

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 ALAMEDA**

TOM TESENE, individually, and on behalf  
of other members of the general public  
similarly situated;

Plaintiff,

v.

CAMBRIA COMPANY, LLC, a Minnesota  
limited liability company; and DOES 1  
through 100, inclusive;

Defendants.

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

Plaintiff,

v.

CAMBRIA COMPANY LLC; a Minnesota  
limited liability company; and DOES 1  
through 100, inclusive;

Defendants.

Case No.: 22CV014439

[Consolidated with Case No. 22CV014587]

Assigned for All Purposes to:

Honorable Noël Wise

Department 21

**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**

**Reservation ID:** 440414177922

[Declaration of Proposed Class Counsel  
(Douglas Han); Declaration of Katherine Catlos;  
Declaration of Proposed Administrator (Jodey  
Lawrence); Declaration of Joan Graff; and  
[Proposed] Order filed concurrently herewith]

Hearing Date: May 28, 2024

Hearing Time: 1:30 p.m.

Hearing Place: Department 21

Complaint Filed: July 15, 2022

Trial Date: None Set

Case No.: 22CV014587

[Consolidated with Case No. 22CV014439]

Complaint Filed: July 18, 2022

Trial Date: None Set

**PLEASE TAKE NOTICE** that on May 28, 2024 at 1:30 p.m., or as soon as the matter may be heard, before the Honorable Noël Wise in Department 21 of the Alameda County Superior Court located at 1221 Oak Street Oakland, California 94612, Plaintiff Tom Tesene (“Plaintiff”) will and hereby does move for an order:

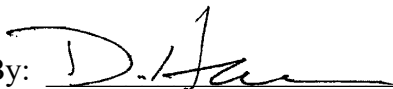
- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Parties’ Class Action and PAGA Settlement Agreement and Class Notice (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds;
- Conditionally certifying the Class for settlement purposes only;
- Appointing Plaintiff as the class representative;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the Court Approved Notice of Class Action and PAGA Settlement and Hearing Data for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action Settlement and Setting Hearing for Final Approval of Settlement and Settlement Agreement;
- Directing the mailing of the Class Notice with a postage-paid return envelope to the Class;
- Approving the deadlines for the notice and settlement administration process;
- Approving Phoenix Class Action Administrators as the Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, Administration Expenses Payment, and Private Attorneys General Act of 2004 (“PAGA”) Penalties.

///

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

7  
8 Dated: April 29, 2024

**JUSTICE LAW CORPORATION**

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

## **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<br>Negotiations .....                                          | 11 |
| iii. | The Settlement Is the Result of Thorough Investigation and<br>Discovery .....                                         | 12 |
| c.   | Terms of the Settlement .....                                                                                         | 12 |
| i.   | Deductions from the Settlement.....                                                                                   | 12 |
| ii.  | Calculation of Settlement Payments .....                                                                              | 12 |
| iii. | The Allocation of 20% to Wages and 80% to Interest and Penalties Is<br>Justified Under the Claims of this Action..... | 13 |
| iv.  | Notice to the Class .....                                                                                             | 13 |
| v.   | Distribution of Funds .....                                                                                           | 14 |
| vi.  | Release of Claims .....                                                                                               | 14 |
| d.   | Counsel for Both Parties Are Experienced in Similar Litigation .....                                                  | 15 |
| IV.  | ARGUMENT .....                                                                                                        | 15 |
| a.   | Class Action Settlements Are Subject to Court Review .....                                                            | 15 |
| b.   | The Settlement Is a Reasonable Compromise of Claims.....                                                              | 16 |
| i.   | The Gross Settlement Amount of \$800,000 Is Fair and Reasonable .....                                                 | 17 |
| ii.  | The PAGA Penalties of \$80,000 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 |

|    |     |                                                                     |    |
|----|-----|---------------------------------------------------------------------|----|
| 1  | ii. | The Class Members Share a Well-defined Community of Interest .....  | 21 |
| 2  | 1.  | Common Issues Predominate.....                                      | 21 |
| 3  | 2.  | Plaintiff’s Claims Are Typical of the Class Claims.....             | 22 |
| 4  | 3.  | Plaintiff Is Adequate to Represent the Class.....                   | 22 |
| 5  | 4.  | Class Action Is Superior for the Fair and Efficient Adjudication of |    |
| 6  |     | this Controversy .....                                              | 22 |
| 7  | e.  | The Settlement Is Fair, Reasonable, and Adequate .....              | 23 |
| 8  | f.  | Notice to Class Members Complies with California Rules of Court,    |    |
| 9  |     | Rule 3.769(f) .....                                                 | 23 |
| 10 | V.  | CONCLUSION.....                                                     | 23 |

