

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHANCELLOR NOBLES (SBN 33081)
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 LOS ANGELES**

JUSTIN AVALOS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

INDIO PRODUCTS, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 20STCV40470

Honorable Elihu M. Berle
Department 6

CLASS ACTION

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

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

Hearing Date: March 2, 2022
Hearing Time: 9:00 a.m.
Hearing Place: Department 6

Complaint Filed: October 19, 2020
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 2, 2022, at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Elihu M. Berle in Department 6 of the Los Angeles County
3 Superior Court, located at 312 North Spring Street, Los Angeles, California 90012 (Spring Street
4 Courthouse), Plaintiff Justin Avalos (“Plaintiff”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” “Joint Stipulation,” or “Settlement”),
8 attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited
9 to, the means of allocation and distribution of funds, and the allocations for
10 penalties under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), the Attorney Fee Award, the Cost Award, the Class Representative
12 Enhancement Payment, and Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action and PAGA Settlement (“Notice”)
17 attached as **Exhibit A** to the Settlement Agreement;
- 18 • Approving the Election Not to Participate In (“Opt Out” From) Settlement
19 (“Exclusion Form”) attached as **Exhibit B** to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Notice and Exclusion Form (collectively,
21 known as the “Notice Packet”) with a postage-paid return envelope to the proposed
22 Class;
- 23 • Approving the proposed deadlines for the notice and settlement administration
24 process;
- 25 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payment, and the Administration Costs, and approval of the allocation for PAGA penalties.

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

Dated: January 31, 2022

JUSTICE LAW CORPORATION

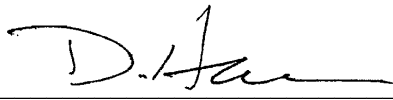
By: 
Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$375,000.00 proposed
3 wage-and-hour class action settlement by Plaintiff on behalf of himself and on behalf of all
4 California non-exempt employees of Defendant Indio Products, Inc. (“Defendant”) during the
5 Class Period (“Class” and “Class Members”). The Class Period is the time period from July 5,
6 2016, to December 31, 2021 (“Class Period”). At the time of this filing, the number of Class
7 Members provided by Defendant is estimated to be one hundred fifteen (115).

8 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
9 and vulnerabilities of the class claims alongside Defendant’s potential liability exposure, this
10 proposed settlement of \$375,000.00 – with an average Individual Settlement Share currently
11 estimated to be between \$1,716.45 and \$1,641.30 – is well within the range of reasonableness.
12 Class Counsel is convinced that the proposed Settlement is in the best interests of the Class
13 Members based on the negotiations and a detailed knowledge of the issues present in this action.

14 **II. BACKGROUND**

15 On October 19, 2020, Plaintiff, a former hourly-paid, non-exempt employee of Defendant,
16 filed a wage-and-hour class action lawsuit against Defendant in the Superior Court of California,
17 County of Los Angeles, entitled *Avalos v. Indio Products, Inc.*, Case Number 20STCV40470.
18 (Declaration of Douglas Han (“Han Dec.”), ¶ 10.) Specifically, Plaintiff alleged eight (8) causes
19 of action for violation of various sections of the California Labor Code and California Business
20 & Professions Code. (*Ibid.*)

21 Plaintiff and Defendant (the “Parties”) attended mediation on Plaintiff’s claims with
22 mediator Jeffrey Krivis on August 17, 2021. (Han Dec., *supra*, at ¶ 11.) With the help of the
23 mediator, the Parties eventually reached an agreement on settlement of the action on November
24 17, 2021. (*Ibid.*)

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1 In line with the Parties’ decision to enter a settlement, on November 30, 2021, Plaintiff
2 provided written notice to the California Labor and Workforce Development Agency (“LWDA”)
3 and Defendant of the specific provisions of the Labor Code he contends Defendant violated and
4 the theories supporting his contentions. (Han Dec., *supra*, at ¶ 12.) In addition, the Parties have
5 agreed that Plaintiff will file a First Amended Complaint (“FAC”), adding a single cause of action
6 for violation of Labor Code section 2698, *et seq.* (PAGA), in the Superior Court of California,
7 County of Los Angeles, in the case entitled *Avalos v. Indio Products, Inc.*, Case Number
8 20STCV40470. (*Id.* at ¶ 13.)

