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

NIKKI HOARD, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

PRODUCTIONS PLUS, INC., a Michigan
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: BCV-22-101736-BCB

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

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); and [Proposed] Order filed
concurrently herewith]

Hearing Date: April 6, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Division H

Complaint Filed: July 13, 2022
FAC Filed: July 20, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 6, 2023, at 8:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Bernard C. Barmann, Jr. in Division H of Kern County
3 Superior Court (Metropolitan Division Justice Building), located at 1215 Truxtun Avenue,
4 Bakersfield, California 93301, Plaintiff Nikki Hoard (“Plaintiff”) will and hereby does move for
5 an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Joint Stipulation of Class Action Settlement
8 and Release (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
9 **Exhibit 2** to the declaration of Douglas Han, including, and not limited to, the
10 means of allocation and distribution of funds, the allocations for payments under
11 the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Attorneys Fees,
12 Costs, Class Representative Enhancement Payment, and Claims Administration
13 Costs;
- 14 • Conditionally certifying the Class for settlement purposes only;
- 15 • Appointing Plaintiff as the Class Representative;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the Notice of Class Action Settlement (“Class Notice”) attached as
18 **Exhibit A** to the Agreement;
- 19 • Approving the Claim Form (“Claim Form”) attached as **Exhibit B** to the
20 Agreement;
- 21 • Directing the mailing of the Class Notice and Claim Form (collectively, known as
22 the “Notice Packet”) with a postage-paid return envelope to the Class;
- 23 • Approving the proposed deadlines for the settlement administration process;
- 24 • Approving ILYM Group, Inc. as the Claims Administrator; and
- 25 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
26 Agreement, at which time the Court will also consider whether to grant Final
27 Approval of the requests for the Attorneys Fees, Costs, Class Representative
28

Enhancement Payment, Claims Administration Costs, and approval of the allocation of the PAGA Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 3, 2023

JUSTICE LAW CORPORATION

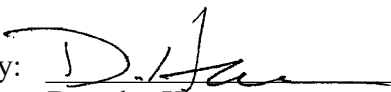
By: 
Douglas Han
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
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	12
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 Individual Settlement Payments	13
iii.	Notice to the Class	14
iv.	Distribution of Funds	14
v.	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 Proposed Settlement Is a Reasonable Compromise of Claims	16
i.	The Settlement Amount of \$2,500,000 Is Fair and Reasonable	17
ii.	The PAGA Payment of \$50,000 Is Reasonable.....	18
c.	Discount Analysis Justifies the Settlement	19
d.	Conditional Certification of the Class Is Appropriate	20
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	20
ii.	The Class Members Share a Well-defined Community of Interest	21
1.	Common Issues Predominate.....	21

2.	Plaintiff’s Claims Are Typical of the Class Claims.....	22
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	23
f.	Notice to Class Members Complies with California Rules of Court, Rule 3.769(f).....	23
V.	CONCLUSION.....	23

TABLE OF AUTHORITIES

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Aguilar v. Cintas Corp. No. 2

(2006) 144 Cal.App.4th 121 17

Amaro v. Anaheim Arena Management, LLC

(2021) 69 Cal.App.5th 521 15

Bartold v. Glendale Federal Bank

(2000) 81 Cal.App.4th 816 20

In re Beef Industry Antitrust Litigation

(5th Cir. 1979) 607 F.2d 167 16

Boyd v. Bechtel Corp.

(N.D.Cal. 1979) 485 F.Supp. 610 12

Brinker Restaurant Corporation v. Superior Court

(2012) 53 Cal.4th 1024 21

Capitol People First v. Department of Developmental Services

(2007) 155 Cal.App.4th 676 21

Carrington v. Starbucks Corp.

(2018) 30 Cal.App.5th 504 18

City of Detroit v. Grinnell Corporation

(2d Cir. 1974) 495 F.2d 448..... 20

Classen v. Weller

(1983) 145 Cal.App.3d 27 22

Dunbar v. Albertson's Inc.

(2006) 141 Cal.App.4th 1422 17

Dunk v. Ford Motor Co.

(1996) 48 Cal.App.4th 1794 15, 23

Espinoza v. Galardi South Enters.

