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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

MAHO LAZO, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

PROTERRA OPERATING COMPANY,
INC., a corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: 21STCV30663

Assigned for All Purposes to:
Honorable Yvette M. Palazuelos
Department 9

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 Justin F. Marquez); Declarations of Proposed Class Representatives (Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, Michele Thorne, and Anthony Diaz); Declaration of Erik Christensen; Declaration of Julie Green; Declaration of Joan Graff; and [Proposed] Order filed concurrently herewith]

Hearing Date: October 5, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department 9

Complaint Filed: August 19, 2021
FAC Filed: March 22, 2023
Trial Date: None Set

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9 *Attorneys for Plaintiffs Maho Lazo and Stephanie Bitetti*

1 **PLEASE TAKE NOTICE** that on October 5, 2023 at 10:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Yvette M. Palazuelos in Department 9 of the Los Angeles
3 County Superior Court (Spring Street Courthouse) located at 312 North Spring Street Los Angeles,
4 California 90012, Plaintiffs Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, Michele
5 Thorne, and Anthony Diaz (“Plaintiffs,” “Plaintiff Lazo,” “Plaintiff Bitetti,” “Plaintiff Khatib,”
6 “Plaintiff Thai,” “Plaintiff Thorne,” and “Plaintiff Diaz”) will and hereby do move for an order:

- 7 • Granting Preliminary Approval of the class action settlement described herein and
8 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
9 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
10 declaration of Douglas Han, including, and not limited to, the means of allocation
11 and distribution of funds;
- 12 • Conditionally certifying the Class for settlement purposes only;
- 13 • Appointing Plaintiffs as the class representatives;
- 14 • Appointing Justice Law Corporation and Wilshire Law Firm as Class Counsel;
- 15 • Approving the Court Approved Notice of Class Action Settlement and Hearing
16 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
17 Settlement Agreement;
- 18 • Directing the mailing of the Class Notice with a postage-paid return envelope to
19 the Class;
- 20 • Approving the proposed deadlines for the settlement administration process;
- 21 • Approving CPT Group, Inc. as the Administrator; and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payments, and
26 Administration Expenses Payment, and approval of the allocation of the Private
27 Attorney General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han and Justin F. Marquez); Declarations of
3 Proposed Class Representatives (Maho Lazo, Stephanie Bitetti, Amar Khatib, Kathy Thai, Michele
4 Thorne, and Anthony Diaz); Declaration of Erik Christensen; Declaration of Julie Green;
5 Declaration of Joan Graff; [Proposed] Order filed concurrently with this motion; pleadings and
6 other records on file with the Court in this matter; and such documentary evidence and oral
7 argument as may be presented at the hearing on this motion.

8
9 Dated: May 30, 2023

JUSTICE LAW CORPORATION

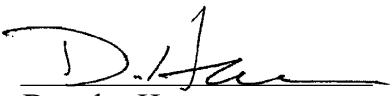
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11 By: 
12 Douglas Han
13 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$856,500 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all persons who worked
4 for Defendants Proterra, Inc. and Proterra Operating Company, Inc. (“Defendants”) in California
5 as hourly paid or non-exempt employees during the period from April 3, 2017 to December 19,
6 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of
7 Class Members is estimated to be three hundred forty-four (344), which was confirmed by
8 Defendants. (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary
9 Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

10 **II. BACKGROUND**

11 On May 11, 2021, Plaintiff Bitetti, represented by Wilshire Law Firm, provided written
12 notice to the California Labor and Workforce Development Agency (“LWDA”) and Defendants.
13 (Han Decl., *supra*, at ¶ 9; Declaration of Justin F. Marquez In Support of Plaintiffs’ Motion for
14 Preliminary Approval of Class Action Settlement (“Marquez Decl.”), ¶ 5, Exhibit 2.) On August
15 11, 2021, Plaintiff Bitetti filed a representative PAGA action in the Superior Court of California,
16 County of Los Angeles (Case No. 21STCV29732). (Han Decl., *supra*, at ¶ 9; Marquez Decl.,
17 *supra*, at ¶ 5; Exhibit 3.)

18 On August 12, 2021, Plaintiff Lazo, represented by Wilshire Law Firm, also provided
19 written notice to the LWDA and Defendants. (Han Decl., *supra*, at ¶ 10; Marquez Decl., *supra*, at
20 ¶ 4; Exhibit 1.) On August 19, 2021, Plaintiff Lazo filed a wage-and-hour class action lawsuit in
21 the Superior Court of California, County of Los Angeles (Case No. 21STCV30663), alleging eight
22 (8) causes of action. (Han Decl., *supra*, at ¶ 10; Marquez Decl., *supra*, at ¶ 4.)