9 **III. INVESTIGATION/ LITIGATION HISTORY**

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

11 After Plaintiff filed his wage-and-hour class action lawsuit, the Parties engaged in both
12 formal and informal discovery. (Han Dec., *supra*, at ¶ 16.) Plaintiff propounded one (1) set of
13 form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions,
14 and one (1) set of requests for production of documents. (*Ibid.*) Thereafter, the Parties met and
15 conferred and agreed to an informal exchange of information and to attend mediation. (*Ibid.*)

16 Both before and after the lawsuit was filed, the Parties conducted significant investigation
17 and discovery of the relevant facts and law. (Han Dec., *supra*, at ¶ 17.) Specifically, Defendant
18 produced employee handbooks, evidencing its wage-and-hour policies, practices, and procedures,
19 a random sampling of time and pay records, and information and data relating to the size and
20 scope of the Class and permitting Plaintiff to understand the number of workweeks and pay
21 periods in the Class Period and PAGA Period, respectively. (*Ibid.*) Class Counsel also interviewed
22 Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

23 Based upon the information provided by Defendant and interviews Class Counsel had
24 with non-exempt employees, Plaintiff contends – and Defendant denies – that Defendant: (a)
25 failed to provide employees with legally mandated rest and meal breaks; (b) failed to pay
26 employees for all hours worked; (c) failed to reimburse employees for necessary business
27 expenses; (d) issued noncompliant wage statements; and (e) is liable for waiting time penalties.
28 (Han Dec., *supra*, at ¶¶ 19-25.)

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

2 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
3 **Stipulation and Settlement Agreement**

4 During the Parties' mediation on August 17, 2021, the Parties discussed the risks of
5 continued litigation, the likelihood of certification, and the merits of the Parties' claims and
6 defenses versus the benefits of settlement. (Han Dec., *supra*, at ¶ 27.) With the assistance of the
7 mediator, the Parties were eventually able to reach an agreement on settlement, the terms of which
8 were memorialized in the Settlement Agreement that the Parties now seek Preliminary Approval
9 of. (*Ibid.*; Exhibit 2.)

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

11 The Settlement Agreement was reached because of arm's-length negotiations. (Han Dec.,
12 *supra*, at ¶ 45.) Though cordial and professional, the settlement negotiations have always been
13 adversarial and non-collusive in nature. (*Ibid.*) At the mediation on August 17, 2021, both Parties'
14 counsel conducted extensive arm's-length settlement negotiations until an agreement was
15 reached. (*Ibid.*) As a result, an agreement was ultimately reached by all parties on November 17,
16 2021. (*Ibid.*)

17 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
18 and length of additional proceedings necessary to continue the litigation against Defendant. (Han
19 Dec., *supra*, at ¶ 46.) Plaintiff and Class Counsel have also considered the uncertainty and risk of
20 further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
21 (*Ibid.*) Based on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair,
22 adequate, and reasonable settlement, and is in the Class Members' best interests. (*Ibid.*)

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

24 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
25 of Plaintiff's claims and Defendant's defenses before reaching the Settlement and engaged in
26 sufficient investigation, research, and discovery to support the Settlement. (Han Dec., *supra*, at ¶
27 47.) The Settlement was only possible following significant investigation and evaluation of
28 Defendant's relevant policies and procedures and the data Defendant produced for the putative

1 class. (Han Dec., *supra*, at ¶ 47.) Furthermore, this case has also reached the stage where “the
2 Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to
3 support the reasonableness, adequacy, and fairness of the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.*
4 (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

