara Kronlund of Department 10D at the Superior
3 Court of California, County of San Joaquin located at 180 East Weber Avenue, Stockton, California
4 95202, Plaintiffs Adam Loera, Miguel Diaz, David Starr, Sudipa Bista and Rick Zurlo (“Plaintiffs,”
5 “Plaintiff Loera,” “Plaintiff Diaz,” “Plaintiff Starr,” “Plaintiff Bista” and Plaintiff Zurlo”) will and
6 hereby do move for an order:

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

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

6 Dated: September 28, 2022

JUSTICE LAW CORPORATION

7
8
9 By: 

Douglas Han

Attorneys for Plaintiffs

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Attended Mediation Which Led to the Joint Stipulation	11
c.	Terms of the Proposed Settlement	11
i.	Deductions from the Settlement.....	11
ii.	Calculation of the Individual Settlement Payments to Class Members.....	12
iii.	Release of Claims	12
IV.	ARGUMENT	13
a.	Class Action Settlements Are Subject to Court Review	13
b.	Preliminary Approval of the Proposed Settlement Is Appropriate	14
c.	The Settlement Was Reached as a Result of Arm's-length Negotiations.....	15
d.	The Settlement Agreement Is Fair, Reasonable, and Adequate.....	15
e.	The PAGA Payment of \$50,000 Is Reasonable.....	16
f.	Discount Analysis Justifies the Settlement	17
g.	Conditional Certification of the Class Is Appropriate	18
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	18
ii.	The Class Members Share a Well-defined Community of Interest	19
h.	The Settlement Is the Result of Thorough Investigation and Discovery	20
i.	Request for Attorneys' Fees and Costs	20
j.	Counsel for Both Parties Are Experienced in Similar Litigation	21
k.	Appointment of CPT Group as the Claims Administrator.....	22
l.	Notice to Class Members Complies with California Rules of Court, Rule 3.769(f).....	22
m.	Proposed Deadlines for the Notice Process	23

///

n.	Appointment of the Class Representatives and Approval of the Class Representative Enhancement Payments	23
V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases

7-Eleven Owners for Fair Franchising v. Southland Corp.

(2000) 85 Cal.App.4th 1135 15

Amaro v. Anaheim Arena Management, LLC

(2021) 69 Cal.App.5th 521 12, 13

In re American Bank note Holographics Inc., Securities Litigation

(S.D.N.Y. 2001) 127 F.Supp.2d 418 15

In re Ampicillin Antitrust Litigation

(D.D.C. 1981) 526 F.Supp. 494 21

Bartold v. Glendale Federal Bank

(2000) 81 Cal.App.4th 816 18

Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.

(S.D.N.Y. 1979) 480 F.Supp. 1195 21

In re Beef Industry Antitrust Litigation

(5th Cir. 1979) 607 F.2d 167 13

Boyd v. Bechtel Corp.

(N.D.Cal. 1979) 485 F.Supp.610 20

Capitol People First v. Department of Developmental Services

(2007) 155 Cal.App.4th 676 19

Carrington v. Starbucks Corp.

(2018) 30 Cal.App.5th 504 16

Cartt v. Superior Court

(1975) 50 Cal.App.3d 960 23

Chavez v. Netflix, Inc.

(2008) 162 Cal.App.4th 43 21

City of Detroit v. Grinnell Corporation

(2nd Cir. 1974) 495 F.2d 448..... 14, 18

1	<i>Dunk v. Ford Motor Co.</i>	
2	(1996) 48 Cal.App.4th 1794	14, 15, 21
3	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
4	(2008) 169 Cal.App.4th 1524	19
5	<i>Green v. Obledo</i>	
6	(1981) 29 Cal.3d 126	13
7	<i>Hanlon v. Chrysler Corp.</i>	
8	(9th Cir. 1998) 150 F.3d 1011	14
9	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
10	(2001) 89 Cal.App.4th 908	18
11	<i>Hopson v. Hanesbrands Inc.</i>	
12	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	17
13	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
14	(1981) 452 U.S. 905.....	13
15	<i>Ketchum v. Moses</i>	
16	(2001) 24 Cal.4th 1122	20
17	<i>Lealao v. Beneficial Cal., Inc.</i>	
18	(2000) 82 Cal.App.4th 19	20
19	<i>Linder v. Thrifty Oil Co.</i>	
20	(2000) 23 Cal.4th 429	18
21	<i>Linney v. Cellular Alaska Partnership</i>	
22	(9th Cir. 1998) 151 F.3d 1234	18
23	<i>Nordstrom Com. Cases</i>	
24	(2010) 186 Cal.App.4th 576	17
25	<i>Officers for Justice v. Civil Service Commission on City and County of San Francisco</i>	
26	(9th Cir. 1982) 688 F.2d 615	14
27	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
28	(2004) 34 Cal.4th 319	18, 19, 24

