

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
HALINA E. SZYMANSKI (SBN 341183)
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 SANTA CRUZ**

CHRISTOPHER RAMIREZ, individually,
and on behalf of other members of the general
public similarly situated and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

THRESHOLD ENTERPRISES LTD., a
Delaware corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 22CV00051

Assigned for All Purposes to:
Honorable Timothy Volkmann
Department 5

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: April 27, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 5

Complaint Filed: January 7, 2022
FAC Filed: March 29, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 27, 2023, at 8:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Timothy Volkmann in Department 5 of the Santa Cruz County
3 Superior Court located at 701 Ocean Street, Santa Cruz, California 95060, Plaintiff Christopher
4 Ramirez (“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 Joint Stipulation and Settlement Agreement (“Agreement,”
7 “Settlement Agreement,” “Joint Stipulation,” or “Settlement”), attached as **Exhibit**
8 **3** to the Declaration of Douglas Han, including, and not limited to, the means of
9 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 (“Class Notice” or “Notice”)
14 attached as **Exhibit A** to the Settlement Agreement;
- 15 • Approving the Election Not to Participate In (“Opt Out” From) Class Action
16 Settlement Form (“Exclusion Form”) attached as **Exhibit B** to the Settlement
17 Agreement;
- 18 • Directing the mailing of the Class Notice and Exclusion Form (collectively, the
19 “Notice Packet”) with a postage-paid return envelope to the Class;
- 20 • Approving the proposed deadlines for Settlement Administration;
- 21 • Approving CPT Group, Inc. as the Settlement 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 Attorney Fee Award, Cost Award, Class
25 Representative Enhancement Payment, and Administration Costs, and approval of
26 the allocation of the Private Attorneys General Act of 2004 (“PAGA”) Payment.

27 ///

28 ///

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: April 3, 2023

JUSTICE LAW CORPORATION

7 By: 
8 Douglas Han
9 *Attorneys for Plaintiff*

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-length Negotiations	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	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	15
a.	Class Action Settlements Are Subject to Court Review.....	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	15
i.	The Gross Settlement Amount of \$1,500,000 Is Fair and Reasonable	16
ii.	The PAGA Payment of \$80,000 Is Reasonable.....	17
c.	Discount Analysis Justifies the Settlement.....	18
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

1	2.	Plaintiff’s Claims Are Typical of the Class Claims.....	21
2	3.	Plaintiff Is Adequate to Represent the Class.....	21
3	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
4		this Controversy	21
5	e.	The Settlement Is Fair, Reasonable, and Adequate	22
6	f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
7	V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	17
<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.....	19
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	17
<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	20

<u>Cases</u>	<u>Page(s)</u>
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	16
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	19
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	17
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	15
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
185042.....	20
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	15, 16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	19
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	15, 16
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	17
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	16, 19, 20
<i>In re Tableware Antitrust Litig.</i>	
(N.D.Cal. 2007) 484 F.Supp.2d 1059	18

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

<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	15
<i>Walsh v. IKON Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17

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

California Rules of Court, Rule 3.769	15
California Rules of Court, Rule 3.769(f)	22
California Rules of Court, Rule 3.769(g).....	15
Federal Rule 23	15

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

Business & Professions Code § 17200	16
Code of Civil Procedure § 382.....	19, 22
Code of Civil Procedure § 877.6.....	16
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(a)	17
Labor Code § 226.3.....	17
Labor Code § 226.7.....	17
Labor Code § 246.....	17
Labor Code § 432.5.....	17

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 510.....	17
Labor Code § 512(a)	17
Labor Code § 551.....	17
Labor Code § 552.....	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 § 2698.....	10
Labor Code § 2800.....	17
Labor Code § 2802.....	17

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,500,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and/or former
4 hourly-paid, non-exempt persons employed by Defendant Threshold Enterprises LTD.
5 (“Defendant”) in California at any time during the period from July 12, 2017, through and
6 including February 10, 2023 (“Class,” “Class Members,” and “Class Period”). (Declaration of
7 Douglas Han in Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement
8 (“Han Decl.”), ¶ 9.) At the time of this filing, the number of Class Members is estimated to be
9 1,343. (*Id.* at ¶ 8.)

10 **II. BACKGROUND**

11 On December 10, 2021, Plaintiff provided written notice to the California Labor and
12 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
13 Labor Code he contends Defendant violated and the theories supporting his contentions. (Han
14 Decl., *supra*, at ¶ 10; Exhibit 4.)

