

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LAWRENCE BEALL (SBN 343117)
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 Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SANTANNA FRANKLIN and JOSE
COJULUN, 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");

Plaintiffs,

v.

MELROSE FACILITY MANAGEMENT,
LLC, a South Dakota limited liability
company; RESEDA DISCOUNT
CORPORATION, a California corporation;
RABBITSWAG INC. DBA PLUG PLAY, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 22STCV06205

Assigned for All Purposes to:
Honorable Kenneth R. Freeman
Department 14

CLASS ACTION

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

[Declaration of Proposed Class Counsel (Douglas
Han); Declarations of Proposed Class
Representatives (Santanna Franklin and Jose
Cojulun); Declarations of Defense Counsel
(David A. Huch, Timothy J. Lepore, and David C.
Hawkes); Declaration of Betsy Butler; Declaration
of Jodey Lawrence; and [Proposed] Order filed
concurrently herewith]

Hearing Date: June 27, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department 14

Complaint Filed: February 18, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 27, 2023 at 10:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Kenneth R. Freeman in Department 14 of the Los Angeles
3 County Superior Court (Spring Street Courthouse) located at 312 North Spring Street Los Angeles,
4 California 90012, Plaintiffs Santanna Franklin and Jose Cojulun (“Plaintiffs,” “Plaintiff
5 Santanna,” and “Plaintiff Cojulun”) will and hereby do move for an order:

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

28 ///

1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declarations of Proposed Class
3 Representatives (Santanna Franklin and Jose Cojulun); Declarations of Defense Counsel (David
4 A. Huch, Timothy J. Lepore, and David C. Hawkes); Declaration of Betsy Butler; Declaration of
5 Jodey Lawrence; [Proposed] Order filed concurrently with this motion; pleadings and other
6 records on file with the Court in this matter; and such documentary evidence and oral argument as
7 may be presented at the hearing on this motion.

8
9 Dated: May 26, 2023

JUSTICE LAW CORPORATION

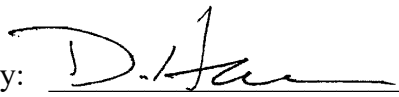
10
11 By: 
12 Douglas Han
13 *Attorneys for Plaintiffs*
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 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.	The <i>Cy Pres</i> Recipient Is Appropriate	13
vi.	Release of Claims	14
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review	16
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	16
i.	The Settlement Amount of \$285,000 Is Fair and Reasonable	17
ii.	The PAGA Penalties of \$20,000 Is Reasonable	18
c.	Discount Analysis Justifies the Settlement.....	19
d.	Conditional Certification of the Class Is Appropriate	20
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	20
ii.	Class Members Share a Well-defined Community of Interest	21

1	1.	Common Issues Predominate.....	21
2	2.	Plaintiffs’ Claims Are Typical of the Class Claims.....	22
3	3.	Plaintiffs Are Adequate to Represent the Class.....	22
4	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
5		this Controversy	23
6	e.	The Settlement Is Fair, Reasonable, and Adequate	23
7	f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f)	23
8	V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	18
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	15
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	16
<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	21
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	21
<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	22
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	18
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	15, 23
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	21
///	
///	

<u>Cases</u>	<u>Page(s)</u>
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	16
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	17
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	20
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	18
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	16
<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.....	21
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	16, 17
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	20
<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	16, 17
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	18
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	17, 20, 21
<i>In re Tableware Antitrust Litig.</i>	
(N.D.Cal. 2007) 484 F.Supp.2d 1059	19

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

<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	18
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	16
<i>Walsh v. IKON Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	18

<u>Rules</u>

California Rules of Court, Rule 3.769	16
California Rules of Court, Rule 3.769 (f)	23
California Rules of Court, Rule 3.769 (g).....	16
Federal Rule 23	16