23 On September 30, 2021, Plaintiff Khatib, represented by Justice Law Corporation, filed a
24 wage-and-hour class action lawsuit in the Superior Court of California, County of Humboldt,
25 alleging eight (8) causes of action that was later transferred to San Mateo County (Case No. 22-
26 CIV-01447). (Han Decl., *supra*, at ¶ 11.)

27 On October 1, 2021, Plaintiff Diaz, represented by Justice Law Corporation, provided
28 written notice to the LWDA and Defendants. (Han Decl., *supra*, at ¶ 12; Exhibit 3.)

1 On October 12, 2021, Plaintiff Thorne, represented by Justice Law Corporation, provided
2 written notice to the LWDA and Defendants. (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

3 On October 20, 2021, Plaintiff Thai, represented by Justice Law Corporation, provided
4 written notice to the LWDA and Defendants. (Han Decl., *supra*, at ¶ 14; Exhibit 5.)

5 After engaging in extensive discovery, investigations, and negotiations, the Parties
6 attended mediation with the mediator Mark S. Rudy on October 20, 2022. (Han Decl., *supra*, at ¶
7 15; Marquez Decl., *supra*, at ¶ 10.) Under the auspices of the mediator, the Parties negotiated a
8 global settlement. (Han Decl., *supra*, at ¶ 15; Marquez Decl., *supra*, at ¶ 10.)

9 In line with the settlement, on March 22, 2023, Plaintiff Lazo filed a First Amended
10 Complaint in the Superior Court of California, County of Los Angeles, adding Plaintiff Bitetti,
11 Plaintiff Khatib, Plaintiff Thai, Plaintiff Thorne, and Plaintiff Diaz as additional named plaintiffs
12 and adding the following cause of action: violation of Labor Code section 2698, *et seq.* (PAGA).
13 (Han Decl., *supra*, at ¶ 16, Exhibits 6-8; Marquez Decl., *supra*, at ¶ 7, Exhibits 4, 5.)

14 **III. INVESTIGATION/ LITIGATION HISTORY**

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

16 Plaintiffs propounded form interrogatories, special interrogatories, requests for admission,
17 and requests for production of documents. (Han Decl., *supra*, at ¶ 18.) Defendants responded to
18 the formal discovery requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in
19 an informal exchange of information and then eventually attended mediation. (*Ibid.*)

20 Prior to the mediation, Defendants produced several documents relating to their policies,
21 practices, and procedures. (Han Decl., *supra*, at ¶ 19; Marquez Decl., *supra*, at ¶¶ 8-9.) As part of
22 Defendants' production, Plaintiffs also reviewed time records, pay records, and information
23 relating to the size and scope of the Class. (Han Decl., *supra*, at ¶ 19; Marquez Decl., *supra*, at ¶¶
24 8-9.) Several putative class members were also interviewed to attain a better understanding of the
25 extent and frequency of the alleged day-to-day violations. (Han Decl., *supra*, at ¶ 19; Marquez
26 Decl., *supra*, at ¶¶ 8-9.)

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1 Based on the information provided by Defendants and interviews with putative class
2 members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide employees
3 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
4 failed to include non-discretionary bonuses and incentives in employees’ regular rate of pay for
5 purposes of overtime compensation and sick leave pay; (4) failed to reimburse employees for
6 necessary business expenses; (5) issued noncompliant wage statements; and (6) are liable for
7 waiting time penalties. (Han Decl., *supra*, at ¶¶ 21-28.)

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

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

10 The Parties attended mediation with an experienced mediator on October 20, 2022. (Han
11 Decl., *supra*, at ¶ 29; Marquez Decl., *supra*, at ¶ 10.) Under the auspices of the mediator, the Parties
12 reached a settlement, the terms were memorialized in the Settlement Agreement. (Han Decl.,
13 *supra*, at ¶ 29, Exhibits 2, 9; Marquez Decl., *supra*, at ¶¶ 10-11.)

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

15 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶
16 32; Marquez Decl., *supra*, at ¶¶ 12-16.) Though cordial and professional, the settlement
17 negotiations have always been adversarial and non-collusive in nature. (Han Decl., *supra*, at ¶ 32;
18 Marquez Decl., *supra*, at ¶¶ 12-16.) At the mediation, both Parties’ counsel conducted extensive
19 arm’s-length settlement negotiations until an agreement was ultimately reached. (Han Decl.,
20 *supra*, at ¶ 32; Marquez Decl., *supra*, at ¶¶ 12-16.)

