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

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

Plaintiff,

vs.

G & J HEAVY HAUL, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: VCU292423
[Consolidated with Case No.: VCU292424]

Assigned for All Purposes To:
Honorable John P. Bianco
Department 2

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND
PAGA 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: September 18, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department 2

Complaint Filed: July 8, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on September 18, 2023 at 8:30 a.m. or as soon as the
2 matter may be heard, before the Honorable John P. Bianco in Department 2 of the Tulare County
3 Superior Court (Visalia Courthouse) located at 221 South Mooney Blvd., Visalia, California
4 93291, Plaintiff Francisco Medrano (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Joint Stipulation and Settlement Agreement (“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 Notice of Class Action Settlement (“Class Notice”) attached as
14 **Exhibit A** to the Settlement Agreement;
- 15 • Approving the Request for Exclusion (“Exclusion Form”) attached as **Exhibit B**
16 to the Settlement Agreement;
- 17 • Directing the mailing of the Class Notice and Exclusion Form (collectively, known
18 as the “Notice Packet”) to the Class via regular First-Class U.S. Mail;
- 19 • Approving the proposed deadlines for the settlement administration process;
- 20 • Approving Phoenix Class Action Administration Solutions as the Settlement
21 Administrator; and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Attorneys’ Fees and Costs, Class Representative
25 Enhancement Payment, and Settlement Administration Costs, and approval of the
26 allocation of the Private Attorney General Act of 2004 (“PAGA”) Payment.

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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 4, 2023

JUSTICE LAW CORPORATION

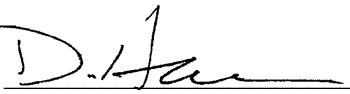
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8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*
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TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	11
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	12
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	Release of Claims	13
d.	Counsel for Both Parties Are Experienced in Similar Litigation	14
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	15
i.	The Settlement Amount of \$1,050,000 Is Fair and Reasonable	16
ii.	The PAGA Payment of \$100,000 Is Reasonable.....	17
c.	Discount Analysis Justifies the Settlement	18
d.	Conditional Certification of the Class Is Appropriate	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	20
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	21

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

TABLE OF AUTHORITIES

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

<i>Acosta v. Trans Union, LLC</i>	
(C.D. Cal. 2007) 240 F.R.D. 564.....	19
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	15
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant 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	20, 21
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Detroit v. Grinnell Corp.</i>	
(2d Cir. 1974) 495 F.2d 448.....	19
<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	22
///	
///	

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

<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS	
2904	21
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106.....	19
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	20
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	16
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	20
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S. Dist. LEXIS 33900	17
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	15
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
185042.....	21
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	15, 16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	20
<i>Linney v. Cellular Alaska P’ship</i>	
(9th Cir. 1998) 151 F.3d 1234	19
///	

<u>Cases</u>	<u>Page(s)</u>
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	15, 16
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	17
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	16, 19, 20
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	15
<i>Walsh v. IKON Office Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17
<u>Rules</u>	
California Rules of Court, Rule 3.769	15
California Rules of Court, Rule 3.769 (f)	23
California Rules of Court, Rule 3.769 (g).....	15
Federal Rule 23	15
<u>Statutes</u>	
Business & Professions Code § 17200	16
Code of Civil Procedure § 382.....	19, 22
Code of Civil Procedure § 877.6.....	16
Labor Code § 201.....	17
Labor Code § 202.....	17
Labor Code § 203.....	17
Labor Code § 204.....	17
Labor Code § 210.....	17
Labor Code § 218.5.....	17

1	<u>Statutes</u>	<u>Page(s)</u>
2	Labor Code § 221.....	17
3	Labor Code § 226.3.....	17
4	Labor Code § 226.7.....	17
5	Labor Code § 226 (a)	17
6	Labor Code § 510.....	17
7	Labor Code § 512 (a)	17
8	Labor Code § 551.....	17
9	Labor Code § 552.....	17
10	Labor Code § 558.....	17
11	Labor Code § 1174 (d).....	17
12	Labor Code § 1194.....	17
13	Labor Code § 1197.....	17
14	Labor Code § 1197.1.....	17
15	Labor Code § 1198.....	17
16	Labor Code § 2698.....	10
17	Labor Code § 2800.....	17
18	Labor Code § 2802.....	17