<u>Statutes</u>

Business & Professions Code § 17200	17
Code of Civil Procedure § 382.....	20, 23
Code of Civil Procedure § 384.....	14
Code of Civil Procedure § 384 (a).....	13
Code of Civil Procedure § 384 (b).....	13
Code of Civil Procedure § 877.6.....	17
Labor Code § 201.....	18
Labor Code § 202.....	18
Labor Code § 203.....	18
Labor Code § 204.....	18
Labor Code § 210.....	18
Labor Code § 218.5.....	18
Labor Code § 221.....	18
Labor Code § 226.3.....	18
Labor Code § 226.7.....	18

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 226 (a)	18
Labor Code § 246.....	18
Labor Code § 432.5.....	18
Labor Code § 510.....	18
Labor Code § 512 (a)	18
Labor Code § 551.....	18
Labor Code § 552.....	18
Labor Code § 558.....	18
Labor Code § 1174 (d).....	18
Labor Code § 1194.....	18
Labor Code § 1197.....	18
Labor Code § 1197.1.....	18
Labor Code § 1198.....	18
Labor Code § 2800.....	18
Labor Code § 2802.....	18

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$285,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 hourly-paid or non-exempt employees of Defendants Melrose Facility Management, LLC, Reseda
5 Discount Corporation, and Rabbitswag Inc. (“Defendants”) within the State of California at any
6 time during the period from February 18, 2018 to March 21, 2023 (“Class,” “Class Members,” and
7 “Class Period”). At the time of this filing, the number of Class Members is estimated to be seventy-
8 three (73), which was confirmed by Defendants. (Declaration of Douglas Han In Support of
9 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On December 8, 2021, Plaintiff Franklin provided written notice to the California Labor
12 and Workforce Development Agency (“LWDA”) and Defendants. (Han Decl., *supra*, at ¶ 10;
13 Exhibit 3.) On December 9, 2021, Plaintiff Cojulun provided written notice to LWDA and
14 Defendants. (*Id.* at ¶ 10; Exhibit 4.)

15 On February 18, 2022, Plaintiffs filed a wage-and-hour class action lawsuit against
16 Defendants in the Superior Court of California, County of Los Angeles, alleging nine (9) causes
17 of action. (Han Decl., *supra*, at ¶ 11; Exhibit 5.)

18 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
19 mediation with the mediator David Phillips, Esq., on December 21, 2022. (Han Decl., *supra*, at ¶
20 12.) Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

21 **III. INVESTIGATION/ LITIGATION HISTORY**

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

23 The Parties engaged in discovery, investigations, and negotiations. (Han Decl., *supra*, at
24 ¶ 14.) During this time, the Parties met and conferred several times and agreed to engage in an
25 informal exchange of information and then eventually attended mediation. (*Ibid.*)

26 ///

27 ///

28 ///

1 Prior to the mediation, Defendants produced documents relating to their policies, practices,
2 and procedures. (Han Decl., *supra*, at ¶ 15.) As part of Defendants’ production, Plaintiffs also
3 reviewed time records, pay records, and information relating to the size and scope of the Class.
4 (*Ibid.*) Several putative class members were also interviewed to attain a better understanding of
5 the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

6 Based on the information provided by Defendants and interviews with putative class
7 members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide employees
8 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
9 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
10 statements; and (5) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-23.)

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

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

13 The Parties attended mediation with an experienced mediator on December 21, 2022. (Han
14 Decl., *supra*, at ¶ 24.) Under the auspices of the mediator, the Parties reached a settlement, the
15 terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 24; Exhibits 2, 6.)

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

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

21 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
22 necessary to continue the litigation. (Han Decl., *supra*, at ¶ 28.) Plaintiffs and Class Counsel also
23 considered the uncertainty and risk of further litigation, potential outcome, and difficulties and
24 delays inherent in such litigation. (*Ibid.*) Thus, Plaintiffs and Class Counsel believe the Settlement
25 is a fair, adequate, and reasonable settlement and is in the best interests of the Class. (*Ibid.*)

26 ///

27 ///

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 Parties’ claims
3 and defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 29.) 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 ¶ 29; *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 \$285,000 (“Gross Settlement Amount”) which includes: (1)
14 Class Counsel Fees Payment not to exceed \$99,750 (35% of the Gross Settlement Amount); (2)
15 Class Counsel Litigation Expenses Payment not to exceed \$25,000; (3) Class Representative
16 Service Payments totaling \$20,000; (4) Administration Expenses Payment currently estimated at
17 \$5,950; and (5) PAGA Penalties not to exceed \$20,000. (Han Decl., *supra*, at ¶ 25.)