In re Tableware Antitrust Litig.

(N.D.Cal. 2007) 484 F.Supp.2d 1059 18

Thurman v. Bayshore Transit Mgmt.

(2012) 203 Cal.App.4th 1112 16

Vasquez v. Superior Court

(1971) 4 Cal.3d 800 13

Wershba v. Apple Computer, Inc.

(2001) 91 Cal.App.4th 224 14, 15

Rules

Federal Rule 23 13

Federal Rule 41 10

Rule 3.766 23

Rule 3.769 13

Rule 3.769(f) 22

Rule 3.769(g) 13, 14

Statutes

Code of Civil Procedure § 382..... 15, 18

Code of Civil Procedure § 1542..... 12

Labor Code § 201..... 16

Labor Code § 202..... 16

Labor Code § 203..... 16

Labor Code § 204..... 16

Labor Code § 218.5..... 16

Labor Code § 221..... 16

Labor Code § 226..... 16

Labor Code § 226.3..... 16

Labor Code § 226.7..... 16

Labor Code § 226(a) 16

1	Labor Code § 246.....	16
2	Labor Code § 510.....	16
3	Labor Code § 512(a)	16
4	Labor Code § 558.....	16
5	Labor Code § 1174(d).....	16
6	Labor Code § 1194.....	16
7	Labor Code § 1197.....	16
8	Labor Code § 1197.1.....	16
9	Labor Code § 1198.....	16
10	Labor Code § 2800.....	16
11	Labor Code § 2802.....	16

12 **Other Authorities**

13	Conte & Newberg, Newberg on Class Actions § 8.21 (4th Ed.)	23
14	Conte & Newberg, Newberg on Class Actions § 8.39 (4th Ed.)	22, 23
15	Conte & Newberg, Newberg on Class Actions § 11.24 (4th Ed.)	13
16	Conte & Newberg, Newberg on Class Actions § 11.25 (4th Ed.)	14
17	Conte & Newberg, Newberg on Class Actions § 11.26 (4th Ed.)	23
18	Conte & Newberg, Newberg on Class Actions § 11.47 (4th Ed.)	16
19	Conte & Newberg, Newberg on Class Actions § 14.03 (4th Ed.)	21
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1 **I. INTRODUCTION**

2 Plaintiffs seek preliminary approval of the Settlement Agreement entered by and between
3 Plaintiffs, individually and on behalf of the proposed Class, and Defendants TruGreen, Inc. and
4 TruGreen Limited Partnership. (“Defendants”). Subject to Court approval, the Parties have agreed
5 to settle this case for a Maximum Settlement Amount of up to \$1,100,000.

6 Plaintiffs seek to certify the following Class for settlement purposes, consisting of
7 approximately seven-hundred-seventeen (717) Class Members: all current and former hourly-paid
8 or non-exempt employees of Defendants within the State of California at any time during the period
9 from January 19, 2017 to August 31, 2022 (“Class,” “Class Members,” and “Class Period”).

10 **II. BACKGROUND**

11 On July 19, 2021, Plaintiff Loera and Plaintiff Diaz filed a wage-and-hour class action
12 lawsuit against Defendants in the Superior Court of California, County of Sacramento (Case No.
13 34-2021-00304557), alleging eight (8) causes of action. (Declaration of Douglas Han In Support of
14 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), at ¶ 10.)

15 On August 13, 2021, Plaintiff Bista and Plaintiff Zurlo provided notice to the Labor and
16 Workforce Development Agency. (Han Decl., *supra*, at ¶ 11.) On October 21, 2021, Plaintiff Bista
17 and Plaintiff Zurlo filed a representative PAGA action against Defendants in the Superior Court for
18 the State of California, County of Sacramento (Case No. 34-2021-00310112). (*Id.* at ¶ 12.)