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action and Private Attorneys General Act of 2004 (“PAGA”) settlement by Plaintiff
4 Francisco Medrano (“Plaintiff”) on behalf of himself and all current and former hourly-paid or
5 non-exempt employees employed by Defendant G & J Heavy Haul, Inc. (“Defendant”) within the
6 State of California at any time between July 8, 2018, through June 3, 2023 (“Class,” “Class
7 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be five hundred seventy-eight (578), which was confirmed by Defendant. (Declaration
9 of Douglas Han in Support of Plaintiff’s Motion for Preliminary Approval of Class Action and
10 PAGA Settlement (“Han Decl.”), ¶¶ 8-9.)

11 **II. BACKGROUND**

12 On May 2, 2022, Plaintiff provided written notice to the Labor and Workforce
13 Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 10; Exhibit 5.)

14 On July 8, 2022, Plaintiff filed a representative PAGA action, pursuant to Labor Code
15 sections 2698, *et seq.*, against Defendant in the Superior Court of California, County of Tulare
16 (Case No. VCU292423). (Han Decl., *supra*, at ¶ 11; Exhibit 6.)

17 On July 8, 2022, Plaintiff filed a wage-and-hour class action lawsuit against Defendant in
18 the Superior Court of California, County of Tulare, alleging eight (8) causes of action (Case No.
19 VCU292424). (Han Decl., *supra*, at ¶ 12.)

20 After engaging in extensive discovery, investigations, and negotiations, The Parties
21 remotely attended mediation with the mediator Hon. Carl J. West (Ret.) on April 4, 2023, resulting
22 in the settlement of this matter. (Han Decl., *supra*, at ¶ 13.)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

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

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

6 Based on the information provided by Defendant and interviews with putative class
7 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
8 with legally mandated meal and rest breaks; (2) failed to compensate employees for all hours
9 worked; (3) failed to include non-discretionary bonuses into employees’ regular rate of pay for
10 purposes of overtime compensation, sick pay, and premium wages; (4) failed to reimburse
11 employees for necessary business expenses; (5) issued noncompliant wage statements; and (6) is
12 liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

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

15 The Parties attended mediation with an experienced mediator on April 4, 2023. (Han Decl.,
16 *supra*, at ¶ 26.) Under the auspices of the mediator, the Parties reached a settlement, and the terms
17 were memorialized in the Settlement Agreement. (*Id.* at ¶ 26; Exhibits 2, 7.)

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

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

23 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
24 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
25 *supra*, at ¶ 30.) Plaintiff and Class Counsel also considered the uncertainty and risk of further
26 litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based
27 on the foregoing, Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
28 reasonable settlement and is in the best interests of Class Members. (*Ibid.*)

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

2 The Parties investigated and evaluated the strengths and weaknesses of the claims and
3 defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 31.) The Settlement was only possible following significant
5 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
6 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
7 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
8 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
9 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
10 at ¶ 31; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

12 **i. Deductions from the Settlement**

13 The Parties agreed this action be settled and compromised for the non-reversionary total
14 sum of \$1,050,000 (“Maximum Settlement Amount”) which includes: (1) attorneys’ fees of no
15 more than \$367,500 (35% of the Maximum Settlement Amount); (2) attorneys’ costs currently
16 estimated at \$17,921.18 but not to exceed \$25,000; (3) Class Representative Enhancement
17 Payment of no more than \$10,000; (4) Settlement Administration Costs not to exceed \$20,000;
18 and (5) PAGA Payment not to exceed \$100,000. (Han Decl., *supra*, at ¶ 27.)

19 **ii. Calculating Settlement Payments**

20 After all Court-approved deductions from the Maximum Settlement Amount, it is
21 estimated \$534,578.82 (“Net Settlement Amount”) will be paid to all Class Members who did not
22 submit valid and timely Requests for Exclusion from the Settlement – with a gross *average*
23 Individual Settlement Payment estimated at this time to be \$924.88. (Han Decl., *supra*, at ¶ 28.)