18 **ii. Calculating Settlement Payments**

19 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
20 \$114,300 (“Net Settlement Amount”) will be distributed to all Class Members who do not submit
21 valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”) –
22 with a gross *average* Individual Class Payment of around \$1,565.75. (Han Decl., *supra*, at ¶ 26.)

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 ¶ 24;
25 Exhibit 2, *supra*, at § 3.2.4.) Individual Class Payments will be allocated twenty percent (20%) to
26 settlement of wage claims and eighty percent (80%) to the settlement of claims for interest and
27 penalties. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 3.2.4.1.)

28 ///

1 In addition, the portion of the PAGA Penalties that is to be paid to each Aggrieved
2 Employee shall be determined using the formula set forth in the Settlement Agreement. (Han
3 Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 3.2.5.1.) Aggrieved Employees’ portion of the PAGA
4 Penalties will be allocated as one hundred percent (100%) penalties. (Han Decl., *supra*, at ¶ 24;
5 Exhibit 2, *supra*, at § 3.2.5.2.)

6 **iii. Notice to the Class**

7 No later than fifteen (15) days after the Court grants Preliminary Approval of the
8 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the
9 form of a Microsoft Excel spreadsheet. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 4.2.) No
10 later than fourteen (14) days after receiving the Class Data, the Administrator will send the Class
11 Notice to all Class Members identified in the Class Data via first-class United States Postal Service
12 mail in English and Spanish. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 7.4.2.)

13 **iv. Distribution of Funds**

14 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
15 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ 4.3., 4.4.)
16 Uncashed settlement checks will be canceled and paid to the *cy pres* recipient California Women’s
17 Law Center (“CWLC”). (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ 4.4.1., 4.4.3.)

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

19 CWLC satisfies the policy of California “to ensure that the unpaid cash residue and
20 unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
21 possible, in a manner designed either to further the purposes of the underlying class action or
22 causes of action, or to promote justice for all Californians.” (Code Civ. Proc., § 384(a).) The Code
23 of Civil Procedure further states:

24 [T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid
25 residue or unclaimed or abandoned class member funds, plus any interest that has accrued
26 thereon, to nonprofit organizations or foundations to support projects that will benefit the
27 class or similarly situated persons, or that promote the law consistent with the objectives
and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit
organizations providing civil legal services to the indigent.

28 (Code Civ. Proc., § 384 (b).)

1 CWLC directly satisfies the legislature's purpose and goal under Code of Civil Procedure
2 section 384. CWLC's work prioritizes the needs of low-income women and families. The core
3 CWLC's work is creating a more just and equitable society by breaking down barriers and
4 advancing the potential of women and girls through litigation, policy advocacy, and education.
5 CWLC's work ranges from tackling economic security, Title IX gender discrimination, violence
6 against women, and women's health. CWLC advances its mission through three (3) primary
7 activities: (1) training and legal support; (2) impact litigation; and (3) policy advocacy. Plaintiffs
8 submit the declaration of CWLC Executive Director Betsy Butler as additional support for CWLC
9 as an appropriate *cy pres* recipient in this matter.

10 There can be no doubt CWLC is the type of organization the legislature had in mind when
11 drafting and amending section 384. The Parties have no connection to or a relationship with CWLC
12 that could create the appearance of impropriety between CWLC and the interests of the Class
13 Members. (Han Decl., *supra*, at ¶ 62.)