19 On August 26, 2021 and December 17, 2021, both lawsuits were removed to the United
20 States District Court for the Eastern District of California. (Han Dec., *supra*, at ¶ 13.) On May 17,
21 2022, both lawsuits were consolidated via the Parties’ stipulation. (*Ibid.*)

22 On May 31, 2022, the Parties participated in mediation before Marc J. Feder, a respected
23 mediator of wage-and-hour class actions. (Han Decl., *supra*, at ¶ 14.) Under the auspices of the
24 mediator, the Parties were able to reach an agreement via a mediator’s proposal. (*Ibid.*)

25 In line with the settlement, the Parties filed a Rule 41 dismissal of the pending federal action
26 without prejudice. (Han Decl., *supra*, at ¶ 15.) Afterwards, on July 11, 2022, Plaintiffs filed a
27 wage-and-hour class action lawsuit against Defendants in the Superior Court of California, County
28 of San Joaquin, alleging Labor Code violations similar to the previous cases (Case No. STK-CV-

1 UOE-2022-0005745). (Han Decl., *supra*, at ¶ 15.) Finally, on September 1, 2022, Plaintiffs filed a
2 First Amended Complaint that added Plaintiff Starr as an additional plaintiff. (*Ibid.*)

3 **III. INVESTIGATION/ LITIGATION HISTORY**

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

5 After Plaintiffs initiated their cases, the Parties engaged in discovery. (Han Decl., *supra*, at
6 ¶ 17.) The Parties conducted significant investigation and discovery of the facts and law. (*Ibid.*)
7 Specifically, Defendants produced documents relating to their wage-and-hour policies, practices,
8 and procedures. (*Ibid.*) Class Counsel also reviewed information relating to the size and scope of
9 the Class and data permitting Class Counsel to understand the number of workweeks in the Class
10 Period. (*Ibid.*) Class Counsel also interviewed several Class Members. (*Ibid.*)

11 Based upon the informal exchange of information, Defendants’ document production, and
12 interviews Class Counsel had with non-exempt employees, Plaintiffs contend – and Defendants
13 deny – Defendants: (a) failed to provide compliant meal and rest breaks; (b) failed to pay
14 employees for all hours worked; (c) failed to properly calculate and pay overtime wages; (c) failed
15 to reimburse employees for incurring business expenses; and (d) is liable for wage statement and
16 waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

17 **b. The Parties Attended Mediation Which Led to the Joint Stipulation**

18 Under the auspices of mediator Marc J. Feder, the Parties were able to reach an agreement
19 on settlement via a mediator’s proposal, the terms of which were memorialized in the Settlement
20 Agreement that the Parties seek preliminary approval of. (Han Decl., *supra*, at ¶ 27; Exhibit 2.)

21 **c. Terms of Proposed Settlement**

22 **i. Deductions from the Settlement**

23 Under the terms of the Settlement Agreement, Defendants will pay a Maximum Settlement
24 Amount of up \$1,100,000, and the Net Settlement Amount will be calculated by deducting the
25 following amounts from the Maximum Settlement Amount: (1) attorneys’ fees up to \$385,500; (2)
26 litigation costs and expenses not to exceed \$25,000; (3) Class Representative Enhancement
27 Payments totaling \$50,000; (4) Claims Administration Costs not to exceed \$20,000; and (e) PAGA
28 Payment up to \$50,000. (Han Decl., *supra*, at ¶ 28.)

1 **ii. Calculation of the Individual Settlement Payments to Class Members**

2 To receive Individual Settlement Payments, all Class Members will be required to submit a
3 timely and valid Claim Form by the Response Deadline. (Han Decl., *supra*, at ¶ 29.)