6 **i. Deductions from the Settlement**

7 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
8 action be settled and compromised for the non-reversionary total sum of \$375,000.00 (“Gross
9 Settlement Amount”), which includes, subject to Court approval: (a) the Attorney Fee Award to
10 Class Counsel in an amount not to exceed \$131,250.00 (35% of the Gross Settlement Amount);
11 (b) the Cost Award to Class Counsel in an amount currently estimated at \$12,658.80, but not to
12 exceed \$20,000.00, for reimbursement of litigation costs and expenses;¹ (c) the Class
13 Representative Enhancement Payment to Plaintiff in the amount of \$10,000.00 for his service as
14 the Class Representative; (d) Administration Costs to Simpluris, the Settlement Administrator, in
15 an amount currently estimated at \$3,700.00, but not to exceed \$5,000.00; and (e) the PAGA
16 Payment of \$20,000.00, seventy-five percent (75%) of which (\$15,000.00) will be paid to the
17 LWDA and twenty-five percent (25%) of which (\$5,000.00) will be distributed to the Eligible
18 Aggrieved Employees on a pro rata basis. (Han Dec., *supra*, at ¶ 28.)

19 **ii. Calculation of the Class Members’ Individual Settlement Shares and**
20 **the Eligible Aggrieved Employees’ Individual PAGA Payments**

21 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
22 that between \$197,391.20 and \$188,750.00 (“Net Settlement Amount”) will be distributed to
23 Class Members – with an average gross Individual Settlement Share estimated to be between
24

25 ¹ The final amount of actual litigation costs will be provided to the Court in conjunction
26 with Plaintiff’s motion for final approval. (Han Dec., *supra*, at ¶ 29.) At that time, Plaintiff will
27 ask the Court to approve the amount of these costs. (*Ibid.*) If Plaintiff’s actual litigation costs
28 exceed \$20,000.00, Plaintiff will only seek reimbursement in the amount of \$20,000.00. (*Ibid.*) If
the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee
Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and
be available for distribution to all Class Members who do not submit valid and timely requests to
exclude themselves from this Settlement (“Participating Class Members”). (*Ibid.*)

1 \$1,716.45 and \$1,641.30.² (Han Dec., *supra*, at ¶ 30.)

2 Each Participating Class Member's Individual Settlement Share will be apportioned as
3 twenty percent (20%) wages and eighty percent (80%) penalties and interest. (Han Dec., *supra*,
4 at ¶ 31.) The Settlement Administrator will calculate and withhold the amount of each
5 Participating Class Member's portion of normal payroll withholding taxes out of the portion of
6 each Participating Class Member's Individual Settlement Share apportioned to wages. (*Ibid.*) The
7 Settlement Administrator will also calculate the amount of Defendant's portion of payroll
8 withholding taxes. (*Ibid.*) The Settlement Administrator will submit the calculation of the amount
9 of Defendant's portion of payroll withholding taxes to Defendant for additional funding and will
10 forward that amount along with each Participating Class Member's Individual Settlement Share
11 withholdings to the appropriate taxing authorities. (*Ibid.*) Defendant will pay half of its portion of
12 payroll withholding taxes at the same time Defendant funds the first half of the Gross Settlement
13 Amount and the second half of its portion of payroll withholding taxes at the same time Defendant
14 funds the second half of the Gross Settlement Amount. (*Ibid.*)

15 Each Eligible Aggrieved Employee's Individual PAGA Payment will be apportioned as
16 one hundred percent (100%) penalties and shall be subject to all authorized and required
17 withholdings other than the tax withholdings customarily made from employees' wages and shall
18 be reported by IRS Forms 1099. (Han Dec., *supra*, at ¶ 34.) Eligible Aggrieved Employees will
19 be responsible for the payment of any taxes and penalties assessed on the Individual PAGA
20 Payments and will be solely responsible for any penalties or other obligations resulting from their
21 personal tax reporting of Individual PAGA Payments. (*Ibid.*)

22 The Settlement Administrator will pay each Participating Class Member the Participating
23 Class Member's pro-rata share of the Net Settlement Amount. (Han Dec., *supra*, at ¶ 32.) Each
24 Participating Class Member's Individual Settlement Share will be calculated according to the
25 formula listed in the Settlement Agreement. (*Ibid.*)

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28 ² \$197,391.20 (Net Settlement Amount) / 115 (Class Members) = \$1,644.93; \$188,750.00
(Net Settlement Amount) / 115 (Class Members) = \$1,572.92.