21 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
22 necessary to continue the litigation. (Han Decl., *supra*, at ¶ 33; Marquez Decl., *supra*, at ¶¶ 12-
23 16.) Plaintiffs and Class Counsel considered the uncertainty and risk of further litigation, potential
24 outcome, and difficulties and delays inherent in such litigation. (Han Decl., *supra*, at ¶ 33;
25 Marquez Decl., *supra*, at ¶¶ 12-16.) Plaintiffs and Class Counsel believe the Settlement is a fair,
26 adequate, and reasonable settlement and is in the best interests of Class Members. (Han Decl.,
27 *supra*, at ¶ 33; Marquez Decl., *supra*, at ¶¶ 12-16.)

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

2 The Parties investigated and evaluated the strengths and weaknesses of the claims and
3 defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 34; Marquez Decl., *supra*, at ¶¶ 12-16.) The Settlement was
5 only possible following significant discovery, investigation, and evaluation of the relevant policies
6 and practices, permitting Class Counsel to engage in a comprehensive analysis of liability and
7 potential damages. (Han Decl., *supra*, at ¶ 34; Marquez Decl., *supra*, at ¶¶ 12-16.) This case has
8 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
9 of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han
10 Decl., *supra*, at ¶ 34; Marquez Decl., *supra*, at ¶¶ 12-16; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979)
11 485 F.Supp. 610, 617.)

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

13 **i. Deductions from the Settlement**

14 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
15 for the non-reversionary total sum of \$856,500 (“Gross Settlement Amount”) which includes: (1)
16 Class Counsel Fees Payment not to exceed \$285,500 (1/3 of the Gross Settlement Amount); (2)
17 Class Counsel Litigation Expenses Payment not to exceed \$30,000; (3) Class Representative
18 Service Payments totaling \$45,000; (4) Administration Expenses Payment not to exceed \$20,000;
19 (5) PAGA Penalties not to exceed \$40,000; and (6) *Pick Up Stix* credit of \$106,500. (Han Decl.,
20 *supra*, at ¶ 30.)

21 **ii. Calculating Settlement Payments**

22 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
23 \$329,500 (“Net Settlement Amount”) will be paid to all Class Members who do not submit valid
24 and timely Requests for Exclusion from the Settlement (“Participating Class Members”) – with a
25 gross *average* Individual Class Payment estimated at \$957.85. (Han Decl., *supra*, at ¶ 31.)

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1 Participating Class Member will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29;
3 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
4 to the settlement of wages claims and eighty percent (80%) to the settlement of claims for penalties
5 and interest. (*Id.* at § C(2)(d)(i).) Class Members who received a prior individual settlement in
6 October 2022 related to the claims raised in the lawsuits will receive a credit for their prior amount
7 received, which will be subtracted from their settlement checks. (*Id.* at § C(2)(d)(iii).)

8 In addition, the PAGA Penalties that is paid to each Aggrieved Employee shall be
9 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29;
10 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA Penalties will be
11 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

12 **iii. Notice to the Class**

13 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
14 the Settlement, Defendants will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
15 ¶ 29; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
16 Class Data, the Administrator will send to all Class Members identified in the Class Data the Class
17 Notice via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

18 **iv. Distribution of Funds**

19 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
20 in the Settlement. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed
21 settlement checks will be canceled and paid to the *cy pres* recipient Legal Aid At Work ("LAAW").
22 (*Id.* at §§ D(3)(a), D(3)(c).)

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

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

[T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid residue or unclaimed or abandoned class member funds, plus any interest that has accrued thereon, to nonprofit organizations or foundations to support projects that will benefit the 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.

(Code Civ. Proc., § 384 (b).)

LAAW directly satisfies the legislature's purpose and goal under Code of Civil Procedure section 384. The core of LAAW's work is providing free legal services to low-wage workers with employment claims. (See Declaration of Joan Graff.) LAAW's Community Legal Services Program also provides advice and counseling to low-wage workers on the full range of employment law issues they face through twelve statewide Workers' Rights Clinic locations throughout California. (*Ibid.*) There can be no doubt LAAW is the type of non-profit organization the legislature had in mind when drafting and amending section 384. (See Declaration of Joan Graff.) The Parties have no connection to or a relationship with LAAW that could reasonably create the appearance of impropriety. (Han Decl., *supra*, at ¶ 71; Marquez Decl., *supra*, at ¶ 28.)

vi. Release of Claims

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § E(2).)

Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § E(3).)

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Effective on the date when Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § E(1).)

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

Both Parties’ counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1; Marquez Decl., *supra*, at ¶¶ 30-40.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1; Marquez Decl., *supra*, at ¶¶ 30-40.) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1; Marquez Decl., *supra*, at ¶¶ 30-40.)

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

1 **IV. ARGUMENT**

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

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

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

10 . . .

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

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

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

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

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

10 **i. The Settlement Amount of \$856,500 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data Defendants produced for the
13 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
14 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 34; Marquez Decl., *supra*, at
15 ¶¶ 12-16.)

16 The claims are predicated on the purported: (1) failure to properly calculate and pay
17 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
18 pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage
19 statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation
20 of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 35.) Defendants
21 vehemently deny the theories of liability. (*Id.* at ¶ 36.)

22 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
23 certification are always present. (Han Decl., *supra*, at ¶ 37; Marquez Decl., *supra*, at ¶¶ 12-16.)
24 As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34
25 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (Han Decl.,
26 *supra*, at ¶ 37.) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions
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concerning certification of wage-and-hour claims.³ (Han Decl., *supra*, at ¶ 37.) Thus, the calculations for potential damages were discounted.

ii. The PAGA Penalties of \$40,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 46.) Defendants asserted, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain they had a strong argument it would be unjust to award maximum PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 46; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore, Defendants argued without stacking and limited to the initial violation, the PAGA penalties would be limited to approximately **\$19,500** (195 employees x \$100 penalty for initial violation) on the low end and **\$136,500** (195 employees x \$100 penalty for initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 47-49.)

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 50.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$40,000 to PAGA civil penalties was reasonable given the fact Defendants are also paying an additional \$816,500 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 (*Ibid.*)

³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for 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].)

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,

Considering Defendants’ 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 **\$4,152,117.23** on the low end and around **\$4,461,861.71** on the high end. (Han Decl., *supra*, at ¶ 51.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$833,657.75	70%	60%	\$100,038.93
Meal Break Premiums	\$336,706.24	60%	50%	\$67,341.25
Overtime/Minimum Wage: Off-the-Clock Work	\$619,267.08 to \$929,011.56	50%	50%	\$154,816.77 to \$232,252.89
Overtime/Minimum Wage: Regular Rate	\$19,038.56	30%	40%	\$7,996.20
Unreimbursed Business Expenses	\$198,240	20%	70%	\$47,577.60
Wage Statement Penalty	\$711,750	50%	50%	\$177,937.50
Waiting Time Penalty	\$1,433,457.60	50%	50%	\$358,364.40
MAXIMUM TOTAL EXPOSURE	\$4,152,117.23 to \$4,461,861.71⁵			\$914,072.65 to \$991,508.77⁶

The realistic recovery for this case is **\$914,072.65** on the low end and **\$991,508.77** on the high end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount is about nineteen percent (19.20%) of the maximum potential exposure and around eighty-six percent (86.38%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be 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 ¶¶ 38-45.)

⁶ (*Id.* at ¶¶ 52-58.)

disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the realistic exposure if Plaintiffs prevailed at trial and provides a significant recovery for Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 60.) Plaintiffs contend the claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

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1 This case involves approximately three hundred forty-four (344) Class Members, meaning
2 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61; *Ghazaryan v. Diva Limousine, Ltd.*
3 (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and
4 former employees” is sufficiently numerous].)

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

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

15 **1. Common Issues Predominate**

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

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1 Plaintiffs assert common issues of fact and law predominate as to each of the claims
2 alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiffs contend all Class Members were subject to the same
3 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