15 On January 7, 2022, Plaintiff filed a wage-and-hour class action lawsuit in the Santa Cruz
16 County Superior Court, alleging 10 causes of action. (Han Decl., *supra*, at ¶ 11.) On March 29,
17 2022, Plaintiff filed a First Amended Complaint (“FAC”), which pleads exhaustion of Plaintiff’s
18 administrative remedies after the LWDA’s 65-day notice period expired as to Plaintiff’s claims
19 pursuant to Labor Code section 2698, *et seq.* on February 14, 2022, and the LWDA did not take
20 any action to investigate or prosecute the matter. (*Id.* at ¶ 12; Exhibit 2.)

21 On November 7, 2022, the Parties attended mediation with mediator Deborah Crandall
22 Saxe, Esq., which resulted in the settlement of this matter. (Han Decl., *supra*, at ¶ 13.)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

25 Plaintiff propounded one set of form interrogatories, one set of special interrogatories, one
26 set of requests for admission, and one set of requests for production of documents. (Han Decl.,
27 *supra*, at ¶ 15.) Thereafter, the Parties met and conferred and agreed to engage in an informal
28 exchange of information and attend mediation. (*Ibid.*)

1 Prior to the mediation, Defendant produced documents relating to its wage-and-hour
2 policies, practices, and procedures. (See Han Decl., *supra*, at ¶ 16.) As part of Defendant’s
3 production, Plaintiff also reviewed time and pay records and information relating to the size and
4 scope of the Class. (*Ibid.*) Several putative class members were also interviewed to attain a better
5 understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

6 Based on the information provided by Defendant and interviews with putative class
7 members, Plaintiff contends – and Defendant denies – that Defendant: (1) failed to provide
8 employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours
9 worked; (3) failed to properly calculate and pay overtime wages and paid sick leave; (4) failed to
10 reimburse employees for necessary business expenses; (5) issued noncompliant wage statements;
11 and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

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

14 The Parties attended mediation with mediator Deborah Crandall Saxe, Esq. on November
15 7, 2022. (Han Decl., *supra*, at ¶ 26.) Under the auspices of the mediator, the Parties reached a
16 settlement, the terms of which were memorialized in the Settlement Agreement. (*Ibid.*; Exhibit 3.)

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

18 At the mediation, both Parties’ counsel engaged in extensive arm’s-length settlement
19 negotiations until an agreement was ultimately reached. (Han Decl., *supra*, at ¶ 37.) Though cordial
20 and professional, the settlement negotiations have always been adversarial and non-collusive in
21 nature. (*Ibid.*)

22 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
23 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
24 *supra*, at ¶ 38.) Plaintiff and Class Counsel have also considered the uncertainty and risks, potential
25 outcome, and difficulties and delays inherent in further litigation. (*Ibid.*) Based on the foregoing,
26 Plaintiff and Class Counsel believe the Settlement is fair, adequate, and reasonable, and is in the
27 best interests of the Class Members. (*Ibid.*)

28 ///

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 ¶ 39.) The Settlement was only possible following significant
5 investigation and evaluation of Defendant’s relevant policies and practices, as well as the data
6 Defendant produced for the Class, which permitted Class Counsel to engage in a comprehensive
7 analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where “the
8 Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to
9 support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.*
10 (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

12 **i. Deductions from the Settlement**

13 The Parties agreed (subject to the Court’s approval) that this action be settled and
14 compromised for the non-reversionary total sum of \$1,500,000 (“Gross Settlement Amount”)
15 which includes: (1) the Attorney Fee Award not to exceed \$525,000 (35% of the Gross Settlement
16 Amount); (2) the Cost Award not to exceed \$20,000; (3) the Class Representative Enhancement
17 Payment not to exceed \$10,000; (4) Administration Costs not to exceed \$20,000; and (5) the
18 PAGA Payment not to exceed \$80,000. (Han Decl., *supra*, at ¶ 27.)

19 **ii. Calculating Settlement Payments**

20 After all Court-approved deductions, it is estimated that \$845,000 (“Net Settlement
21 Amount”) will be distributed to all Class Members who did not submit valid and timely requests
22 to exclude themselves from the class action Settlement (“Participating Class Members”) – with a
23 gross *average* Individual Settlement Share estimated at \$629.19. (Han Decl., *supra*, at ¶ 28.)