24 Individual Settlement Payments to Class Members will be calculated and apportioned from
25 the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl.,
26 *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶ 41.) Individual Settlement Payments will be allocated twenty
27 percent (20%) as wages and eighty percent (80%) as interest and penalties. (*Id.* at ¶ 57.)

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1 Individual PAGA Payments to each Eligible Aggrieved Employee shall be determined
2 using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2,
3 *supra*, at ¶ 42.) All Individual PAGA Payments will be allocated as one hundred percent (100%)
4 penalties. (*Id.* at ¶ 58.)

5 **iii. Notice to the Class**

6 Within thirty (30) calendar days of entry of the Court's Order Granting Preliminary
7 Approval, Defendant will provide the Class List to the Settlement Administrator. (Han Decl.,
8 *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶ 45.) Within ten (10) calendar days after receiving the Class
9 List and updating the addresses within the Class List, the Settlement Administrator will mail a
10 Notice Packet to all Class Members via regular First-Class U.S. Mail. (*Id.* at ¶ 47.)

11 **iv. Distribution of Funds**

12 The Maximum Settlement Amount will be funded pursuant to the timeline and manner set
13 forth in the Settlement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶¶ 53-54.) The funds from
14 the uncashed checks shall be distributed by the Settlement Administrator to the State Controller's
15 Unclaimed Property Fund. (*Id.* at ¶ 55.)

16 **v. Release of Claims**

17 All Class Members who do not submit a valid and timely Request for Exclusion, on behalf
18 of himself or herself, his or her heirs, descendants, dependents, executors, administrators, assigns,
19 and successors, fully and finally release and discharge the Released Parties from any and all of the
20 Class Released Claims within the Class Period, which will be final and binding on the Effective
21 Date. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶¶ 26, 68.)

22 Plaintiff, State of California, and LWDA will release the Released Parties of the claims set
23 forth in the PAGA Released Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶¶ 27, 69.)

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1 Plaintiff, for himself and his heirs, successors, and assigns, waives, releases, acquits, and
2 forever discharges the Released Parties from any and all claims, actions, charges, complaints,
3 grievances, and causes of action, of whatever nature, whether known or unknown, which exist or
4 may exist on Plaintiff's behalf. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶ 67.) Plaintiff also
5 expressly waives and relinquishes any and all claims, rights or benefits he may have under Civil
6 Code section 1542. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at ¶ 67.)

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

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

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

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1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.¹
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

- 7 (a) A settlement or compromise of an entire class action, or a cause of action in
8 a class action, or as to a party, requires the approval of the court after
9 hearing.
10 . . .
11 (c) Any party to a settlement agreement may serve and file a written notice of
12 motion for preliminary approval of the settlement. The settlement
13 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*
18 *nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

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

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

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

10 **i. The Settlement Amount of \$1,050,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the additional information and the
13 data Defendant produced, as referenced in Section III above, permitting Class Counsel to engage
14 in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 31.)

15 The claims are predicated on the purported: (1) failure to properly calculate and pay
16 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
17 consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5)
18 failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation
19 of PAGA; and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl.,
20 *supra*, at ¶ 32.) Defendant denies the theories of liability and any and all damages. (*Id.* at ¶ 33.)

21 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 34.) As the California Supreme Court
23 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
24 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
25 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.²
26 (*Ibid.*) As a result, Plaintiff’s calculations for potential damages were discounted.

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28 ² (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Payment of \$100,000 Is Reasonable**

2 According to Plaintiff, the provisions of the Labor Code potentially triggering PAGA
3 penalties in this case include Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
4 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800,
5 and 2802. (Han Decl., *supra*, at ¶ 43.) Defendant asserts, regardless of the results of the underlying
6 causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*)
7 Defendant also maintains it had a strong argument it would be unjust to award maximum PAGA
8 penalties given the law’s current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at
9 ¶ 43; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by
10 30% under this authority].) Without stacking and limited to the initial violation, PAGA penalties
11 would be limited to at least **\$29,400** (294 employees x \$100 penalty for initial violation) (or lower)
12 on the low end and **\$235,200** (294 employees x \$100 penalty for initial violation x 8 theories of
13 recovery) on the higher end. (Han Decl., *supra*, at ¶¶ 44-46.)