## TABLE OF AUTHORITIES

| <u>Cases</u>                                                                | <u>Page(s)</u> |
|-----------------------------------------------------------------------------|----------------|
| <i>Acosta v. TransUnion, LLC</i>                                            |                |
| (C.D. Cal. 2007) 240 F.R.D. 564.....                                        | 19             |
| <i>Aguiar 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 .....                                             | 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 Corp. v. Superior Court</i>                           |                |
| (2012) 53 Cal.4th 1004 .....                                                | 21             |
| <i>Capitol People First v. Department of Developmental Services</i>         |                |
| (2007) 155 Cal.App.4th 676 .....                                            | 21             |
| <i>Detroit v. Grinnell Corp.</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 .....                                           | 17             |
| <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             |

| <b><u>Cases</u></b>                                                           | <b><u>Page(s)</u></b> |
|-------------------------------------------------------------------------------|-----------------------|
| <i>Green v. Obledo</i>                                                        |                       |
| (1981) 29 Cal.3d 126 .....                                                    | 15                    |
| <i>Harris v. Superior Court</i>                                               |                       |
| (2007) 154 Cal.App.4th 164 .....                                              | 17                    |
| <i>Hicks v. Kaufman &amp; Broad Home Corp.</i>                                |                       |
| (2001) 89 Cal.App.4th 908 .....                                               | 20                    |
| <i>Hopson v. Hanesbrands Inc.</i>                                             |                       |
| (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900 .....  | 18                    |
| <i>In re General Motors Corp. Engine Interchange Litigation</i>               |                       |
| (7th Cir. 1979) 594 F.2d 1106.....                                            | 19                    |
| <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 .....                                           | 20                    |
| <i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>                     |                       |
| (2010) 186 Cal.App.4th 399 .....                                              | 16                    |
| <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            |

| <b><u>Cases</u></b>                             | <b><u>Page(s)</u></b> |
|-------------------------------------------------|-----------------------|
| <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 .....                       | 15                    |
| <i>Walsh v. IKON Office Solutions, Inc.</i>     |                       |
| (2007) 148 Cal.App.4th 1440 .....               | 17                    |
| <b><u>Rules</u></b>                             |                       |
| California Rules of Court, Rule 3.769 .....     | 15, 16                |
| California Rules of Court, Rule 3.769 (f) ..... | 23                    |
| California Rules of Court, Rule 3.769 (g).....  | 16                    |
| Federal Rule 23 .....                           | 15                    |
| <b><u>Statutes</u></b>                          |                       |
| Business and Professions Code § 17200.....      | 17                    |
| Code of Civil Procedure § 382.....              | 20, 23                |
| Code of Civil Procedure § 877.6.....            | 16                    |
| Code of Civil Procedure § 1542.....             | 15                    |
| 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                    |
| Labor Code § 226(a) .....                       | 18                    |
| Labor Code § 246.....                           | 18                    |

| <b><u>Statutes</u></b>     | <b><u>Page(s)</u></b> |
|----------------------------|-----------------------|
| 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 § 2698 .....    | 17                    |
| Labor Code § 2800.....     | 18                    |
| Labor Code § 2802.....     | 18                    |

1       **I.     INTRODUCTION**

2           This motion seeks preliminary approval of a non-reversionary wage-and-hour class action  
3 and representative PAGA settlement by Plaintiff on behalf of themselves and all current and  
4 former hourly-paid or non-exempt employees of Defendant Cambria Company, LLC  
5 (“Defendant”) within the State of California at any time during the period from January 15, 2018  
6 through preliminary approval (“Class,” “Class Members,” and “Class Period”). At the time of this  
7 filing, the number of Class Members confirmed by Defendant is about one hundred seventy-seven  
8 (177). (Declaration of Douglas Han in Support of Plaintiff’s Motion For Preliminary Approval of  
9 Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10       **II.    BACKGROUND**

11           On April 22, 2022, Plaintiff provided written notice to the California Labor and Workforce  
12 Development Agency (“LWDA”) and Defendant of the specific provisions of the Labor Code he  
13 contends were violated. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

14           On July 15, 2022, Plaintiff filed a wage-and-hour class action lawsuit in the Superior Court  
15 of California, County of Alameda, alleging eight (8) causes of action. (Han Decl., *supra*, at ¶ 11.)