4 **2. Plaintiffs' Claims Are Typical of the Class Claims**

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

7 Plaintiffs are former employee of Defendants and allege they and Class Members were
8 employed by the same company and injured by the common policies and practices related to the
9 claims described above. (Han Decl., *supra*, at ¶ 63; Marquez Decl., *supra*, at ¶¶ 17-21; Declaration
10 of Amar Khatib Re Adequacy In Support of Motion for Preliminary Approval ("Khatib Decl."),
11 ¶¶ 2-7, 11-13; Declaration of Kathy Thai Re Adequacy In Support of Motion for Preliminary
12 Approval ("Thai Decl."), ¶¶ 2-8, 12-15; Declaration of Michelle Thorne Re Adequacy In Support
13 of Motion for Preliminary Approval ("Thorne Decl."), ¶¶ 2-9, 13-16; Declaration of Anthony Diaz
14 Re Adequacy In Support of Motion for Preliminary Approval ("Diaz Decl."), ¶¶ 2-9, 13-16;
15 Declaration of Maho Lazo Re Adequacy In Support of Motion for Preliminary Approval ("Lazo
16 Decl."), ¶¶ 3-4; Declaration of Stephanie Bitetti Re Adequacy In Support of Motion for
17 Preliminary Approval ("Bitetti Decl."), ¶¶ 3-4.) Plaintiffs seek relief for these claims and
18 derivative claims on behalf of all Class Members. (Han Decl., *supra*, at ¶ 63; Marquez Decl.,
19 *supra*, at ¶¶ 17-21; Khatib Decl., *supra*, at ¶¶ 2-7, 11-13; Thai Decl., *supra*, at ¶¶ 2-8, 12-15;
20 Thorne Decl., *supra*, at ¶¶ 2-9, 13-16; Diaz Decl., *supra*, at ¶¶ 2-9, 13-16; Lazo Decl., *supra*, at ¶¶
21 3-4; Bitetti Decl., *supra*, at ¶¶ 3-4.) Thus, the claims arise from the same employment practices
22 and are based on the same legal theories applicable to the Class. (Han Decl., *supra*, at ¶ 63;
23 Marquez Decl., *supra*, at ¶¶ 17-21; Khatib Decl., *supra*, at ¶¶ 2-7, 11-13; Thai Decl., *supra*, at ¶¶
24 2-8, 12-15; Thorne Decl., *supra*, at ¶¶ 2-9, 13-16; Diaz Decl., *supra*, at ¶¶ 2-9, 13-16; Lazo Decl.,
25 *supra*, at ¶¶ 3-4; Bitetti Decl., *supra*, at ¶¶ 3-4.)

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3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 64; Marquez Decl., *supra*, at ¶¶ 17-21; Khatib Decl., *supra*, at ¶¶ 8-10, 14-18; Thai Decl., *supra*, at ¶¶ 9-11, 16-20; Thorne Decl., *supra*, at ¶¶ 10-12, 17-21; Diaz Decl., *supra*, at ¶¶ 10-12, 17-21; Lazo Decl., *supra*, at ¶¶ 5-12; Bitetti Decl., *supra*, at ¶¶ 5-12.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (Han Decl., *supra*, at ¶ 64; Marquez Decl., *supra*, at ¶¶ 17-21; Khatib Decl., *supra*, at ¶¶ 8-10, 14-18; Thai Decl., *supra*, at ¶¶ 9-11, 16-20; Thorne Decl., *supra*, at ¶¶ 10-12, 17-21; Diaz Decl., *supra*, at ¶¶ 10-12, 17-21; Lazo Decl., *supra*, at ¶¶ 5-12; Bitetti Decl., *supra*, at ¶¶ 5-12.) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (Han Decl., *supra*, at ¶ 64; Marquez Decl., *supra*, at ¶¶ 17-21; Khatib Decl., *supra*, at ¶¶ 8-10, 14-18; Thai Decl., *supra*, at ¶¶ 9-11, 16-20; Thorne Decl., *supra*, at ¶¶ 10-12, 17-21; Diaz Decl., *supra*, at ¶¶ 10-12, 17-21; Lazo Decl., *supra*, at ¶¶ 5-12; Bitetti Decl., *supra*, at ¶¶ 5-12.) Plaintiffs have no interest adverse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 64; Marquez Decl., *supra*, at ¶¶ 17-21; Khatib Decl., *supra*, at ¶¶ 8-10, 14-18; Thai Decl., *supra*, at ¶¶ 9-11, 16-20; Thorne Decl., *supra*, at ¶¶ 10-12, 17-21; Diaz Decl., *supra*, at ¶¶ 10-12, 17-21; Lazo Decl., *supra*, at ¶¶ 5-12; Bitetti Decl., *supra*, at ¶¶ 5-12.)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are also current employees, Plaintiffs believe fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

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

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.

V. CONCLUSION

Dated: May 30, 2023

JUSTICE LAW CORPORATION

By: D. Han
Douglas Han
Attorneys for Plaintiffs

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 30, 2023, I served the foregoing document described as

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

for the following case: Maho Lazo, et al. v. Proterra Operating Company, Inc., et al.
LWDA/Court Case No.: LWDA-CM-841224-21
Case Number: 21STCV30663
Los Angeles 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 May 30, 2023, at Pasadena, California.



Sophia Hanneyan