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

MANUEL PALOMO and BRYANT
HEREDIA, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act (“PAGA”);

Plaintiff,

v.

SUNMET JUICE COMPANY, LLC, a
California limited liability company;
SUNMET PACKING & COLD STORAGE,
LLC, a California limited liability company;
ETCHEGARAY FARMS LLC, a California
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: BCV-23-101351-BCB

Assigned for All Purposes to:
Honorable Bernard C. Barmann, Jr.
Division H

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 Douglas Han and [Proposed]
Order filed concurrently herewith]

Hearing Date: June 4, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Division H

Complaint Filed: May 2, 2023
FAC Filed: July 11, 2023
SAC Filed: April 11, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 4, 2024 at 8:30 a.m., or as soon as the matter may
2 be heard, before the Honorable Bernard C. Barmann in Division H of the Kern County Superior
3 Court located at 1215 Truxtun Ave, Bakersfield, California 93301, Plaintiffs Manuel Palomo
4 (“Plaintiff Palomo”) and Bryant Heredia (“Plaintiff Heredia”) (hereinafter referred to collectively
5 as “Plaintiffs”) 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 (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 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,
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) and the [Proposed] Order filed concurrently
3 with this motion; pleadings and other records on file with the Court in this matter; and such
4 documentary evidence and oral argument as may be presented at the hearing on this motion.

5
6 Dated: May 8, 2024

JUSTICE LAW CORPORATION

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

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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 Plaintiffs on behalf of themselves and all current and former hourly-paid
4 or non-exempt direct hires of Defendants Sunmet Juice Company, LLC, Sunmet Packing & Cold
5 Storage, LLC, and Etchegaray Farms LLC (“Defendants”) who worked for Defendants during the
6 period from May 2, 2019, through the date on which the Court grants Preliminary Approval of the
7 Settlement, and all current and former hourly paid or non-exempt employees placed to work at
8 Defendant Sunmet Juice Company, LLC through the temporary employment agency United
9 Staffing Associates, LLC during the period from May 2, 2019, through the date on which the Court
10 grants Preliminary Approval of the Settlement (“Class,” “Class Members,” and “Class Period”).
11 At the time of this filing, the number of Class Members is estimated to be six hundred seventy
12 (670), which was confirmed by Defendants. (Declaration of Douglas Han In Support of Plaintiffs’
13 Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

14 **II. BACKGROUND**

15 On May 20, 2022, Plaintiff Palomo provided written notice to the California Labor and
16 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

17 On May 2, 2023, Plaintiff Palomo filed a representative PAGA action in the Superior Court
18 of California, County of Kern. (Han Decl., *supra*, at ¶ 11; Exhibit 4.)

19 On May 1, 2023 Plaintiff Palomo provided an amended written notice to the LWDA of the
20 specific provisions of the Labor Code he contends were violated and the theories supporting his
21 contentions. (Han Decl., *supra*, at ¶ 12, Exhibit 5.)

22 On July 11, 2023, Plaintiff Palomo filed a First Amended Complaint pleading exhaustion
23 of the sixty-five (65) day notice period for the amended written notice to the LWDA. (Han Decl.,
24 *supra*, at ¶ 13; Exhibit 6.)

25 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
26 mediation with the mediator Jeff Ross on February 26, 2024. (Han Decl., *supra*, at ¶ 14.). Under
27 the auspices of the mediator, the Parties reached a settlement via mediator’s proposal. (*Ibid.*)

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Plaintiff Palomo then filed a Second Amended Complaint, adding Plaintiff Heredia as a named plaintiff and as well as two new causes of action. (Han Decl., *supra*, at ¶ 15; Exhibit 7.)

111. INVESTIGATION/ LITIGATION HISTORY

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

Plaintiffs propounded form interrogatories, special interrogatories, requests for admission, and requests for production of documents. (Han Decl., *supra*, at ¶ 17.) The Parties met and conferred and agreed to engage in an informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

Prior to the mediation, Defendants produced numerous documents relating to their policies, practices, and procedures. (Han Decl., *supra*, at ¶ 18.) As part of Defendants production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based on the information provided by Defendants and interviews with putative class members, Plaintiffs contend – and Defendants deny – Defendants: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) maintained an illegal rounding practice; (4) failed to include non-discretionary bonuses in employees’ regular rate of pay for purposes of overtime compensation; (5) failed to reimburse employees for necessary business expenses; (6) issued noncompliant wage statements; and (7) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 20-28.)

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 mediator. (Han Decl., *supra*, at ¶ 29.) Under the auspices of the mediator, the Parties eventually reached a settlement, the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 29; Exhibits 2, 8.)