1 The Settlement Administrator will also pay each Eligible Aggrieved Employee the
2 Eligible Aggrieved Employee's pro-rata share of the PAGA Payment. (Han Dec., *supra*, at ¶ 33.)
3 Each Eligible Aggrieved Employee's Individual PAGA Payment will be calculated according to
4 the formula listed in the Settlement Agreement. (*Ibid.*)

5 **iii. Notice to the Class**

6 Within three (3) calendar days after entry of the Preliminary Approval Order, Defendant
7 shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 36.) Within
8 fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement
9 Administrator, the Settlement Administrator will mail the Notice Packets, in both English and
10 Spanish, to the Class Members via first-class regular U.S. using the most current mailing address
11 information available. (*Id.* at ¶ 37.) Class Members and Eligible Aggrieved Employees are not
12 required to submit a claim form to receive their Individual Settlement Shares and Individual
13 PAGA Payments. (*Ibid.*)

14 **iv. Distribution of Funds**

15 Defendant shall fund the Gross Settlement Amount of \$375,000.00 in two separate
16 payments. (Han Dec., *supra*, at ¶ 38.) The first half payment of \$187,500.00, plus Defendant's
17 share of employer-side payroll taxes on this first half payment, shall be due at Final Approval.
18 (*Ibid.*) The second half payment of \$187,500.00, plus Defendant's share of employer-side payroll
19 taxes on this second half payment, shall be due one hundred eighty (180) days after Final
20 Approval. (*Ibid.*) Defendant shall wire these funds to the Settlement Administrator on the above-
21 specified dates. (*Ibid.*) Within fourteen (14) calendar days after the Settlement Administrator
22 receives the entire Gross Settlement Amount, the Settlement Administrator shall calculate and
23 disburse all payments due under the Settlement Agreement. (*Id.* at ¶ 39.)

24 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
25 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
26 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 40.) If any
27 checks are not redeemed or deposited within ninety (90) calendar days after mailing, the
28 Settlement Administrator will send a reminder postcard. (*Ibid.*) If any checks remain uncashed or

not deposited by the expiration of the 90-day period after mailing the reminder notice, the Settlement Administrator will, within two hundred (200) calendar days after the checks are initially mailed, cancel the check(s), and pay the amount of the Individual Settlement Share or Individual PAGA Payment (as applicable) to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or Individual PAGA Payment available to him or her per the applicable claim procedure to request that money from the State of California. (Han Dec., *supra*, at ¶ 40.)

v. Release of Claims

As of the Effective Final Settlement Date, in exchange for the consideration set forth in the Settlement Agreement, Plaintiff and the Participating Class Members release the Released Parties from the Released Claims for the Class Period ("Released Claims"). (Han Dec., *supra*, at ¶ 41; Exhibit 2, *supra*, at §§ I (Q), I (KK), I (LL), III (J).)

As of the Effective Final Settlement Date, the LWDA and each Eligible Aggrieved Employee, including Plaintiff, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly is barred from bringing any action for the PAGA Released Claims during the PAGA Period ("PAGA Released Claims"). (Han Dec., *supra*, at ¶ 42; Exhibit 2, *supra*, at §§ I (Q), I (FF), III (K).) The release of the PAGA Released Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid request for exclusion. (Han Dec., at ¶ 42.)

As of the Effective Final Settlement Date, in exchange for the Class Representative Enhancement Payment in an amount not to exceed \$10,000.00, and in recognition of his work and efforts in obtaining the benefits for the Class and undertaking the risk of paying litigation costs in the event this matter had not successfully resolved, Plaintiff provides a general release of claims for himself and his spouse, heirs, successors, and assigns. (Han Dec., *supra*, at ¶ 43; Exhibit 2, *supra*, at § III (L).)

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1 The Released Parties include Defendant and its present and former officers, directors,
2 employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent
3 and related companies, subsidiaries, divisions, affiliates, predecessors, successors, and assigns,
4 and all of their present and former officers, directors, employees, shareholders, agents, trustees,
5 representatives, attorneys, insurers, reinsurers, parent and related companies, subsidiaries,
6 divisions, affiliates, predecessors, successors, and assigns (“Released Parties”). (Han Dec., *supra*,
7 at ¶ 44; Exhibit 2, *supra*, at § I (LL).)