4 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
5 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 30.) All
6 Individual Settlement Payments will be allocated fifteen percent (15%) as wages and eighty-five
7 percent (85%) as penalties. (*Ibid.*) The Claims Administrator will also calculate the twenty-five
8 percent (25%) portion of the PAGA Payment to PAGA Aggrieved Employees using the formula set
9 forth in the Settlement Agreement. (*Ibid.*)

10 **iii. Release of Claims**

11 Upon the Effective Date, Plaintiffs and all Settlement Class Members will be deemed to
12 have fully, finally, and forever released, settled, compromised, relinquished, and discharged with
13 respect to all the Released Parties any and all Released Claims for any period during the Released
14 Claims Period. (Han Decl., *supra*, at ¶ 34.)

15 As a condition of the Settlement, Plaintiffs shall provide a separate general release against
16 the Released Parties. (Han Decl., *supra*, at ¶ 35.) Furthermore, pursuant to the terms of the
17 Settlement, and solely with respect to the Released Claims, Plaintiffs waive and relinquish any
18 rights or benefits available to them under the provisions of section 1542 of the Civil Code. (*Ibid.*)

19 The Released Parties include Defendants, and their predecessors, successors, subsidiaries,
20 parent companies, other corporate affiliates, and assigns, including but not limited to Defendants
21 and all of their owners, shareholders, members, officers, directors, employees, agents, servants,
22 registered representatives, attorneys, insurers, reinsurers, trustees, successors and assigns, any other
23 persons acting by, through, under or in concert with any of them, and any entities with whom
24 Defendants shared a Joint Employer relationship. (Han Decl., *supra*, at ¶ 36.)

25 Regarding class action releases, ““[A] court may release not only those claims alleged in
26 the complaint and before the court, but also claims which ‘could have been alleged by reason of or
27 in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
28 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases are

1 acceptable because they are limited to the scope of the allegations in the complaint. Moreover, the
2 released claims are ““based on *the identical factual predicate* as that underlying the claims in the
3 settled class action.”” (*Amaro, supra*, 69 Cal.App.5th at 537 In other words, the released claims do
4 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

5 **IV. ARGUMENT**

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

7 California Rules of Court, rule 3.769 requires court approval for class action settlements.¹
8 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
9 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
10 preliminary approval of class settlements:

- 11 (a) A settlement or compromise of an entire class action, or a cause of action
12 in a class action, or as to a party, requires the approval of the court after
13 hearing.
14 ...
15 (c) Any party to a settlement agreement may serve and file a written notice of
16 motion for preliminary approval of the settlement. The settlement
17 agreement and proposed notice to class members must be filed with the
18 motion, and the proposed order must be lodged with the motion.

19 Courts act within their discretion in approving settlements fair, non-collusive, and consider
20 “all the normal perils of litigation as well as the additional uncertainties inherent in complex class
21 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. sub
22 nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

23 The approval process of any class action settlement is done in two steps: (1) an earlier
24 conditional review by the court; and (2) a later detailed review after the period during which notice
25 is distributed to class members for their comment or objections. (Conte & Newberg, Newberg on
26 Class Actions (4th ed. 2002 supp.) § 11.24.) This procedure, which is commonly utilized by federal
27 and state courts, assures class members of the protection of procedural due process safeguards, and
28 enables a court to fulfill its role as the guardian of the interests of the settlement class.

¹ The California Supreme Court 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,
therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 Preliminary approval does not require a court to make a final determination that the
2 settlement is fair, reasonable, and adequate. That decision is made only at the final approval stage,
3 after notice of the settlement has been given to the class members, and they have had an opportunity
4 to voice their views of the settlement or to exclude themselves from the settlement. (See Cal. Rules
5 of Court, rule 3.769(g).) In considering a potential class settlement, the court also need not reach
6 any ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and
7 need not engage in a trial on the merits. (See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974)
8 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
9 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625.) Neither formal notice nor a hearing is required for
10 the trial court to grant provisional class certification and preliminary approval; the court may grant
11 such relief upon an informal application by the settling parties and may conduct any necessary
12 hearing in court or in chambers, at the court's discretion. (Conte & Newberg, *supra*, § 11.25.)