24 Participating Class Members will receive a proportionate share of the Net Settlement
25 Amount calculated using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at
26 ¶ 29.) Individual Settlement Shares will be apportioned one-third (1/3) in compromise of claims
27 for alleged unpaid wages and two-thirds (2/3) in compromise of claims for alleged non-wage
28 amount including penalties and interest. (*Ibid.*)

1 In addition, the portion of the PAGA Payment that will be paid to each Eligible PAGA
2 Employee shall be determined using the formula set forth in the Settlement Agreement. (Han Decl.,
3 *supra*, at ¶ 30.) Eligible PAGA Employees' portions of the PAGA Payment will be allocated as
4 one hundred percent (100%) in compromise of claims for alleged penalties. (*Ibid.*)

5 **iii. Notice to the Class**

6 Within 30 calendar days after entry of the Preliminary Approval Order, Defendant shall
7 deliver the Class Data to the Settlement Administrator. (Han Decl., *supra*, at ¶ 31.) Within 14 days
8 after receipt of the Class Data from Defendant, the Settlement Administrator shall mail the Notice
9 Packet to the Class Members via first-class regular U.S. Mail. (*Ibid.*)

10 **iv. Distribution of Funds**

11 The Settlement will be funded and disbursed pursuant to the timeline and manner set forth
12 in the Settlement Agreement. (Han Decl., *supra*, at ¶ 32.) If any checks remain uncashed or not
13 deposited by the expiration of the check-cashing period, the Settlement Administrator will cancel
14 the check(s) and pay the amount of the Individual Settlement Share(s) to the California State
15 Controller: Unpaid Wage Fund and add the amount of the uncashed individual shares of the PAGA
16 Payment to the funds being paid to the LWDA. (*Ibid.*)

17 **v. Release of Claims**

18 Upon Defendant's fulfillment of its payment obligations pursuant to Section III(J)(9)(a) of
19 the Settlement Agreement, Plaintiff and the other Participating Class Members will fully and
20 finally release and discharge the Released Parties from the Released Claims. (Han Decl., *supra*, at
21 ¶ 33.)

22 Upon Defendant's fulfillment of its payment obligations pursuant to Section III(J)(9)(a) of
23 the Settlement Agreement, Plaintiff, the LWDA, and any other representative, proxy, or agent
24 thereof, including, but not limited to, any and all Eligible PAGA Employees, are barred from
25 pursuing any action for civil penalties defined within the PAGA Released Claims against the
26 Released Parties. (Han Decl., *supra*, at ¶ 34.)

27 ///

28 ///

1 Upon Defendant’s fulfillment of its payment obligations pursuant to Section III(J)(9)(a) of
2 the Settlement Agreement, in exchange for the Class Representative Enhancement Payment in an
3 amount not to exceed \$10,000 to Plaintiff in recognition of his work and efforts in prosecuting the
4 claims and obtaining the Settlement, and undertaking the risk for the payment of costs if this matter
5 had not successfully resolved, Plaintiff hereby provides a general release of claims for himself and
6 his spouse, heirs, successors and assigns, and forever releases, remises, and discharges the
7 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
8 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses,
9 debts, penalties and expenses of any nature whatsoever, arising from the beginning of time through
10 the date the court grants Preliminary Approval. (Han Decl., *supra*, at ¶ 35.)

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

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

20 Both Parties’ counsel are experienced in wage-and-hour employment law and class actions.
21 (See Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on
22 behalf of employees for Labor Code violations and are experienced and qualified to evaluate the
23 class claims, the advantages and disadvantages of settlement versus trial, and the viability of the
24 defenses. (See *ibid.*) This experience instructed Class Counsel on the risks and uncertainties of
25 further litigation and guided their determination to endorse the Settlement.¹ (See *ibid.*)

26 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
27 the Notice Packet has been provided to the Class, and they have had an opportunity to respond.
28 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 (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
13 motion, and the proposed order must be lodged with the motion.

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

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

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

26 ///

27 ///

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 Gross Settlement Amount of \$1,500,000 Is Fair and Reasonable**

11 The Settlement was only possible following significant investigation and evaluation of
12 Defendant’s relevant policies and practices, as well as the data Defendant produced for the Class,
13 which permitted Class Counsel to engage in a comprehensive analysis of liability and potential
14 damages. (Han Decl., *supra*, at ¶ 39.)

15 Plaintiff’s claims are predicated on Defendant’s purported: (a) failure to properly calculate
16 and pay overtime wages and paid sick leave; (b) failure to provide meal and rest breaks and pay
17 applicable premium wages; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e)
18 failure to issue compliant wage statements; (f) failure to reimburse business expenses; (g) violation
19 of PAGA; and (h) violation of Business & Professions Code section 17200, *et seq.* (Han Decl.,
20 *supra*, at ¶ 40.) Defendant vehemently denies Plaintiff’s theories of liability. (*Id.* at ¶ 41.)

21 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
22 to certification are always present. (Han Decl., *supra*, at ¶ 42.) As the California Supreme Court
23 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
24 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
25 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
26 (*Ibid.*) Thus, the calculations for potential damages were discounted.