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

2 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*,
3 at ¶ 32.) Though cordial and professional, the settlement negotiations have always been adversarial
4 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive
5 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)

6 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
7 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*,
8 at ¶ 33.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
9 all potential adverse outcomes, and the difficulties and delays inherent in the litigation of any such
10 complex matter. (*Ibid.*) Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and
11 reasonable settlement and is in the best interests of the Class Members. (*Ibid.*)

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

13 The Parties investigated and evaluated the strengths and weaknesses of the claims and
14 defenses before reaching the Settlement and engaged in research and discovery to support the
15 Settlement. (Han Decl., *supra*, at ¶ 34.) The Settlement was only possible following significant
16 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
17 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
18 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
19 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
20 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
21 at ¶ 34; see also *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

23 **i. Deductions from the Settlement**

24 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
25 for the non-reversionary total sum of \$500,000 (“Gross Settlement Amount”) which includes: (1)
26 Class Counsel Fees Payment up to \$175,000 (35% of the Gross Settlement Amount); (2) Class
27 Counsel Litigation Expenses Payment up to \$25,000; (3) Class Representative Service Payments
28 totaling \$20,000; (4) Administration Expenses Payment up to \$15,000; and (5) PAGA Penalties

up to \$40,000. (Han Decl., *supra*, at ¶ 30.)

ii. Calculating Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$225,000 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross *average* Individual Class Payment estimated at \$335.82. (Han Decl., *supra*, at ¶ 31.)

The Participating Class Members will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated fifteen percent (15%) to the settlement of wage claims and eighty-five percent (85%) to the settlement of claims for interests and penalties. (*Id.* at § C(2)(d)(i).)

The portion of the PAGA Penalties that is to be paid to each Aggrieved Employee shall be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § C(2)(e).)

iii. Notice to the Class

No later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar 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).)

iv. Distribution of Funds

The Gross Settlement Amount will be funded and distributed pursuant to the timeline and manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at §§ D(2), D(3).) Uncashed settlement checks will be canceled and transmitted to the *cy pres* recipient California Farmworker Foundation. (*Id.* at §§ D(3)(a), D(3)(c).) If the Court does not approve California Farmwork Foundation to serve as the *cy pres* recipient, then the uncashed funds will be transmitted to the California Controller’s Unclaimed Property Fund. (*Ibid.*)

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1 **v. Release of Claims**

2 As of the Effective Date, all Participating Class Members shall release the Released Parties
3 of all claims that are not assertable under PAGA and that Plaintiffs alleged, or could have alleged,
4 based on the facts pled in the Operative Complaint, and which arose or existed during the Class
5 Period. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § E(3).)

6 As of the Effective Date, all Aggrieved Employees and LWDA shall release Defendants
7 and Released Parties of all claims that are assertable under PAGA and that Plaintiffs alleged, or
8 could have alleged, based on the facts pled in the Operative Complaint or PAGA Notice, and which
9 arose or existed during the PAGA Period. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § E(4).)

10 Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs,
11 administrators, successors, and assigns generally release and discharge the Released Parties from
12 the Plaintiffs' Release. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § E(2).) Furthermore,
13 Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542
14 of the Civil Code. (*Id.* at § E(2)(b).)

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

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

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

1 further litigation and guided their determination to endorse the Settlement.¹ (Han Decl., *supra*, at
2 ¶¶ 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 authorized California’s trial courts to use Federal Rule
27 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
28 (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 \$500,000 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 ¶ 34.)

The claims are predicated on Defendants’ purported: (a) failure to properly calculate and pay overtime wages; (b) failure to pay minimum wages; (c) failure to provide meal and rest breaks and consistently and properly pay applicable premium wages; (d) failure to timely pay wages; (e) failure to issue compliant wage statements; (f) failure to reimburse business expenses; (g) unlawful deductions; (h) sick leave violations; (i) violation of PAGA; and (j) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 35.) Defendants vehemently deny all theories of liability. (*Id.* at ¶ 36.)

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1 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 37.) As the California Supreme Court ruled
3 in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always
4 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*
5 have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
6 Thus, the calculations for potential damages were discounted.

7 **ii. The PAGA Penalties of \$40,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
9 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
10 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 47.)
11 Defendants contend that, regardless of the results of the underlying causes of action, PAGA
12 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants also maintain
13 that, in addition to the strong arguments against the underlying claims, they have a strong argument
14 that it would be unjust to award maximum PAGA penalties given the law's unsettled state
15 concerning PAGA penalties. (Han Decl., *supra*, at ¶ 47; see also *Thurman v. Bayshore Transit*
16 *Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
17 Furthermore, Defendants argued without stacking and limited to the initial violation, the PAGA
18 penalties would be limited to about **\$37,000** (370 employees x \$100 penalty for initial violation)
19 on the low end and **\$296,000** (370 employees x \$100 penalty for initial violation x 8 theories of
20 recovery) on the high end. (Han Decl., *supra*, at ¶¶ 48-50.)

