

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 DIEGO**

JULIANA BERGARA, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

BREAD & CIE, INC., a California
corporation; BREAD & CIE WHOLESALE,
LLC, a California limited liability company;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: 37-2022-00001960-CU-OE-CTL

Assigned for All Purposes to:
Honorable Timothy Taylor
Department C-72

CLASS ACTION

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

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

Hearing Date: May 5, 2023
Hearing Time: 1:30 p.m.
Hearing Place: Department C-72

Complaint Filed: January 18, 2022
FAC Filed: March 21, 2022
SAC Filed: December 16, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 5, 2023 at 1:30 p.m., or as soon as the matter may
2 be heard, before the Honorable Timothy Taylor in Department C-72 of the San Diego County
3 Superior Court (Hall of Justice) located at 330 W Broadway San Diego, California 92101, Plaintiff
4 Juliana Bergara (“Plaintiff”) 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 Representative Action Settlement and
7 Release (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **Exhibit 2** to the declaration of Douglas Han, including, and not limited to, the
9 means of allocation 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 Notice of Class Action Settlement and Hearing Date for Final Court
14 Approval (“Class Notice”) attached as **Exhibit 2** to the Proposed Order;
- 15 • Directing the mailing of the Class Notice with a postage-paid return envelope to
16 the Class;
- 17 • Approving the proposed deadlines for the settlement administration process;
- 18 • Approving CPT Group, Inc. as the Settlement Administrator; and
- 19 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
20 Agreement, at which time the Court will also consider whether to grant Final
21 Approval of the requests for the Class Counsel’s Attorneys’ Fees, Class Counsel’s
22 Litigation Costs, Class Representative Incentive Payment, and Settlement
23 Administration Costs, and approval of the allocation of the Private Attorney
24 General Act of 2004 (“PAGA”) Payment.

25 ///

26 ///

27 ///

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

5
6 Dated: March 30, 2023

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*
11
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 Settlement Was Reached as a Result of Arm's-Length Negotiations	11
ii.	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	12
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	Release of Claims	13
d.	Counsel for Both Parties Are Experienced in Similar Litigation	14
IV.	ARGUMENT	14
a.	Class Action Settlements Are Subject to Court Review	14
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	15
i.	The Settlement Amount of \$400,000 Is Fair and Reasonable	16
ii.	The PAGA Payment of \$10,000 Is Reasonable.....	17
c.	Discount Analysis Justifies the Settlement	17
d.	Conditional Certification of the Class Is Appropriate	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	19
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	20
2.	Plaintiff's Claims Are Typical of the Class Claims.....	20

3.	Plaintiff Is Adequate to Represent the Class.....	21
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	21
e.	The Settlement Is Fair, Reasonable, and Adequate	22
f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
V.	CONCLUSION.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	16
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	19
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	15
<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	20
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	20
<i>City of Detroit v. Grinnell Corporation</i>	
(2d Cir. 1974) 495 F.2d 448.....	18
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	20
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	16
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	14, 22
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	20
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	19

Cases

Page(s)

Green v. Obledo

(1981) 29 Cal.3d 126 14

Harris v. Superior Court

(2007) 154 Cal.App.4th 164 16

Hicks v. Kaufman & Broad Home Corp.

(2001) 89 Cal.App.4th 908 19

Hopson v. Hanesbrands Inc.

(N.D.Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S.Dist. LEXIS 33900 17

Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n

(1981) 452 U.S. 905 15

Jones v. JGC Dallas LLC

(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012

U.S.Dist.LEXIS 185042 20

Kullar v. Foot Locker Retail, Inc.

(2008) 168 Cal.App.4th 116 15

Linder v. Thrifty Oil Co.

(2000) 23 Cal.4th 429 19

Linney v. Cellular Alaska Partnership

(9th Cir. 1998) 151 F.3d 1234 18

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles

(2010) 186 Cal.App.4th 399 15

Nordstrom Com. Cases

(2010) 186 Cal.App.4th 576 17

Sav-On Drug Stores, Inc. v. Superior Court

(2004) 34 Cal.4th 319 16, 19, 20

In re Tableware Antitrust Litig.

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

Cases **Page(s)**

Thurman v. Bayshore Transit Mgmt.

(2012) 203 Cal.App.4th 1112 17

Vasquez v. Superior Court

(1971) 4 Cal.3d 800 14

Walsh v. IKON Solutions, Inc.