16           On July 18, 2022, Plaintiff filed a representative PAGA action in the Superior Court of  
17 California, County of Alameda. (Han Decl., *supra*, at ¶ 12; Exhibit 4.)

18           After engaging in discovery, investigations, and negotiation, the Parties remotely attended  
19 mediation with the mediator Lynn S. Frank on May 9, 2023, eventually resulting in a tentative  
20 global settlement after continued negotiations. (Han Decl., *supra*, at ¶ 13.)

21           In line with the settlement, the Parties stipulation to consolidate both lawsuits and  
22 designated the class action lawsuit as the lead case. (Han Decl., *supra*, at ¶ 14.)

23       **III.   INVESTIGATION/ LITIGATION HISTORY**

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

25           After filing this case, Plaintiff propounded form interrogatories, special interrogatories,  
26 requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 16.)  
27 The Parties then met and conferred, agreed to engage in the informal exchange of information,  
28

and eventually agreed to remotely attend mediation. (*Ibid.*)

Defendant produced several documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 17.) As part of Defendant's production, Plaintiff also reviewed a sampling of time records, pay records, and information relating to the size and scope of the Class and Aggrieved Employees. (*Ibid.*) Putative class members were also located and interviewed to obtain a better understanding of the alleged day-to-day violations. (*Ibid.*)

Based upon the information provided by Defendant and interviews with putative class members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks and pay applicable premium wages; (2) failed to pay employees for all hours worked; (3) failed to factor non-discretionary bonuses into regular rate of pay; (4) failed to reimburse employees for necessary business expenses; (5) failed to issue compliant wage statements; and (6) failed to timely pay wages. (Han Decl., *supra*, at ¶¶ 19-26.)

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

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

The Parties remotely attended mediation with an experienced wage-and-hour mediator. (Han Decl., *supra*, at ¶ 27.) Under the auspices of the mediator, the Parties eventually reached a tentative global settlement, the terms of which were memorialized in the Agreement the Parties now seek Preliminary Approval of. (*Id.* at ¶ 27; Exhibits 2, 5.)

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

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

Plaintiff and Class Counsel believe in the merits of the case but recognize the expense and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶ 31.) Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel

believe the settlement set forth in the Agreement is fair, adequate, and reasonable and is in the Class Members' best interests. (*Ibid.*)

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

The Parties investigated and evaluated the factual strengths and weaknesses of the claims and defenses before reaching the Settlement and engaged in sufficient investigation, research, and discovery. (Han Decl., *supra*, at ¶ 32.) The information produced permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where the Parties understand “the strength of the case; the reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best possible recovery” sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 32; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

### **c. Terms of the Settlement**

#### **i. Deductions from the Settlement**

The Parties agreed (subject to the Court’s approval) this action be settled and compromised for the non-reversionary total sum of \$800,000 (“Gross Settlement Amount”) which includes the: (1) Class Counsel Fees Payment of up to \$280,000.00 (35% of the Gross Settlement Amount); (2) Class Counsel Litigation Expenses Payment of up to \$25,000; (3) Class Representative Service Payment up to \$10,000 for Plaintiff; (4) Administration Expenses Payment of up to \$15,000; and (5) PAGA Penalties of up to \$80,000. (Han Decl., *supra*, at ¶ 28.)

#### **ii. Calculation of Settlement Payments**

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$390,000 (“Net Settlement Amount”) will be distributed to Class Members who do not submit valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”), resulting in a gross *average* Individual Class Payment of \$2,203.39. (Han Decl., *supra*, at ¶ 29.)

The Administrator will calculate and disburse the Individual Class Payments using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § C(2)(d).) The Administrator will also calculate and disburse Individual PAGA Payments using

the formula set forth in the Settlement Agreement. (*Id.* at § C(2)(e).)

**iii. The Allocation of 20% to Wages and 80% to Interest and Penalties Is Justified Under the Claims of this Action**

Individual Class Payments will be allocated as follows: (1) twenty percent (20%) to the settlement of wage claims; and (2) eighty percent (80%) to the settlement of claims for interest and penalties. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § C(2)(d)(i).)

