

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259
Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KINGS**

AHMED SALAZAR, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

HOOD PACKAGING CORPORATION; a
Mississippi corporation; TC
TRANSCONTINENTAL U.S.A., INC.; a New
York corporation; TC
TRANSCONTINENTAL PACKAGING INC.;
a Delaware corporation; and DOES 1 through
100, inclusive;
Defendants.

AHMED SALAZAR, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act ("PAGA");

Plaintiff,

v.

HOOD PACKAGING CORPORATION; a
Mississippi corporation; TC
TRANSCONTINENTAL U.S.A., INC.; a New
York corporation; TC
TRANSCONTINENTAL PACKAGING INC.;
a Delaware corporation; and DOES 1 through
100, inclusive;

Defendants.

Lead Case No.: 22C-0231
Consolidated with Case No.: 22C-0233

Assigned for All Purposes to:
Honorable Randy Edwards
Department 2

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: October 4, 2023
Hearing Time: 8:15 a.m.
Hearing Place: Department 2

Salazar Class Complaint Filed: June 29, 2022
Salazar PAGA Complaint Filed: June 28, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 4, 2023 at 8:15 a.m., or as soon as the matter
2 may be heard, before the Honorable Randy Edwards in Department 2 of the Kings County Superior
3 Court (Kings Superior Court) located at 1640 Kings County Drive Hanford, California 93230,
4 Plaintiff Ahmed Salazar (“Plaintiff”) will and hereby does move for an order:

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

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); [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: August 10, 2023

JUSTICE LAW CORPORATION

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8 By: 
9 Douglas Han
10 Shunt Tatavos-Gharajeh
11 Talia Lux
12 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiff on behalf of himself and all current and former hourly-paid or
4 non-exempt employees of Defendants Hood Packaging Corporation, TC Transcontinental U.S.A.,
5 Inc., and TC Transcontinental Packaging, Inc. (“Defendants”) within the State of California at any
6 time during the period from January 1, 2018, through September 26, 2023 (“Class,” “Class
7 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be one hundred twenty-five (125), which was confirmed by Defendants. (Declaration
9 of Douglas Han In Support of Plaintiff’s Motion for Preliminary Approval of Class Action
10 Settlement (“Han Decl.”), ¶¶ 8-9.)

11 **II. BACKGROUND**

12 On April 22, 2022, Plaintiff provided written notice to the California Labor and Workforce
13 Development Agency (“LWDA”) and Defendants. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

14 On June 28, 2022, Plaintiff filed a representative PAGA action in the Superior Court of
15 California, County of Kings (Case No. 22C-0233). (Han Decl., *supra*, at ¶ 11; Exhibit 4.)

16 On June 29, 2022, Plaintiff filed a wage-and-hour class action lawsuit in the Superior Court
17 of California, County of Kings (Case No. 22C-0231), alleging eight (8) causes of action. (Han
18 Decl., *supra*, at ¶ 12.)

19 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
20 mediation with the mediator Honorable Howard R. Broadman on June 28, 2023, resulting in a
21 settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 13.)

22 In line with the settlement, the Parties stipulated to consolidate both lawsuits and designate
23 the wage-and-hour class action lawsuit (Case No. 22C-0231) as the lead case on July 10, 2023.
24 (Han Decl., *supra*, at ¶ 14.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

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

7 Prior to the mediation, Defendants produced documents relating to their policies, practices,
8 and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendants' production, Plaintiff also
9 reviewed time records, pay records, including a Class list, and information relating to the size and
10 scope of the Class. (*Ibid.*) Several putative class members were located and interviewed to attain
11 a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

12 Based on the information provided by Defendants and interviews with putative class
13 members, Plaintiff contends – and Defendants deny – Defendants: (1) failed to provide employees
14 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
15 failed to include non-discretionary bonuses in employees' regular rate of pay for purposes of
16 overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse employees
17 for necessary business expenses; (5) issued noncompliant wage statements; and (6) are liable for
18 waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

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

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

21 The Parties attended mediation with an experienced mediator on June 28, 2023. (Han
22 Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, the Parties reached a settlement, the
23 terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 27; Exhibits 2, 5.)

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

25 The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶
26 30.) Though cordial and professional, the settlement negotiations have always been adversarial
27 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive
28 arm's-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

1 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
3 *supra*, at ¶ 31.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
4 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
5 on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
6 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

8 The Parties investigated and evaluated the strengths and weaknesses of the claims and
9 defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 32.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
12 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
14 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
15 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
16 at ¶ 32; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
20 for the non-reversionary total sum of \$700,000 (“Gross Settlement Amount”) which includes: (1)
21 Class Counsel Fees Payment not to exceed \$245,000 (35% of the Gross Settlement Amount); (2)
22 Class Counsel Litigation Expenses Payment not to exceed \$15,000; (3) Class Representative
23 Service Payment not to exceed \$10,000; (4) Administration Expenses Payment not to exceed
24 \$10,000; and (5) PAGA Penalties not to exceed \$50,000. (Han Decl., *supra*, at ¶ 28.)

25 **ii. Calculating Settlement Payments**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$370,000 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
28 *average* Individual Class Payment estimated at \$2,960. (Han Decl., *supra*, at ¶ 29.)

1 Participating Class Member will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27;
3 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
4 to the settlement of wages claims and eighty percent (80%) to the settlement of claims for interests
5 and penalties. (*Id.* at § C(2)(d)(i).)