13 **b. Preliminary Approval of the Proposed Settlement Is Appropriate**

14 To grant preliminary approval of a class action settlement, the trial court must preliminarily
15 determine whether the settlement is fundamentally fair, adequate, and reasonable. (*Dunk v. Ford*
16 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court has broad powers to determine whether a
17 proposed settlement is fair under the circumstances of the case. (*Id.* at p. 1801.) To make this
18 fairness determination, courts must consider several relevant factors, including “the strength of the
19 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
20 maintaining class action status through trial, the amount offered in settlement, the extent of
21 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
22 [.]” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) “The list of factors is not
23 exclusive and the court is free to engage in a balancing and weighing of the factors depending on
24 the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
25 245.) Furthermore, courts give “proper deference to the private consensual decision of the
26 parties[.]” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027 (citation omitted).)

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

2 The Settlement was reached through arm’s-length negotiations. (Han Decl., *supra*, at ¶ 37.)
3 Though cordial and professional, the settlement negotiations were always adversarial and non-
4 collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive arm’s-length
5 settlement negotiations until the Parties finally reached an agreement on settlement. (*Ibid.*)

6 Plaintiffs believe in the merits of their case but also recognize the inherent risks of litigation
7 and understand the benefit of the Class receiving settlement funds immediately as opposed to
8 risking continued litigation with no guarantee of success. (Han Decl., *supra*, at ¶ 38.)

9 **d. The Settlement Agreement Is Fair, Reasonable, and Adequate**

10 In deciding whether to approve a proposed class action settlement under Code of Civil
11 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
12 reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) The burden is on the
13 proponent of the settlement to show that it is fair and reasonable. (*Wershba v. Apple Computer,*
14 *Inc.*, *supra*, 91 Cal.App.4th at p. 245.) A presumption of fairness exists if: (1) the settlement is
15 reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow
16 counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4)
17 percentage of objectors is small. (*Ibid.*; *Dunk v. Ford Motor Co.*, at p. 1802; *7-Eleven Owners for*
18 *Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.)

19 The Settlement was calculated using information and data uncovered through litigation,
20 discovery, case investigation, and informal exchange of information. (Han Decl., *supra*, at ¶ 39.)
21 The Settlement also considers the potential risks and rewards inherent with this case. (*Ibid.*)

22 Assuming all the requested payments are approved and paid in the full, the Net Settlement
23 Amount is estimated to be \$570,000. (Han Decl., *supra*, at ¶ 40.) Even at the final approval stage,
24 “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],
25 particularly if recommended by experienced and competent counsel.” (*Ibid.*; *In re American Bank*
26 *note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-430.)

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1 Class Counsel believe the Settlement is fair, reasonable, and adequate, and is in the best
2 interest of the Class Members. (Han Decl., *supra*, at ¶ 41.) Although the recommendations of Class
3 Counsel are not conclusive, the Court can consider their recommendations if Class Counsel appear
4 to be competent, have experience with this type of litigation, and significant discovery and
5 investigation have been completed. (*Ibid.*; Conte & Newberg, *supra*, § 11.47.)

6 **e. The PAGA Payment of \$50,000 Is Reasonable**

7 The provisions of the Labor Code potentially triggering PAGA penalties include, but are not
8 limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510,
9 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 51.)
10 Defendants asserted, regardless of the results of the underlying causes of action, PAGA penalties
11 are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintained they had a
12 strong argument it would be unjust to award maximum PAGA penalties given the current unsettled
13 state of the law. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
14 penalties by 30% under this authority].) Defendants argued without stacking and limited to the
15 initial violation, the PAGA penalties would be limited to **\$55,300** (553 employees x \$100 initial
16 violations) on the low end and **\$387,100** (553 employees x \$100 x 7 theories of recovery) on the
17 high end (Han Dec., *supra*, at ¶¶ 52-55.)

18 Plaintiffs also recognized the risk any PAGA award could be significantly reduced. (Han
19 Decl., *supra*, at ¶ 56.) Many of the causes of action brought were duplicative of the statutory claims,
20 such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194, 1197, 1198,
21 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable based on a
22 rate of **\$3.71** per pay period [$\$50,000 / 13,495$ pay periods in PAGA date range = **\$3.71**] given the
23 fact Defendants are also paying an additional \$1,050,000 in the class settlement.² (*Ibid.*) When
24 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
25
26

27 ² (See *Carrington, supra*, 30 Cal.App.5th at p. 529 [affirming a rate of \$5 per violation and
28 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].)

result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.³ (Han Decl., *supra*, at ¶ 56.)