14 **vi. Release of Claims**

15 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
16 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
17 Participating Class Members, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the
19 Released Parties from all claims that were alleged in the operative complaint, or could have been
20 alleged, based on the Class Period facts or legal assertions stated in the operative complaint and
21 ascertained in the course of the lawsuit. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § 5.2.)

22 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
23 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
24 Aggrieved Employees are deemed to release, on behalf of themselves and their respective former
25 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
26 Released Parties from all claims for PAGA penalties that were alleged in the operative complaint,
27 or could have been alleged, based on the PAGA Period facts and legal assertions stated in the
28 operative complaint, the PAGA Notice, and ascertained in the course of the lawsuit. (Han Decl.,

1 *supra*, at ¶ 24; Exhibit 2, *supra*, at § 5.3.)

2 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
3 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
4 Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs,
5 administrators, successors, and assigns generally release and discharge the Released Parties from
6 all claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*,
7 at ¶ 24; Exhibit 2, *supra*, at § 5.1.) Plaintiffs also expressly waive and relinquish the provisions,
8 rights, and benefits, if any, of section 1542 of the Civil Code. (*Ibid.*)

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

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

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

24 ///

25 ///

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

1 **IV. ARGUMENT**

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

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

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

10 (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 authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

10 **i. The Settlement Amount of \$285,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data Defendants produced for the
13 Class, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive
14 analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 29.)

15 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
16 to pay minimum wages; (3) failure to provide meal and rest breaks and consistently pay applicable
17 premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
18 (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business
19 & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 30.) Defendants vehemently
20 deny the theories of liability. (*Id.* at ¶ 31.)

21 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 32.) 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 _____
28 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Penalties of \$20,000 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 ¶ 39.) Defendants assert, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain
7 they had a strong argument it would be unjust to award maximum PAGA penalties given the law's
8 current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 39; *Thurman v.*
9 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
10 authority].) Defendants argued without stacking and limited to the initial violation, the PAGA
11 penalties would be limited to **\$6,700** (67 employees x \$100 penalty for initial violation) on the low
12 end and **\$46,900** (67 employees x \$100 penalty for initial violation x 7 theories of recovery) on
13 the high end. (Han Decl., *supra*, at ¶¶ 40-42.)

14 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 43.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Thus, allocating \$20,000 to PAGA civil penalties was reasonable given the fact Defendants are
17 paying an additional \$265,000 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 that the case is not
21 suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

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”).

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 **\$1,217,792** on the low end and around **\$1,273,880** on the high end. (Han Decl., *supra*, at ¶ 44.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$299,136	70%	60%	\$35,896.32
Meal Break Premiums	\$373,920	60%	50%	\$74,784
Overtime/Minimum Wage: Off-the-Clock Work	\$112,176 to \$168,264	50%	50%	\$28,044 to \$42,066
Unreimbursed Business Expenses	\$32,370	20%	70%	\$7,768.80
Wage Statement Penalty	\$204,350	40%	40%	\$73,566
Waiting Time Penalty	\$195,840	40%	40%	\$70,502.40
MAXIMUM TOTAL EXPOSURE	\$1,217,792 to \$1,273,880⁵			\$290,561.52 to \$304,583.52⁶

Thus, the realistic recovery for this case is **\$290,561.52** on the low end and **\$304,583.52** on the high end. (Han Decl., *supra*, at ¶ 51.) The Gross Settlement Amount is about twenty-two percent (22.37%) of the maximum potential exposure and around ninety-three percent (93.57%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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

⁵ (Han Decl., *supra*, at ¶¶ 33-38.)

⁶ (*Id.* at ¶¶ 44-50.)

consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators’.) Nevertheless, this settlement is in line with the realistic exposure if Plaintiffs prevailed at trial and provides a significant recovery for Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 52.) Plaintiffs contend the claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately seventy-three (73) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 53.)