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

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

18 Counsel for both Parties are particularly experienced in wage-and-hour employment law
19 and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
20 numerous cases on behalf of employees for Labor Code violations and, thus, are experienced and
21 qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial,
22 and the viability of the defenses. (*Ibid.*) Class Counsel’s experience also guided their
23 determination to endorse the proposed Settlement.³ (*Ibid.*)

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26 ³ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the
27 number of objectors – is not determinable until the Notice has been provided to the Class
28 Members, and they have had an opportunity to respond. This information will be provided to the
Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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.⁴
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 (c) Any party to a settlement agreement may serve and file a written notice of
11 motion for preliminary approval of the settlement. The settlement
12 agreement and proposed notice to class members must be filed with the
motion, and the proposed order must be lodged with the motion.

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

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

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

25 ///

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

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

11 **i. The Settlement Amount of \$375,000 Is Fair and Reasonable**

12 The proposed Settlement was only possible following significant investigation and
13 evaluation of Defendant's relevant policies and procedures and the data Defendant produced for
14 the putative class, as referenced in Section III above, which permitted Class Counsel to engage in
15 a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 47.)

16 This investigation and evaluation informed Plaintiff's central theories of liability. (Han
17 Dec., *supra*, at ¶ 48.) Plaintiff's claims are predicated on Defendant's alleged: (a) failure to pay
18 overtime wages; (b) failure to provide compliant rest and meal breaks and pay applicable
19 premiums; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
20 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of Labor
21 Code section 2698, *et seq.* (PAGA); and (h) violation of Business & Professions Code sections
22 17200, *et seq.* (*Ibid.*) Defendant denies Plaintiff's theories of liability. (*Id.* at ¶ 49.)

23 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
24 to certification are always present. (Han Dec., *supra*, at ¶ 50.) As the California Supreme Court
25 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
26 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
27 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour
28

claims.⁵ (Han Dec., *supra*, at ¶ 50.) These factors led Plaintiff to discount calculations of potential damages.

ii. The PAGA Payment of \$20,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 226(a), 226.3, 226.7, 246, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*, at ¶ 58.) Defendant asserts that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the law's current unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$6,900.00** (69 employees x \$100 initial violations) on the low end and **\$41,400.00** (69 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec., at ¶ 61.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 63.) Many of the causes of action brought were duplicative of the statutory claims such as violations of Labor Code sections 201, 202, 203, 204, 218.5, 226.3, 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$20,000.00 to PAGA civil penalties was reasonable based on a rate of **\$9.01** per pay period [$\$20,000.00 \div 2,220$ pay periods in PAGA date range = **\$9.01**], given the fact that Defendant is also paying an additional

⁵ (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].)

\$335,000.00 in the Settlement.⁶ (Han Decl., *supra*, at ¶ 63.) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁷ (*Ibid.*)

Considering Defendant’s defenses, its supporting evidence, and its position that the case is not suitable for class treatment, the settlement of \$375,000.00 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$591,222.85** on the low end and **\$628,262.87** on the high end. (Han Dec., *supra*, at ¶ 64.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$55,214.70	50%	40%	\$16,564.41
Meal Break Premiums	\$82,104.08	40%	25%	\$36,946.84
Overtime/Minimum Wage: Rounding	\$38,651.29	30%	50%	\$13,527.95
Overtime/Minimum Wage: Off-the-Clock Work	\$74,020.98 to \$111,061.00	50%	40%	\$22,206.29 to \$33,318.30
Unreimbursed Business Expenses	\$36,673.00	30%	50%	\$12,835.55
Wage Statement Penalty	\$217,350.00	25%	40%	\$97,807.50
Waiting Time Penalty	\$87,208.80	25%	40%	\$39,243.96
MAXIMUM TOTAL EXPOSURE	\$591,222.85 to \$628,262.87 ⁸			\$239,132.50 to \$250,244.51 ⁹

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⁶ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000].)

⁷ (*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”).)

⁸ (Han Dec., *supra*, at ¶¶ 52-57.)