Considering Defendants’ defenses, supporting evidence, and position this case is not suitable for class treatment, the settlement amount of \$1,100,000 is reasonable and fair.

f. 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 approximately **\$5,130,669.76** on the low end and **\$5,331,552.88** on the high end. (Han Decl., *supra*, at ¶ 57.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$521,942.26	70%	60%	\$62,633.07
Meal Break Premiums	\$681,979.84	60%	60%	\$109,116.77
Overtime/Minimum Wage: Off-the-Clock Work	\$401,766.24 to \$602,649.36	50%	50%	\$100,441.56 to \$150,662.34
Overtime/Minimum Wage: Regular Rate	\$87,441.82	40%	50%	\$26,232.55
Unreimbursed Business Expenses	\$286,764	30%	70%	\$60,220.44
Wage Statement Penalty	\$1,299,550	60%	50%	\$324,887.50
Waiting Time Penalty	\$1,851,225.60	60%	50%	\$462,806.40
MAXIMUM TOTAL EXPOSURE	\$5,130,669.76 to \$5,331,552.88⁴			\$1,146,338.29 to \$1,196,559.07⁵

Based on this analysis, the realistic recovery for this case is **\$1,146,338.29** on the low end and **\$1,196,559.07** on the high end. (Han Decl., *supra*, at ¶ 65.) Thus, the Maximum Settlement Amount of \$1,100,000 is approximately twenty percent (20.63%) of the maximum potential exposure and about ninety-two percent (91.93%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

³ (*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”).)

⁴ (Han Decl., *supra*, at ¶¶ 42-50.)

⁵ (*Id.* at ¶¶ 58-64.)

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

10 **g. Conditional Certification of the Class Is Appropriate**

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

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

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

25 This case involves about seven-hundred-seventeen (717) Class Members, confirmed by
26 Defendants. (Han Decl., *supra*, at ¶ 66.) Thus, this Class is sufficiently numerous. (*Ibid.*)

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

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

11 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of
12 recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department*
13 *of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) Furthermore, the
14 commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to
15 the potential class. (*Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1534.)

16 Plaintiffs assert that common issues of fact and law predominate as to each of the claims
17 they alleged. (Han Decl., *supra*, at ¶ 67.) All hourly-paid and non-exempt employees who worked
18 for Defendants within the State of California at any time during the Class Period were subject to the
19 same or similar employment practices, policies, and procedures as described above. (*Ibid.*)

20 Plaintiffs are former employees of Defendants and allege they and the Class Members were
21 employed by the same company and injured by Defendants’ common policies and practices
22 described above. (Han Decl., *supra*, at ¶ 68.) Plaintiffs seek relief for these claims and derivative
23 claims on behalf of the Class. (*Ibid.*) Thus, Plaintiffs’ claims arise from the same employment
24 practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

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

2 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
3 before reaching the Settlement and engaged in sufficient investigation, research, and discovery to
4 support the settlement. (Han Decl., *supra*, at ¶¶ 17-18.) The settlement was only possible following
5 discovery and evaluation of Defendants’ policies and procedures and data produced for the putative
6 class, which permitted Class Counsel to engage in a comprehensive analysis of liability and
7 potential damages. (*Id.* at ¶ 70.) The case is at the stage where “the Parties certainly have a clear
8 view of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Ibid.*;
9 *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

10 **i. Request for Attorneys’ Fees and Costs**

11 The Settlement provides for Class Counsel to apply to the Court for an award of attorneys’
12 fees of thirty-five percent (35%) of the Maximum Settlement Amount (or \$385,500) and
13 reimbursement of litigation costs and expenses up to \$25,000. (Han Decl., *supra*, at ¶ 71.) The
14 Notice Packet will provide the Class Members with information as to the amounts allocated toward
15 Attorneys’ Fees and Costs. (*Ibid.*)

16 Trial courts have “wide latitude” in assessing the value of attorneys’ fees and their decisions
17 will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v. Beneficial Cal.,*
18 *Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, it is long settled that the “experienced trial judge is the
19 best judge of the value of professional services rendered in his court[.]” (*Ketchum v. Moses* (2001)
20 24 Cal.4th 1122, 1132.) California law provides that attorney fee awards should be equivalent to
21 fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (See
22 *Lealao*, at p. 47.) In *Lealao*, the court held that when an action leads to a recovery that can be
23 “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
24 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
25 litigation.” (*Id.* at p. 50.) In cases where class members present claims against a maximum
26 settlement fund and the settlement agreement provides that the defendant agrees to paying the
27 attorneys a percentage of the same, use of the percentage method is appropriate. (*Id.* at p. 32.)