(2007) 148 Cal.App.4th 1440 16

Rules

California Rules of Court, Rule 3.769 14

California Rules of Court, Rule 3.769 (f) 22

California Rules of Court, Rule 3.769 (g)..... 14

Federal Rule 23 14

Statutes

Business & Professions Code § 17200 16

Code of Civil Procedure § 382..... 19, 22

Code of Civil Procedure § 877.6..... 15

Code of Civil Procedure § 1542..... 13

Labor Code § 201..... 17

Labor Code § 202..... 17

Labor Code § 203..... 17

Labor Code § 204..... 17

Labor Code § 210..... 17

Labor Code § 218.5..... 17

Labor Code § 221..... 17

Labor Code § 226.3..... 17

Labor Code § 226.7..... 17

Labor Code § 226 (a) 17

Labor Code § 246..... 17

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 510.....	17
Labor Code § 512 (a)	17
Labor Code § 558.....	17
Labor Code § 1174 (d).....	17
Labor Code § 1194.....	17
Labor Code § 1197.....	17
Labor Code § 1197.1.....	17
Labor Code § 1198.....	17
Labor Code § 2800.....	17
Labor Code § 2802.....	17

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$400,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of herself and all current and former non-
4 exempt employees of Defendants in the State of California who worked for Defendants at any time
5 from January 18, 2018 to December 31, 2022, inclusive (“Class,” “Class Members,” and “Class
6 Period”). At the time of this filing, the number of Class Members is estimated to be one thousand
7 forty-seven (1,047), which was confirmed by Defendants Bread & Cie, Inc. and Bread & Cie
8 Wholesale, LLC (“Defendants”). (Declaration of Douglas Han In Support of Plaintiff’s Motion
9 for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

10 **II. BACKGROUND**

11 On September 23, 2021, Plaintiff provided written notice to the Labor and Workforce
12 Development Agency (“LWDA”) and Defendants. (Han Decl., *supra*, at ¶ 9.)

13 On January 18, 2022, Plaintiff filed a representative PAGA in the Superior Court of
14 California, County of Los Angeles. (Han Decl., *supra*, at ¶ 10.)

15 On March 21, 2022, Plaintiff filed a First Amended Complaint that added violation of
16 Business & Professions section 17200, *et seq.* (Han Decl., *supra*, at ¶ 11.)

17 On December 16, 2022, Plaintiff filed a Second Amended Complaint adding seven (7) age-
18 and-hour class action causes of action. (Han Decl., *supra*, at ¶ 12.)

19 The Parties engaged in discovery, investigations, and negotiations. (Han Decl., *supra*, at
20 ¶ 13.) After engaging in discovery, investigations, and negotiations, the Parties managed to
21 successfully reach a reasonable settlement of this matter. (*Ibid.*)

22 **III. INVESTIGATION/ LITIGATION HISTORY**

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

24 Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
25 interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of
26 documents. (Han Decl., *supra*, at ¶ 15.) Defendants responded to Plaintiff’s formal discovery
27 requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in an informal exchange
28 of information with the hopes of negotiating a settlement. (*Ibid.*)

1 Before and after this matter was filed, the Parties conducted significant investigation and
2 discovery of the facts and law. (Han Decl., *supra*, at ¶ 16.) Defendants produced documents
3 relating to their policies, practices, and procedures. (*Ibid.*) As part of Defendants’ production,
4 Plaintiff also reviewed time records, pay records, and information relating to the size and scope of
5 the Class. (*Ibid.*) Defendants also provided the necessary information pertaining to the number of
6 workweeks and pay periods. (*Ibid.*) Putative class members were also interviewed to attain a better
7 understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

8 Based on the information provided by Defendants and interviews with putative class
9 members, Plaintiff contends – and Defendants deny – Defendants: (1) failed to provide employees
10 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
11 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
12 statements; and (5) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

14 **i. 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 35.) Though cordial and professional, the settlement negotiations have always been adversarial
17 and non-collusive in nature. (*Ibid.*) Throughout this matter, both Parties’ counsel conducted
18 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

19 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
20 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
21 *supra*, at ¶ 36.) Plaintiff and Class Counsel also have considered the uncertainty and risks, potential
22 outcome, and difficulties and delays inherent in further litigation. (*Ibid.*) Based on the foregoing,
23 Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement,
24 and is in the best interests of Class Members. (*Ibid.*)

25 ///

26 ///

27 ///

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

2 The Parties investigated and evaluated the strengths and weaknesses of the Parties’ claims
3 and defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 37.) The Settlement was only possible following significant
5 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
6 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
7 reached the stage where “the Parties certainly have a clear view of the strengths and weaknesses
8 of their cases” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han
9 Decl., *supra*, at ¶ 37; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