⁹ (*Id.* at ¶¶ 65-71.)

1 Based on this analysis, the realistic recovery for this case is **\$239,132.50** on the low end
2 and **\$250,244.51** on the high end. (Han Dec., *supra*, at ¶ 72.) The Gross Settlement Amount of
3 \$375,000.00 is approximately sixty percent (59.69%) of the maximum potential exposure and
4 about one hundred fifty percent (149.85%) of the maximum realistic exposure at trial. (*Ibid.*)

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

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

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

23 The proposed Class is ascertainable and numerous as to make it impracticable to join all
24 Class Members, and there are common questions of law and fact that predominate over any
25 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 73.) Plaintiff contends
26 that as former hourly-paid, non-exempt employees of Defendant, his claims are typical of the
27 claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class.
28 (*Ibid.*) Also, Plaintiff asserts that the prosecution of separate actions by individual Class Members

would create the risk of inconsistent or varying adjudications. (Han Dec., *supra*, at ¶ 73.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately one hundred fifteen (115) Class Members. (Han Dec., *supra*, at ¶ 74.) Thus, the Class is sufficiently numerous. (*Ibid.*)

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

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

1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker*

1 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
2 regularly granted class certification when the plaintiff can present evidence of common policies.
3 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
4 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
5 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
6 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

7 Plaintiff asserts common issues of fact and law predominate as to each of the claims
8 alleged. (Han Dec., *supra*, at ¶ 75.) Plaintiff contends all Class Members were subject to the same
9 or similar employment practices, policies, and procedures, described in detail above. (*Ibid.*)

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

11 Typical claims rely on legal theories and facts that are substantially like those of other
12 class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former employee
13 of Defendant and alleges he and the Class Members were employed by the same company and
14 injured by Defendant's common policies and practices related to the claims described above. (Han
15 Dec., *supra*, at ¶ 76.) Plaintiff seeks relief for these claims and derivative claims on behalf of all
16 Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and
17 are based on the same legal theories as those applicable to the Class. (*Ibid.*)

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

19 Plaintiff has proven to be an adequate Class Representative. (Han Dec., *supra*, at ¶ 77.)
20 He has conducted himself diligently and responsibly in representing the Class in this litigation,
21 understand his fiduciary obligations, and has actively participated in the prosecution of this case.
22 (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class
23 Counsel with a complete understanding of his work environment and requirements. (*Ibid.*)
24 Further, Plaintiff has no interest that is averse to the interests of the other Class Members. (*Ibid.*)

25 ///

26 ///

27 ///

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

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

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

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

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

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

20 If the court has certified the action as a class action, notice of the final approval
21 hearing must be given to class members in the manner specified by the court. The
22 notice must contain an explanation of the proposed settlement and procedures for
23 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.

24 The proposed Notice Packet meets all these requirements. The proposed Notice Packet
25 advises the Class Members of their right to participate in the Settlement; how and when to object
26 to or request exclusion from the Settlement; and the date, time, and location of the Final Approval
27 Hearing. (See Han Dec., *supra*; Exhibits A and B to Exhibit 2.)

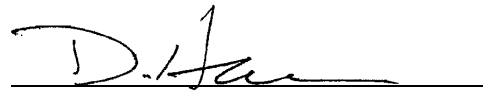
28 ///

1 **V. CONCLUSION**

2 Plaintiff submits that the proposed Settlement is in the best interests of the Class, as it is
3 fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the
4 proposed Settlement should be preliminarily approved by the Court, the Class should be
5 conditionally certified for purposes of settlement only, and the Notice Packet should be approved.

6
7 Dated: January 31, 2022

JUSTICE LAW CORPORATION

8
9 

Douglas Han
Shunt Tatavos-Gharajeh
Chancellor Nobles
Attorneys for Plaintiff

**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 manderson@justicelawcorp.com

On February 9, 2022, I served the foregoing document described as

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

for the following case: **Avalos v. Indio Products, Inc.**
LWDA/Court Case No.: **LWDA-CM-855116-21**
20STCV40470
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 February 9, 2022, at Pasadena, California.



Mariah Anderson