(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS..... 21

1	<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
2	(2008) 169 Cal.App.4th 1524	21
3	<i>Green v. Obledo</i>	
4	(1981) 29 Cal.3d 126	15
5	<i>Harris v. Superior Court</i>	
6	(2007) 154 Cal.App.4th 164	17
7	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
8	(2001) 89 Cal.App.4th 908	20
9	<i>Hopson v. Hanesbrands Inc.</i>	
10	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	18
11	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
12	(1981) 452 U.S. 905.....	16
13	<i>Jones v. JGC Dallas LLC</i>	
14	(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
15	185042.....	21
16	<i>Kullar v. Foot Locker Retail, Inc.</i>	
17	(2008) 168 Cal.App.4th 116	16, 17
18	<i>Linder v. Thrifty Oil Co.</i>	
19	(2000) 23 Cal.4th 429	21
20	<i>Linney v. Cellular Alaska Partnership</i>	
21	(9th Cir. 1998) 151 F.3d 1234	20
22	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
23	(2010) 186 Cal.App.4th 399	16
24	<i>Nordstrom Com. Cases</i>	
25	(2010) 186 Cal.App.4th 576	18
26	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
27	(2004) 34 Cal.4th 319	17, 20, 21
28	///	

1	<i>In re Tableware Antitrust Litig.</i>	
2	(N.D.Cal. 2007) 484 F.Supp.2d 1059	19
3	<i>Thurman v. Bayshore Transit Mgmt.</i>	
4	(2012) 203 Cal.App.4th 1112	18
5	<i>Vasquez v. Superior Court</i>	
6	(1971) 4 Cal.3d 800	15
7	<i>Viking River Cruises, Inc. v. Moriana</i>	
8	(2022) 142 S.Ct. 1906.....	10
9	<i>Walsh v. IKON Solutions, Inc.</i>	
10	(2007) 148 Cal.App.4th 1440	17
11	<u>Rules</u>	
12	California Rules of Court, Rule 3.769	15, 16
13	California Rules of Court, Rule 3.769(f)	23
14	California Rules of Court, Rule 3.769(g).....	16
15	Federal Rule 23	15
16	<u>Statutes</u>	
17	Business & Professions Code § 17200	17
18	Code of Civil Procedure § 382.....	20, 23
19	Code of Civil Procedure § 877.6.....	17
20	Labor Code § 201.....	18
21	Labor Code § 202.....	18
22	Labor Code § 203.....	18
23	Labor Code § 204.....	18
24	Labor Code § 210.....	18
25	Labor Code § 218.5.....	18
26	Labor Code § 221.....	18
27	Labor Code § 226.....	18
28	Labor Code § 226(a)	18

1	Labor Code § 226.3.....	18
2	Labor Code § 226.7.....	18
3	Labor Code § 226.8.....	18
4	Labor Code § 246.....	18
5	Labor Code § 510.....	18
6	Labor Code § 512.....	18
7	Labor Code § 512(a).....	18
8	Labor Code § 558.....	18
9	Labor Code § 1174.....	18
10	Labor Code § 1194.....	18
11	Labor Code § 1197.....	18
12	Labor Code § 1197.1.....	18
13	Labor Code § 1198.....	18
14	Labor Code § 2698.....	18
15	Labor Code § 2800.....	18
16	Labor Code § 2802.....	18

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a \$2,500,000 proposed wage-and-hour class
3 action settlement by Plaintiff on behalf of herself and all individuals who have previously been or
4 currently are employed by Defendant Productions Plus, Inc. (“Defendant”) as an hourly paid or
5 non-exempt employee or independent contractor within the State of California during the time
6 period from, and including, April 9, 2016 through, and including, June 27, 2022 (“Class,” “Class
7 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
8 estimated to be two thousand, seven hundred and eighty-seven (2,787). (Declaration of Douglas
9 Han In Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han
10 Decl.”), ¶¶ 8-9.)

11 **II. BACKGROUND**

12 On July 13, 2022, Plaintiff, a former employee of Defendant, filed a wage-and-hour class
13 action lawsuit in the Superior Court of California, County of Kern, alleging nine (9) causes of
14 action. (Han Decl., *supra*, at ¶ 10.)