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1 Considering the facts and circumstances surrounding this case, Class Counsel’s application
2 for attorneys’ fees is well within the range of reasonableness. Historically, courts have awarded fees
3 as high as fifty percent (50%) of the settlement fund, depending on the circumstances of the case.
4 (Conte & Newberg, *supra*, § 14.03; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526
5 F.Supp. 494 [awarding attorneys’ fees in the amount of 45% of the \$7.3 million settlement fund];
6 *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480 F.Supp. 1195
7 [awarding approximately 53% of the settlement fund as attorney fees].) California Courts routinely
8 approve attorneys’ fees “averag[ing] around one-third of the recovery.” (*Chavez v. Netflix, Inc.*
9 (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found 20-40% range of contingency fee in
10 marketplace was appropriate in class actions]; see also *Estrada v. Dr. Pepper/Seven-Up*, Los
11 Angeles County Superior Court, Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*,
12 Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage and hour).) Class Counsel
13 have borne all the risks and costs of litigation and will not receive any compensation until recovery
14 is obtained. (Han Decl., *supra*, at ¶ 72.) Considering the amount of the fees requested, the work
15 performed, and the risks incurred, the requested fees and costs are reasonable. (*Ibid.*)

16 **j. Counsel for Both Parties Are Experienced in Similar Litigation**

17 Both Parties’ counsel are experienced in wage-and-hour employment law and class actions.
18 Class Counsel have significant experience in litigating unpaid wages, non-compliant meal and rest
19 breaks, and unfair business practices class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class
20 Counsel prosecuted numerous cases on behalf of employees for Labor Code violations and are
21 experienced and qualified to evaluate the class claims and the Settlement’s benefits. (*Ibid.*) This
22 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
23 their determination to endorse the proposed settlement.⁶ (*Ibid.*)

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27 ⁶ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the
28 Notice Packet has been provided to the Class and they have had an opportunity to respond. (*Dunk v.*
Ford Motor Co., *supra*, 48 Cal.App.4th at p. 1802.) This information will be provided to the Court
in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **k. Appointment of CPT Group as the Claims Administrator**

2 The Parties agreed to select CPT Group, Inc. as the Claims Administrator. (Han Decl.,
3 *supra*, at ¶ 73.) The Claims Administration Costs, which are currently estimated not to exceed
4 \$20,000, are the costs payable from the Maximum Settlement Amount to the Claims Administrator
5 for administering the Settlement as set forth in the Agreement. (*Ibid.*)

6 **l. Notice to Class Members Complies with California Rules of Court, Rule**
7 **3.769(f)**

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

9 If the court has certified the action as a class action, notice of the final approval
10 hearing must be given to class members in the manner specified by the court. The
11 notice must contain an explanation of the proposed settlement and procedures for
12 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.

13 The Notice Packet will provide: (1) information regarding this case; (2) summary of the
14 principal terms; (3) Class definition; (4) total number of Workweeks each respective Class Member
15 worked; (5) each Class Member's estimated Individual Settlement Payment; (6) dates which
16 comprise the Class Period; (7) instructions on how to submit valid Claim Forms, disputes regarding
17 Workweeks, Requests for Exclusion, or objections; (8) upcoming deadlines; (9) claims to be
18 released; and (10) date for the Final Approval Hearing. (Han Decl., *supra*, at ¶ 74.)