27 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
28 of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Payment of \$80,000 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, 432.5,
4 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*,
5 at ¶ 51.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that it
7 had a strong argument that it would be unjust to award maximum PAGA penalties given the law's
8 unsettled state concerning PAGA penalties. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012)
9 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) If PAGA penalties are
10 granted on any one of the violations alleged in the operative complaint, the total civil penalties
11 exposure under PAGA could be approximately **\$84,800.00** (848 employees x \$100 penalty for
12 initial violation) on the low end. (Han Decl., ¶ 53.) Multiplying the PAGA exposure by the number
13 of alleged violations under the theories of recovery under PAGA gives potential civil penalties of
14 around **\$593,600.00** (848 employees x \$100 penalty for initial violation x 7 theories of recovery)
15 on the high end. (*Ibid.*)

16 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at
17 ¶ 55.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
18 Thus, allocating \$80,000 to PAGA civil penalties was reasonable given the fact Defendant is
19 paying an additional \$1,420,000 in the class settlement. (*Ibid.*) When PAGA penalties are
20 negotiated in good faith and “there is no indication that [the] amount was the result of self-interest
21 at the expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

22 _____
23 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
24 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
25 decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
26 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
27 Cal.App.4th 1422 [affirming denial of certification].)

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

Considering Defendant's defenses, supporting evidence, and position 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 **\$12,509,972.70** on the low end and around **\$14,475,488.70** on the high end. (Han Decl., *supra*, at ¶ 56.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$2,117,109.22	70%	60%	\$254,053.11
Meal Break Premiums	\$1,175,188.04	50%	50%	\$293,797.01
Overtime/Minimum Wage: Off-the-Clock Work	\$3,931,032.04 to \$5,896,548.06	70%	60%	\$471,723.85 to \$707,585.77
Overtime/Minimum Wage: Regular Rate	\$108,515.00	30%	40%	\$45,576.30
Unreimbursed Business Expenses	\$248,594.00	60%	60%	\$39,775.04
Wage Statement Penalty	\$1,823,200.00	50%	60%	\$364,640.00
Waiting Time Penalty	\$3,106,334.40	50%	60%	\$621,266.88
MAXIMUM TOTAL EXPOSURE	\$12,509,972.70 to \$14,475,488.70⁵			\$2,090,832.19 to \$2,326,694.11⁶

Thus, the realistic recovery for this case is **\$2,090,832.19** on the low end and **\$2,326,694.11** on the high end. (Han Decl., *supra*, at ¶ 64.) The Gross Settlement Amount of \$1,500,000 is about ten percent (10.36%) of the maximum potential exposure and approximately sixty-four percent (64.47%) of the maximum realistic exposure at trial. (*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

⁵ (Han Decl., *supra*, at ¶¶ 44-50.)

⁶ (*Id.* at ¶¶ 57-63.)

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 Plaintiff 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 ¶ 65.) Plaintiff contends that his claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff asserts that 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.)

///

1 This case involves approximately 1,343 Class Members, meaning the Class is sufficiently
2 numerous. (Han Decl., *supra*, at ¶ 66; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
3 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is
4 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].)

27 ///

28 ///

1 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
2 alleged. (Han Decl., *supra*, at ¶ 67.) Plaintiff contends that all Class Members were subject to the
3 same or similar employment practices, policies, and procedures. (*Ibid.*)

4 **2. Plaintiff's 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 Plaintiff is a former employee of Defendant and alleges that he and the Class Members
8 were employed by the same company and injured by Defendant's common policies and practices
9 related to the claims described above. (Han Decl., *supra*, at ¶ 68.) Plaintiff seeks relief for these
10 claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiff's claims arise from the
11 same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

13 Plaintiff has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶ 69.)
14 Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation,
15 understands his fiduciary obligations, and actively participated in the prosecution of this case.
16 (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with
17 a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff has no interest
18 averse to the interests of the other Class Members. (*Ibid.*)

19 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 20 **of this Controversy**

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

28 ///

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 Notice Packet meets all these requirements. The Notice Packet advises Class Members
18 of their right to participate in the Settlement, how and when to object to or request exclusion from
19 the Settlement, and the date, time, and location of the Final Approval Hearing. (See Han Decl.,
supra; Exhibits A and B to Exhibit 3.)

20 ///

21 ///

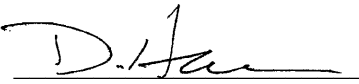
22 ///

1 **V. CONCLUSION**

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

6
7 Dated: April 3, 2023

JUSTICE LAW CORPORATION

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

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On April 3, 2023, I served the foregoing document described as

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

for the following case: **Ramirez v. Threshold Enterprises, LTD.**
LWDA/Court Case No.: **LWDA Case No.: CM-857104-21**
Court Case No.: 22CV00051
Santa Cruz 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 April 3, 2023, at Pasadena, California.



Madison Luna