14 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 47.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Allocating \$100,000 to PAGA civil penalties was reasonable given that Defendant is also paying
17 an additional \$950,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
18 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
19 of other Class Members,” such amounts are reasonable.³ (*Ibid.*)

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

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

Considering Defendant’s defenses, supporting evidence, and its position that the case is not suitable for class treatment nor manageable on any representative class or PAGA basis, the Settlement Agreement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, Plaintiff calculated the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$6,498,775.27** on the low end and around **\$6,846,209.35** on the high end. (Han Decl., *supra*, at ¶ 48.)

Category	Potential Exposure Assessment	Certification Risk	Merits Risk	Realistic Exposure Assessment
Rest Break Premiums	\$1,076,100.97	70%	60%	\$129,132.12
Meal Break Premiums	\$829,374.02	60%	50%	\$165,874.80
Minimum/Overtime Wage: Off-the-Clock Work	\$694,595.02 to \$1,042,029.10	50%	50%	\$173,648.76 to \$260,507.28
Underpaid Wages Due to Regular Rate Theories	\$268,169.26	40%	50%	\$80,450.78
Unreimbursed Business Expenses	\$287,900	40%	70%	\$51,822
Wage Statement Penalty	\$1,176,000	60%	60%	\$188,160
Waiting Time Penalty	\$2,166,636	60%	60%	\$346,661.76
MAXIMUM TOTAL EXPOSURE	\$6,498,775.27 to \$6,846,209.35⁴			\$1,135,750.21 to \$1,222,608.73⁵

Plaintiff assessed the realistic recovery for this case is **\$1,135,750.21** on the low end and **\$1,222,608.73** on the high end. (Han Decl., *supra*, at ¶ 56.) The Maximum Settlement Amount is about fifteen percent (15.34%) of the maximum potential exposure and around eighty-six percent (85.88%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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⁴ (Han Decl., *supra*, at ¶¶ 35-42.)

⁵ (*Id.* at ¶¶ 49-55.)

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

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

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

18 The Class is ascertainable and numerous as to make it impracticable to join all Class
19 Members, and there are common questions of law and fact that predominate over any questions
20 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 57.) Plaintiff contends the claims
21 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
22 interests of the Class. (*Ibid.*) Plaintiff also asserts the prosecution of separate actions by individual
23 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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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 Plaintiff contends this case involves about five hundred seventy-eight (578) Class
10 Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 58; *Ghazaryan v.*
11 *Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as
12 many as 190 current and 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.

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1. Common Issues Predominate

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

Plaintiff asserts common issues of fact and law predominate as to each of the claims. (Han Decl., *supra*, at ¶ 59.) Plaintiff contends all hourly-paid or non-exempt persons employed by Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiff’s Claims Are Typical of the Class Claims

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

Plaintiff is a former hourly-paid, non-exempt employee of Defendant and alleges he and the Class Members were employed by the same company and were injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 60.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiff contends the claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

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Plaintiff contends he has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 61.) Plaintiff contends he has conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and contends he has 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 contends he has no interest averse to the interests of the Class. (*Ibid.*)

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

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.

e. The Settlement Is Fair, Reasonable, and Adequate

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.)

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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 Class Members of their right to participate in the Settlement, how and when to object to or opt-out of the Settlement, and date, time, and location of the Final Approval Hearing.

V. CONCLUSION

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

Dated: August 4, 2023

JUSTICE LAW CORPORATION

By: D. Han
Douglas Han
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 bitty@justicelawcorp.com

On August 4, 2023, I served the foregoing document described as

**PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION AND PAGA 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: **Medrano v. G & J Heavy Haul, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-881658-22**
Court Case No.: VCU292423
Tulare 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

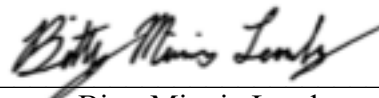
[X] BY ELECTRONIC SUBMISSION

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 4, 2023, at Pasadena, California.


Bitty Minnis-Lemley