///

///

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 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 54; Declaration of Santanna Franklin Re Adequacy In Support of
25 Motion for Preliminary Approval (“Franklin Decl.”), ¶¶ 2-7, 11-13; Declaration of Jose Cojulun
26 Re Adequacy In Support of Motion for Preliminary Approval (“Cojulun Decl.”), ¶¶ 2-8, 12-15.)
27 Plaintiffs contend all Class Members were subject to the same or similar employment practices,
28

1 policies, and procedures described in detail above. (Han Decl., *supra*, at ¶ 54; Franklin Decl.,
2 *supra*, at ¶¶ 2-7, 11-13; Cojulun Decl., *supra*, at ¶¶ 2-8, 12-15.)

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

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

6 Plaintiffs are former employees of Defendants and allege they and Class Members were
7 employed by the same company and injured by the common policies and practices related to the
8 claims described above. (Han Decl., *supra*, at ¶ 55; Franklin Decl., *supra*, at ¶¶ 2-7, 11-13; Cojulun
9 Decl., *supra*, at ¶¶ 2-8, 12-15.) Plaintiffs seek relief for these claims and derivative claims on
10 behalf of all Class Members. (Han Decl., *supra*, at ¶ 55; Franklin Decl., *supra*, at ¶¶ 2-7, 11-13;
11 Cojulun Decl., *supra*, at ¶¶ 2-8, 12-15.) Thus, the claims arise from the same employment practices
12 and are based on the same legal theories applicable to the Class. (Han Decl., *supra*, at ¶ 55;
13 Franklin Decl., *supra*, at ¶¶ 2-7, 11-13; Cojulun Decl., *supra*, at ¶¶ 2-8, 12-15.)

14 **3. Plaintiffs Are Adequate to Represent the Class**

15 Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 56;
16 Franklin Decl., *supra*, at ¶¶ 8-10, 14-17; Cojulun Decl., *supra*, at ¶¶ 9-11, 16-19.) Plaintiffs
17 conducted themselves diligently and responsibly in representing the Class in this litigation,
18 understand the fiduciary obligations, and actively participated in the prosecution of this case. (Han
19 Decl., *supra*, at ¶ 56; Franklin Decl., *supra*, at ¶¶ 8-10, 14-17; Cojulun Decl., *supra*, at ¶¶ 9-11,
20 16-19.) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with
21 a complete understanding of the work experience and environment. (Han Decl., *supra*, at ¶ 56;
22 Franklin Decl., *supra*, at ¶¶ 8-10, 14-17; Cojulun Decl., *supra*, at ¶¶ 9-11, 16-19.) Plaintiffs have
23 no interest averse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 56; Franklin
24 Decl., *supra*, at ¶¶ 8-10, 14-17; Cojulun Decl., *supra*, at ¶¶ 9-11, 16-19.)

25 ///

26 ///

27 ///

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

3 A class action is superior to other available means for the fair and efficient adjudication of
4 this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class
5 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 expense
7 that numerous individual actions would necessitate. Because several Class Members are also
8 current employees, Plaintiffs believe 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 a proposed settlement is “fair, adequate and
13 reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action
14 settlement is presumed fair under the following circumstances: (1) parties reached settlement after
15 arm’s-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
16 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
17 objectors is small. (*Id.* at p. 1802.) All these elements are present here.

18 **f. Notice to the Class 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 hearing
21 must be given to class members in the manner specified by the court. The notice must
22 contain an explanation of the proposed settlement and procedures for class members to
23 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 Class Notice meets all these requirements. The Class Notice advises Class Members
25 of their right to participate in the Settlement, how and when to object to or request exclusion from
26 the Settlement, and date, time, and location of the Final Approval Hearing.

27 ///

28 ///

1 **V. CONCLUSION**

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

6 Dated: May 26, 2023

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
Attorneys for Plaintiffs

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On July 10, 2023, I served the foregoing document described as

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

for the following case: **Franklin, et. al v. Melrose Facility Management, LLC, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 856639-21**
Court Case No.: 22STCV06205
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 July 10, 2023 at Pasadena, California.



Mariah Anderson