The allocation of wages, interest, and penalties indicated above was based on the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages if the case went to trial. (Han Decl., *supra*, at ¶ 51.) Plaintiff added the realistic exposure for rest break premiums and meal break premiums (\$60,200.99 + \$59,251.50 = \$119,452.49). (*Ibid.*) Plaintiff then added the \$119,452.49 to the low end realistic exposure for unpaid wages due to off-the-clock work and underpaid overtime wages (\$119,452.49 + \$98,656.74 + \$1,576.72 = \$219,685.95). (*Ibid.*) The realistic exposure of \$219,685.95 Plaintiff can expect to receive if he was to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-clock work, and underpaid overtime wages represents about twenty-one percent (20.97%) of the low end total realistic exposure and PAGA penalties ( $\$219,685.95 \div \$1,047,373 = 0.2097 \times 100 = 20.97\%$ ). (*Ibid.*) Because this represents almost twenty percent (20%) of wages, allocating twenty percent (20%) for the settlement of wage claims and eighty percent (80%) for the settlement of claims for interest and penalties pursuant to the Agreement is appropriate. (*Ibid.*)

**iv. Notice to the Class**

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

///

1                                   **v. Distribution of Funds**

2           The Gross Settlement Amount and subsequent payments to be made will be funded and  
3 disbursed in the manner and time set forth in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit  
4 2, *supra*, at §§ D(2), D(3).)

5           Participating Class Members and Aggrieved Employees must cash in their settlement  
6 checks within one hundred eighty (180) calendar days after the date of their mailing. (Han Decl.,  
7 *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ D(3)(a), D(3)(c).) Uncashed settlement checks will be  
8 canceled after the void date and transmitted to the *cy pres* recipient Legal Aid At Work. (*Ibid.*)  
9 Legal Aid At Work is an appropriate to serve as a *cy pres* recipient (See Declaration of Joan  
10 Graff.) The Parties have to connection to or relationship with the *cy pres* recipient Legal Aid At  
11 Work that would create the appearance of impropriety. (See Parties' counsel's declarations.)

12                                   **vi. Release of Claims**

13           Effective on the date when Defendant fully funds the Gross Settlement Amount and all  
14 employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, all  
15 Participating Class Members, on behalf of themselves and their former and present  
16 representatives, agents, attorneys, heirs, administrators, successors, transferees, and assigns,  
17 release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit  
18 2, *supra*, at § E(2).)

19           Effective on the date when Defendant fully funds the Gross Settlement Amount and all  
20 employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,  
21 as an agent and proxy of the State of California, and State of California itself (including the  
22 LWDA) are deemed to release the Released Parties from the Released PAGA Claims. (Han Decl.,  
23 *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(3).)

24           Effective on the date when Defendant fully funds the Gross Settlement Amount and all  
25 employer's payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff  
26 and his former and present spouses, representatives, agents, attorneys, heirs, administrators,  
27 successors, transferees and assigns generally release and discharge the Released Parties from the

Plaintiff's Release. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(1).) Furthermore, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(1)(a).)

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

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

The Parties' counsel are experienced in wage-and-hour, employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel's experience guided their determination to endorse the Settlement.<sup>1</sup> (*Ibid.*)

### **IV. ARGUMENT**

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

California Rules of Court, rule 3.769 requires court approval for class action settlements.<sup>2</sup> “Before final approval, the court must conduct an inquiry into the fairness of the proposed

---

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

<sup>2</sup> The California Supreme Court 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 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for  
2 preliminary approval of class settlements:

- 3 (a) A settlement or compromise of an entire class action, or a cause of action in  
4 a class action, or as to a party, requires the approval of the court after  
5 hearing.  
6 . . .  
7 (c) Any party to a settlement agreement may serve and file a written notice of  
8 motion for preliminary approval of the settlement. The settlement  
9 agreement and proposed notice to class members must be filed with the  
10 motion, and the proposed order must be lodged with the motion.  
11

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

16 **b. The Settlement Is a Reasonable Compromise of Claims**

17 Understanding the sum in controversy is an important factor in if the settlement “of the  
18 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and  
19 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
20 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th  
21 399, 409.) The most important factor is “the strength of the case for plaintiffs on the merits,  
22 balanced against the amount offered in settlement.” (*Kullar*, at p. 130; see also *Munoz*, at p. 409.)