11 **i. Deductions from the Settlement**

12 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
13 for the non-reversionary total sum of \$1,375,000 (“Gross Settlement Amount”) which includes:
14 (1) Class Counsel’s Attorneys’ Fees not to exceed \$133,333.33; (2) Class Counsel’s Litigation
15 Costs not to exceed \$10,000; (3) Class Representative Incentive Payment not to exceed \$7,500;
16 (4) Settlement Administration Costs not to exceed \$15,000; and (5) PAGA Payment not to exceed
17 \$10,000. (Han Decl., *supra*, at ¶ 26.)

18 **ii. Calculating Settlement Payments**

19 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
20 \$226,666.67 (“Net Settlement Amount”) will be distributed to all Class Members who do not
21 timely exclude themselves from the Settlement (“Participating Class Members”) – with a gross
22 *average* Individual Settlement Payment estimated at \$216.49. (Han Decl., *supra*, at ¶ 27.)

23 Participating Class Member will receive a proportionate share of the Net Settlement
24 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28.)
25 Individual Settlement Payments will be allocated ten percent (10%) as wages and ninety percent
26 (90%) as penalties, interest, and other non-wage damages. (*Ibid.*) The portion of the PAGA
27 Payment that will be paid to each Aggrieved Employee shall be determined using the formula set
28 forth in the Settlement Agreement. (*Ibid.*)

1 **iii. Notice to the Class**

2 Within fifteen (15) calendar days following Preliminary Approval, Defendants will provide
3 the Settlement Administrator a Class List. (Han Decl., *supra*, at ¶ 29.) Within thirty (30) calendar
4 days of receipt of the Class List, the Settlement Administrator will send the Class Notice to all
5 Class Members by first-class mail. (*Ibid.*)

6 **iv. Distribution of Funds**

7 The Gross Settlement Amount will be funded and disbursed pursuant to the timeline and
8 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 30.) Uncashed settlement checks will
9 be canceled and transmitted to the State of California Unclaimed Property Fund. (*Ibid.*)

10 **v. Release of Claims**

11 In exchange for the consideration under the Settlement and upon Defendants' delivery of
12 the Gross Settlement Amount and employer-side payroll taxes on wages paid to Class Members
13 to the Settlement Administrator, all Participating Class Members, on behalf of themselves and
14 their current, former, and future heirs, executors, administrators, attorneys, agents, and assigns,
15 will forever release, waive, acquit, and discharge the Released Parties from the Class Released
16 Claims and PAGA Released Claims. (Han Decl., *supra*, at ¶ 31.)

17 In exchange for the consideration under the Settlement and upon Defendants' delivery of
18 the Gross Settlement Amount to the Settlement Administrator, Plaintiff, LWDA, and any other
19 representative, proxy, or agent thereof, including, but not limited to, the Aggrieved Employees,
20 will fully and finally release and discharge the Released Parties from the PAGA Released Claims.
21 (Han Decl., *supra*, at ¶ 32.)

22 In exchange for the Class Representative Incentive Payment, Plaintiff releases, on behalf
23 of herself and her heirs, representatives, attorneys, and assigns, all federal and state statutory
24 claims, and federal and state common law claims Plaintiff may have had, or presently has, against
25 any of the Released Parties. (Han Decl., *supra*, at ¶ 33.) Plaintiff expressly waives the protections
26 and any and all benefits of Civil Code Section 1542. (*Ibid.*)

27 ///

28 ///

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

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

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

16 **IV. ARGUMENT**

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

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

22 ///

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

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

4 ...

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

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

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

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

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

///

///

1 **i. The Settlement Amount of \$400,000 Is Fair and Reasonable**

2 The Settlement Agreement was only possible following significant investigation and
3 evaluation of the relevant policies and procedures, as well as the data Defendants produced for the
4 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
5 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 37.)

6 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
7 to pay minimum wages; (3) failure to provide meal and rest breaks and consistently pay applicable
8 premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
9 (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business
10 & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 38.) Defendants vehemently
11 deny the theories of liability. (*Id.* at ¶ 39.)

12 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
13 certification are always present. (Han Decl., *supra*, at ¶ 40.) As the California Supreme Court
14 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
15 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
16 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
17 (*Ibid.*) Thus, the calculations for potential damages were discounted.

18 ///

19 ///

20 ///

21
22
23
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].)