21 ///

22 ///

23 ///

24 _____
25 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 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].)

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 51.) Many of the causes of action brought were also duplicative of the statutory claims. (See *ibid.*) Allocating \$40,000 to PAGA civil penalties was therefore reasonable given that Defendants are also paying an additional \$460,000 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.*)

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 **\$4,925,347.35** on the low end and around **\$5,187,496.71** on the high end. (Han Decl., *supra*, at ¶ 52.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$677,579.94	70%	60%	\$81,309.59
Meal Break Premiums	\$619,170.26	60%	60%	\$99,067.24
Overtime/Minimum Wage: Off-the-Clock Work	\$524,298.72 to \$786,448.08	60%	60%	\$83,887.80 to \$125,831.69
Rounding	\$21,007.66	30%	50%	\$7,352.68
Regular Rate	\$19,460.37	40%	50%	\$5,838.11
Unreimbursed Business Expenses	\$331,180	40%	70%	\$59,612.40
Wage Statement Penalty	\$795,500	70%	70%	\$71,595
Waiting Time Penalty	\$1,937,150.40	70%	70%	\$174,343.54
MAXIMUM TOTAL EXPOSURE	\$4,925,347.35 to \$5,187,496.71⁵			\$583,006.36 to \$624,950.25⁶

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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”.)

⁵ (Han Decl., *supra*, at ¶¶ 38-46.)

⁶ (*Id.* at ¶¶ 53-60.)

1 Based on the foregoing, the realistic recovery for this case is about **\$583,006.36** on the low
2 end and **\$624,950.25** on the high end. (Han Decl., *supra*, at ¶ 61.) The Gross Settlement Amount
3 is about nine percent (9.64%) of the maximum potential exposure and around eighty percent
4 (80.01%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

5 The only question at preliminary approval is whether the settlement is within the range of
6 possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594
7 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
8 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
9 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
10 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska*
11 *P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation
12 and avoidance of wasteful and expensive litigation that induce consensual settlements. The
13 proposed settlement is not to be judged against a hypothetical or speculative measure of what
14 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
15 if Plaintiffs prevailed at trial and provides a significant recovery for the Class Members.

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

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

22 The Class is ascertainable and numerous as to make it impracticable to join all Class
23 Members, and there are common questions of law and fact that predominate over any questions
24 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 62.) Plaintiffs contend their claims
25 are typical of the claims of the Class and that Class Counsel will fairly and adequately protect the
26 interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by individual
27 Class Members would create the risk of inconsistent or varying adjudications, so a class action is
28 superior to other available means for the fair and efficient adjudication. (*Ibid.*)

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

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

9 This case involves approximately six hundred seventy (670) Class Members, meaning the
10 Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 63; *Ghazaryan v. Diva Limousine, Ltd.*
11 (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and
12 former employees” is sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

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

1 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
2 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*
3 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
4 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
5 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
6 certified class of dancers on state law claims].)

7 Plaintiffs contend that common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 64.) Plaintiffs contend all hourly-paid or non-exempt persons
9 employed by Defendants during the Class Period were subject to the same or similar employment
10 practices, policies, and procedures. (*Ibid.*)

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

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

14 Plaintiffs are former employees of Defendants and allege that they and the Class Members
15 were employed by the same vertically integrated enterprise and injured by the common policies
16 and practices related to the claims above. (Han Decl., *supra*, at ¶ 65.) Plaintiffs seek relief for these
17 claims and derivative claims on behalf of the Class. (*Ibid.*) The claims arise from the same
18 employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

20 Plaintiffs have each proven to be adequate class representatives. (Han Decl., *supra*,
21 at ¶ 66.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in
22 this litigation, understand the fiduciary obligations, and actively participated in the prosecution of
23 this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide
24 them with a complete understanding of their work experiences and workplace environments.
25 (*Ibid.*) Plaintiffs also have no interest averse to the interests of the other Class Members (*Ibid.*)

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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 the Class
25 Members of their right to participate in the Settlement, how and when to object to or request
26 exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

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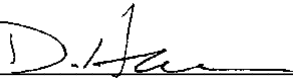
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1 **V. CONCLUSION**

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 8, 2024

JUSTICE LAW CORPORATION

7 By: 
8 Douglas Han
9 *Attorneys for Plaintiff*
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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, California 91103 and my electronic service address is manderson@justicelawcorp.com.

On May 8, 2024, 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: **Palomo v. Sunmet Juice Company, LLC, et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 884908-22**
Court Case No.: BCV-23-101351
Kern 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 May 8, 2024, at Pasadena, California.



Mariah Anderson