23 In weighing the strength of the case, *Kullar* instructs the court is not to “decide the merits  
24 of the case or to substitute its evaluation of the most appropriate settlement for that of the  
25 attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not  
26 require an explicit statement of the maximum amount the class could recover if plaintiff prevailed  
27 on all his claims, provided there is a record allowing ““an understanding of the amount that is in  
28 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.) In other words, “as the court does  
when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court

1 must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.”  
2 (*Kullar*, at p. 133.)

3 **i. The Gross Settlement Amount of \$800,000 Is Fair and Reasonable**

4 The Settlement Agreement was only possible following significant investigation and  
5 evaluation of the relevant policies and procedures and the data produced for the putative class,  
6 permitting Class Counsel to engage in a comprehensive analysis of liability and potential  
7 damages. (Han Decl., *supra*, at ¶ 32.)

8 The claims are predicated on Defendant’s alleged: (1) failure to properly calculate and  
9 pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3)  
10 failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant  
11 wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections  
12 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.*  
13 (Han Decl., *supra*, at ¶ 33.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 34.)

14 While Plaintiff believes the case is suitable for certification, uncertainties with respect to  
15 certification are present. (Han Decl., *supra*, at ¶ 35.) As the California Supreme Court ruled in  
16 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter  
17 of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have  
18 reached different conclusions concerning certification of wage-and-hour claims.<sup>3</sup> (*Ibid.*) These  
19 factors led to discounting the calculations of potential damages.

20 ///

21 ///

22 ///

23 \_\_\_\_\_  
24 <sup>3</sup> (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification  
25 of class claiming misclassification and ordering summary adjudication in favor of employees],  
26 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for  
27 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440  
28 [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].)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 49.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was arguable the Court would award the maximum penalties. (*Ibid.*) Thus, allocating \$80,000 to PAGA civil penalties was reasonable given that Defendant is paying an additional \$720,000 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 generally considered reasonable.<sup>4</sup> (*Ibid.*)

///

25  
26  
27  
28

**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 **\$2,041,887.83** on the low end and **\$2,239,201.31** on the high end. (Han Decl., *supra*, at ¶ 50.)

| Category                                  | Potential Exposure                                  | Certification Risk | Merits Risk | Realistic Exposure                              |
|-------------------------------------------|-----------------------------------------------------|--------------------|-------------|-------------------------------------------------|
| Rest Break Premiums                       | \$430,007.09                                        | 65%                | 60%         | \$60,200.99                                     |
| Meal Break Premiums                       | \$263,340                                           | 55%                | 50%         | \$59,251.50                                     |
| Overtime/Minimum Wage: Off-the-Clock Work | \$394,626.96 to \$591,940.44                        | 50%                | 50%         | \$98,656.74 to \$147,985.11                     |
| Regular Rate                              | \$4,204.58                                          | 25%                | 50%         | \$1,576.72                                      |
| Unreimbursed Business Expenses            | \$74,760                                            | 25%                | 60%         | \$22,428                                        |
| Wage Statement Penalty                    | \$308,050                                           | 25%                | 25%         | \$173,278.13                                    |
| Waiting Time Penalty                      | \$566,899.20                                        | 25%                | 25%         | \$318,880.80                                    |
| <b>MAXIMUM TOTAL EXPOSURE</b>             | <b>\$2,041,887.83 to \$2,239,201.31<sup>5</sup></b> |                    |             | <b>\$734,272.88 to \$783,601.25<sup>6</sup></b> |

Based on this analysis, the realistic recovery for this case is **\$734,272.88** on the low end and **\$783,601.25** on the high end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount is about thirty-five percent (35.73%) of the maximum potential exposure and one hundred two percent (102.10%) of the 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 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.*

<sup>5</sup> (Han Decl., *supra*, at ¶¶ 36-43.)

<sup>6</sup> (*Id.* at ¶¶ 52-58.)

1 *Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of  
2 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual  
3 settlements. The proposed settlement is not to be judged against a hypothetical or speculative  
4 measure of what might have been achieved by the negotiators”.) Nevertheless, the Settlement  
5 provides significant recovery for the Class Members.