6 In addition, the portion of the PAGA Penalties that is paid to each Aggrieved Employee
7 shall be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*,
8 at ¶ 27; Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees' portion of the PAGA Penalties
9 will be allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

10 **iii. Notice to the Class**

11 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
12 the Settlement, Defendants will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
13 ¶ 27; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) days after receiving the Class
14 Data, the Administrator will send the Class Notice with a Spanish translation to all Class Members
15 identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
18 in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed
19 settlement checks will be paid to the California Controller's Unclaimed Property Fund in the name
20 of the Class Member. (*Id.* at § D(3)(c).)

21 **v. Release of Claims**

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 Participating Class Members, on behalf of themselves and their former and present representatives,
25 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
26 the Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(2).)

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1 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
2 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
3 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
4 to release, on behalf of themselves and their former and present representatives, agents, attorneys,
5 heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA
6 Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(3).)

7 Effective on the date when Defendants fully fund the entire Gross Settlement Amount and
8 fund all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
9 Plaintiff and his former and present spouses, representatives, agents, attorneys, heirs,
10 administrators, successors, and assigns generally release and discharge Released Parties from
11 Plaintiff's Release. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(1).) Plaintiff also expressly
12 waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil
13 Code. (*Id.* at § E(1)(a).)

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

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

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

3 **IV. ARGUMENT**

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

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

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

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

15 Courts have discretion to approve settlements that are fair, not collusive, and consider “all
16 the normal perils of litigation as well as the additional uncertainties inherent in complex class
17 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub*
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 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
24 the Class Notice has been provided to the Class, and they have had an opportunity to respond. This
25 information will be provided to the Court in conjunction with the Motion for Final Approval of
Class Action Settlement.

26 ² The California Supreme Court has also authorized California’s trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
28 *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.

Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 130; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.)

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

i. The Settlement Amount of \$700,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the data produced, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 32.)

The claims are predicated on the purported: (1) failure to properly calculate and pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 33.) Defendants vehemently deny the theories of liability. (*Id.* at ¶ 34.)

While Plaintiff believes the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*

Stores, Inc. have reached different conclusions concerning certification of wage-and-hour claims.³ (Han Decl., *supra*, at ¶ 35.) Thus, the calculations for potential damages were discounted.

ii. The PAGA Penalties of \$50,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 44.) Defendants asserted, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintained they had a strong argument that it would be unjust to award maximum PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 44; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore, Defendants argued without stacking and limited to the initial violation, the PAGA penalties would be limited to about **\$10,900** (109 employees x \$100 penalty for initial violation) on the low end and **\$76,300** (109 employees x \$100 penalty for initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 45-47.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 48.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$50,000 to PAGA civil penalties was reasonable given that Defendants are also paying an additional \$650,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are reasonable.⁴ (*Ibid.*)

³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422 [affirming denial of certification].)

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$1,970,323.91** on the low end and around **\$2,203,811.26** on the high end. (Han Decl., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$279,640.96	65%	60%	\$39,149.73
Meal Break Premiums	\$323,093.16	55%	50%	\$72,695.96
Overtime/Minimum Wage: Off-the-Clock Work	\$466,974.70 to \$700,462.05	50%	50%	\$116,743.68 to \$174,115.51
Regular Rate	\$8,046.09	25%	40%	\$3,620.74
Unreimbursed Business Expenses	\$102,425	25%	60%	\$30,727.50
Wage Statement Penalty	\$436,000	30%	30%	\$213,640
Waiting Time Penalty	\$354,144	30%	30%	\$173,530.56
MAXIMUM TOTAL EXPOSURE	\$1,970,323.91 to \$2,203,811.26⁵			\$650,108.17 to \$707,480⁶

Thus, the realistic recovery for this case is about **\$650,108.17** on the low end and **\$707,480** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about thirty-one percent (31.76%) of the maximum potential exposure and around ninety-nine percent (98.94%) 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 General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and

579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).)

⁵ (Han Decl., *supra*, at ¶¶ 36-43.)

⁶ (*Id.* at ¶¶ 50-56.)

of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*Detroit v. Grinnell Corp.* (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”). 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 ¶ 58.) Plaintiff contends 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 the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

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1 This case involves approximately one hundred twenty-five (125) Class Members, meaning
2 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 59.)

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

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

13 **1. Common Issues Predominate**

14 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
15 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
16 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690.) In other words, courts
17 determine whether the elements necessary to establish liability are susceptible to common proof,
18 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*
19 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
20 certification when the plaintiff can present evidence of common policies. (See, e.g., *Jones v. JGC*
21 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
22 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
23 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
24 certified class of dancers on state law claims].)

25 Plaintiff asserts common issues of fact and law predominate as to each of the claims
26 alleged. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends all Class Members were subject to the same
27 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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Plaintiff is a former employee of Defendants and alleges he and Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 62.) Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff has no interest adverse to the interests of the other Class Members. (*Ibid.*)

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

/ / /

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

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

V. CONCLUSION

Dated: August 10, 2023

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Talia Lux
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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On August 10, 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: **Salazar v. Hood Packaging Corporation et al.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-880092-22**
Court Case No.: 22C-0233
Kings 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

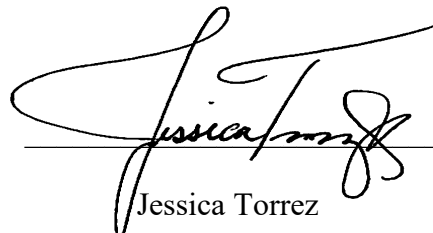
[X] BY ELECTRONIC SUBMISSION

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 August 10, 2023, at Pasadena, California.



Jessica Torrez