1 **ii. The PAGA Payment of \$10,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties in this case
3 include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510,
4 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 47.)
5 Defendants asserts, regardless of the results of the underlying causes of action, PAGA penalties
6 are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintains they had a
7 strong argument it would be unjust to award maximum PAGA penalties given the law’s current
8 unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 47; *Thurman v. Bayshore*
9 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
10 Defendants argued without stacking and limited to the initial violation, the PAGA penalties would
11 be limited to **\$62,600** (626 employees x \$100 penalty for initial violation) on the low end and
12 **\$438,200** (626 employees x \$100 penalty for initial violation x 7 theories of recovery) on the high
13 end. (Han Decl., *supra*, at ¶¶ 48-50.)

14 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 51.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Thus, allocating \$10,000 to PAGA civil penalties was reasonable given the fact Defendants are
17 paying an additional \$390,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated
18 in good faith and “there is no indication that [the] amount was the result of self-interest at the
19 expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

20 Considering Defendants’ defenses, supporting evidence, and position the case is not
21 suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

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

23 Excluding the civil penalties, which could be completely discretionary, the total estimated
24 potential exposure, assuming certification and prevailing at trial, would be about **\$8,055,306.24**
25 on the low end and around **\$8,232,889.36** on the high end. (Han Decl., *supra*, at ¶ 52.)

26 _____
27 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009
28 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”).

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$2,130,997.44	75%	75%	\$133,187.34
Meal Break Premiums	\$1,420,664.96	65%	65%	\$174,031.46
Overtime/Minimum Wage: Off-the-Clock Work	\$355,166.24 to \$532,749.36	60%	55%	\$63,929.92 to \$95,894.88
Unreimbursed Business Expenses	\$363,600	35%	75%	\$59,085
Wage Statement Penalty	\$907,700	70%	70%	\$81,693
Waiting Time Penalty	\$2,877,177.60	70%	70%	\$258,945.98
MAXIMUM TOTAL EXPOSURE	\$8,055,306.24 to \$8,232,889.36⁵			\$770,872.70 to \$802,837.66⁶

Thus, the realistic recovery for this case is **\$770,872.70** on the low end and **\$802,837.66** on the high end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount of \$400,000 is about five percent (4.86%) of the maximum potential exposure and around fifty percent (49.82%) of the maximum realistic exposure at trial, which is a reasonable 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 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular 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 Plaintiff prevailed at trial and provides a significant recovery for Class Members.

///

⁵ (Han Decl., *supra*, at ¶¶ 41-46.)

⁶ (*Id.* at ¶¶ 53-58.)

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

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

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

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

14 “Ascertainability is required in order to give notice to putative class members as to whom
15 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
16 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
17 by describing a set of common characteristics sufficient to allow a member of that group to identify
18 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
19 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
20 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

21 This case involves approximately one thousand forty-seven (1,047) Class Members,
22 meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61; *Ghazaryan v. Diva*
23 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as
24 190 current and former employees” is sufficiently numerous].)

25 ///

26 ///

27 ///

1 **ii. 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.*) The application of each of these factors is discussed below.

11 **1. Common Issues Predominate**

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

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiff contends all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

26 **2. Plaintiff’s Claims Are Typical of the Class Claims**

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

1 Plaintiff is a former employee of Defendants and alleges she and Class Members were
2 employed by the same company and injured by the common policies and practices related to the
3 claims described above. (Han Decl., *supra*, at ¶ 63.) Plaintiff seeks relief for these claims and
4 derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims arise from the same
5 employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

7 Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 64.)
8 Plaintiff conducted herself diligently and responsibly in representing the Class in this litigation,
9 understands the fiduciary obligations, and actively participated in the prosecution of this case.
10 (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with
11 a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff has no interest
12 averse to the interests of the other Class Members. (*Ibid.*)

13 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 14 **of this Controversy**

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

22 ///

23 ///

24 ///

1 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

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

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

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

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

20 **V. CONCLUSION**

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

24 Dated: March 30, 2023

JUSTICE LAW CORPORATION

25 By: 

26 Douglas Han

27 Attorneys for Plaintiff

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

for the following case:	Bergara v. Bread & Cie, Inc. et. al
LWDA/Court Case No.:	LWDA Case No.: CM- 845745-21
	Court Case No.: 37-2022-00001960-CU-OE-CTL
	San Diego County Superior Court

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

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.

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

Executed on March 30, 2023, at Pasadena, California.

Betty Marie Lomb

Bitty Minnis-Lemley