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

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

13 The Class is ascertainable and numerous as to make it impracticable to join all Class  
14 Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*,  
15 at ¶ 60.) Plaintiff contends, as a former hourly-paid, non-exempt employee of Defendant, his  
16 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect  
17 the interests of the Class. (*Ibid.*) Plaintiff also asserts the prosecution of separate actions by  
18 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

20 “Ascertainability is required in order to give notice to putative class members as to whom  
21 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)  
22 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs  
23 by describing a set of common characteristics sufficient to allow a member of that group to  
24 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*  
25 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be  
26 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

1 This case involves about one hundred seventy-seven (177) Class Members, meaning the  
2 Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61.) Class Members will be identified by  
3 Defendant to the Administrator through a review of the employment records. (*Ibid.*)

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

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

14 **1. Common Issues Predominate**

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

26 ///

27 ///

1 Plaintiff asserts common issues of fact and law predominate as to each of the claims  
2 alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiff contends all persons employed by Defendant as  
3 hourly-paid or non-exempt employees in California during the Class Period were subject to the  
4 same or similar policies, practices, and procedures described in detail above. (*Ibid.*)

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

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

8 Plaintiff is a former employee of Defendant and alleges he and the Class Members were  
9 employed by the same company and injured by Defendant's common policies, practices, and  
10 procedures related to the claims described above. (Han Decl., *supra*, at ¶ 63.) Plaintiff seeks relief  
11 for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims  
12 arise from the same employment practices and are based on the same legal theories as those  
13 applicable to the Class. (*Ibid.*)

## 14 **3. Plaintiff Is Adequate to Represent the Class**

15 Plaintiff has proven to be an adequate representative. (Han Decl., *supra*, at ¶ 64.) Plaintiff  
16 has conducted himself diligently and responsibly in representing the Class, understands his  
17 fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff also  
18 has no interests averse to the interests of the Class Members. (*Ibid.*)

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

21 A class action is superior to other available means for the fair and efficient adjudication  
22 of this controversy. Plaintiff contends 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  
25 expense. Because some Class Members are current employees, Plaintiff believes the fear of  
26 retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

27 ///

In deciding to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find the 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. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) These elements are present.

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

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.

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

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

**JUSTICE LAW CORPORATION**

By: D. Han  
Douglas Han  
Attorneys for Plaintiff



# Superior Court of Alameda County Public Portal

## Make a Reservation

TESENE vs CAMBRIA COMPANY LLC; A MINNESOTA LIMITED LIABILITY COMPANY;

Case Number: 22CV014439 Case Type: Civil Unlimited Category: Other Employment Complaint Case

Date Filed: 2022-07-15 Location: Rene C. Davidson Courthouse - Department 21

### Reservation

Case Name:

TESENE vs CAMBRIA COMPANY LLC; A MINNESOTA  
LIMITED LIABILITY COMPANY;

Case Number:

22CV014439

Type:

Motion re: (Motion for Preliminary Approval of Class  
Action Settlement, Conditional Certification, Approval of  
Class Notice, Setting of Final Approval Hearing Date)

Status:

RESERVED

Filing Party:

Tom Tesene (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 21

Date/Time:

05/28/2024 1:30 PM

Number of Motions:

1

Reservation ID:

440414177922

Confirmation Code:

CR-5IBY3WQNMCC6HEKZX

### Fees

| Description                 | Fee  | Qty | Amount |
|-----------------------------|------|-----|--------|
| Motion re: (name extension) | 0.00 | 1   | 0.00   |
| Court Technology Fee        | 1.00 | 1   | 1.00   |
| TOTAL                       |      |     | \$1.00 |

### Payment

Amount:

\$1.00

Type:

Visa

Account Number:

XXXX4359

Authorization:

09359G

Payment Date:

n/a

 [Print Receipt](#)

[+ Reserve Another Hearing](#)

[View My Reservations](#)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
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 jtorrez@justicelawcorp.com

On April 29, 2024, 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: **Tesene v. Cambria Company LLC**  
LWDA/Court Case No.: **LWDA Case No.: CM-880025-22**  
**Court Case No.: 22CV014439**  
**Alameda 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

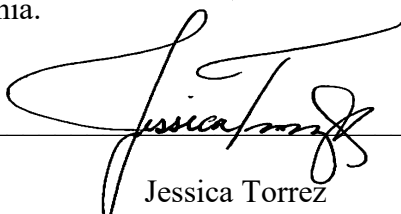
**[X] BY ELECTRONIC SUBMISSION**

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 29, 2024, at Pasadena, California.

  
\_\_\_\_\_  
Jessica Torrez