19 The Notice Packet will include the Claim Form that will provide pertinent employment
20 information. (Han Decl., *supra*, at ¶ 75.) The Claim Form will state the estimated gross amount of
21 each Class Member's Individual Settlement Payment and provide detailed instructions on how to
22 complete and submit it, as well as the procedure and deadline for challenging the number of
23 Individual Workweeks provided on the Claim Form. (*Ibid.*)

24 The notice procedure provided by the Settlement fulfills the requirement of neutrality in
25 class notices. (Conte & Newberg, *supra*, § 8.39.) "Sufficient information about the case should be
26 provided to enable class members to make an informed decision about their participation." (Manual
27 for Complex Litigation, Fourth (2004) § 21.311.) The Notice Packet summarizes the proceedings to
28 date and the terms and conditions of the Settlement in a coherent manner. The Notice Packet

1 recognizes the Court has not granted final approval and apprises the Class Members of how-to
2 object. The Notice Packet satisfies all due process requirements and complies with the standards of
3 fairness, completeness, and neutrality. (Cal. Rules of Court, rule 3.766; Conte & Newberg, *supra*,
4 §§ 8.21 and 8.39; Manual for Complex Litigation, *supra*, §§ 21.311 and 21.312; see *Cartt v.*
5 *Superior Court* (1975) 50 Cal.App.3d 960.) Thus, the Court should approve the Notice Packet.

6 **m. Proposed Deadlines for the Notice Process**

7 At this preliminary approval stage, Plaintiffs also seek approval of the proposed deadlines
8 for the notice and claims administration process. (Han Decl., *supra*, at ¶ 76; Conte & Newberg,
9 *supra*, § 11.26.) The notice process entails the mailing of the Notice Packet to all known and
10 reasonably ascertainable Class Members based on Defendants' payroll records. (Han Decl., *supra*,
11 at ¶ 76.) Within thirty (30) business days of Preliminary Approval, Defendants will provide the
12 Class List(s) to the Claims Administrator. (*Ibid.*)

13 Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator
14 will perform a search based on the National Change of Address Database, or any other similar
15 services available, and mail a Notice Packet to all Class Members via regular First-Class U.S. Mail.
16 (Han Decl., *supra*, at ¶ 77.)

17 The Settlement will be funded pursuant to the timeline and manner set forth in the
18 Settlement. (Han Decl., *supra*, at ¶ 33.) Any checks issued by the Claims Administrator to
19 Claimants will be negotiable for at least one hundred eighty (180) calendar days. (*Ibid.*) Uncashed
20 settlement checks will be sent to a California State Controller's Office. (*Ibid.*)

21 **n. Appointment of the Class Representatives and Approval of the Class**
22 **Representative Enhancement Payments**

23 A named plaintiff is eligible for payment that reasonably compensates him for undertaking
24 and fulfilling a fiduciary duty to represent absent class members. (*Cellphone Termination Fee*
25 *Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th
26 715, 726 [upholding "service payments" to named plaintiffs for their efforts in bringing the case];
27 *Stevens v. Safeway, Inc.* (C.D.Cal. Feb. 25, 2008, No. CV 05-01988 MMM (SHx)) 2008
28 U.S.Dist.LEXIS 17119 [\$20,000.00 and \$10,000.00 to two class representatives]; *In Re Janney*

1 *Montgomery Scott LLC Financial Consultant Litig.* (E.D.Pa. July 16, 2009) 2009 U.S.Dist.LEXIS
2 60790 [\$20,000.00 each to three class representatives].)

3 Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 69.)
4 Plaintiffs conducted themselves diligently and responsibly in representing the Class, understand
5 their fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs
6 spent time in meetings and conferences to provide counsel with a complete understanding of their
7 work environment. (*Ibid.*) Plaintiffs do not have any interests averse to the interests of other Class
8 Members. (*Ibid.*; see *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 340.)

9 The requested Class Representative Enhancement Payments are fair and reasonable
10 compensation for Plaintiffs' efforts in: (1) bringing this matter; (2) assisting Class Counsel with the
11 investigation, litigation, and settlement; (3) regularly conferring with Class Counsel on the status of
12 the case and the strategies for prosecuting the claims; and (4) reviewing the Settlement to ensure the
13 terms are fair and that it provides adequate relief to the Class. (Han Decl., *supra*, at ¶ 78.)

14 **V. CONCLUSION**

15 Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class
16 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
17 should be conditionally certified for settlement purposes, and Notice Packet should be approved.

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19 Dated: September 28, 2022

JUSTICE LAW CORPORATION

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21 By: 

22 Douglas Han
23 Attorneys for Plaintiffs
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PROOF OF SERVICE