15 Before the filing of this action, Class Counsel represented a separate Plaintiff Fred Dresch
16 in separate actions in Orange County and Los Angeles County alleging the same PAGA and Class
17 Claims. Plaintiff Dresch and Defendant attended mediation on April 28, 2022 before Steve
18 Serratore, Esq. but did not settle. (Han Decl., *supra*, at ¶ 11.) On June 15, 2022, the United States
19 Supreme Court decided *Viking River Cruises, Inc. v. Moriana*, 142 S.Ct. 1906 and determined that
20 the FAA pre-empted California’s *Iskanian* rule insofar as it precluded division of a PAGA action
21 into individual and non-individual claims through an agreement to arbitrate. (Han Decl., *supra*, at
22 ¶ 12.) In light of the *Viking River* decision, Plaintiff Fred Dresch settled his individual claims and
23 dismissed her representative and class claims without prejudice. (*Ibid.*)

24 Plaintiff Hoard stepped into shoes of the Class Representative and initiated this lawsuit
25 borrowing the tolled statute of limitations from the original lawsuit filed by Fred Dresch. (Han
26 Decl., *supra*, at ¶ 13.) The Parties continued to negotiate a potential settlement through the
27 Mediator by exchanging additional data and information including financial records. (*Ibid.*) The
28

Parties agreed to the basic terms of the settlement on January 19, 2023. (Han Decl., *supra*, at ¶ 13.)

III. INVESTIGATION/ LITIGATION HISTORY

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

The Parties conducted significant investigation and discovery of the facts and law both before and after this case was filed. (Han Decl., *supra*, at ¶ 15.) After meeting and conferring, the Parties agreed to attend an early mediation. (*Ibid.*) The Parties agreed to engage in an informal exchange of information in advance of mediation. (*Ibid.*) Specifically, Defendant produced documents relating to its policies, practices, and procedures regarding the classification and job duties of independent contractors, reimbursement of business expenses, time punch records for non-exempt employees evidencing all hours worked, meal and rest break policies, and payroll records for the putative class. (*Ibid.*) As part of Defendant’s production, Plaintiff also reviewed time records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Plaintiff also interviewed Class Members who worked for Defendant throughout the Class Period. (*Ibid.*)

Based upon the information provided by Defendant and interviews Class Counsel had with Class Members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to properly classify independent contractors as hourly-paid or non-exempt employees; (2) failed to provide employees with legally mandated meal and rest breaks; (3) failed to pay employees for all hours worked; (4) failed to include non-discretionary bonuses in employees’ regular rate of pay for purposes of overtime compensation, sick leave pay, and premium wages; (5) failed to reimburse employees for necessary business expenses; (6) issued noncompliant wage statements; and (7) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-24.)

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 attended mediation with the mediator, Steven J. Serratore, on April 28, 2022. (Han Decl., *supra*, at ¶ 25.) While the Parties did not settle at mediation, under the continued assistance of the mediator, the Parties eventually reached a settlement via a mediator’s proposal, the terms of which were memorialized in the Settlement Agreement the Parties now seek

1 Preliminary Approval of. (Han Decl., *supra*, at ¶ 26; Exhibit 2.)

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

3 The Settlement Agreement was reached because of arm's-length negotiations. (Han Decl.,
4 *supra*, at ¶ 29.) Though cordial and professional, the settlement negotiations have always been
5 adversarial and non-collusive in nature. (*Ibid.*) At the mediation and throughout the negotiation
6 process, both Parties' counsel conducted extensive arm's-length settlement negotiations until an
7 agreement was reached. (*Ibid.*)

8 Plaintiff and Class Counsel recognize the expense and length of continued proceedings
9 necessary to continue the litigation against Defendant. (Han Decl., *supra*, at ¶ 30.) Plaintiff and
10 Class Counsel also considered the uncertainty and risk of further litigation, potential outcome,
11 existing arbitration agreements, and difficulties and delays inherent in such litigation as well as
12 Defendant's past and current financial condition. (*Ibid.*) Based on the foregoing, Plaintiff and
13 Class Counsel believe the Settlement Agreement is a fair, adequate, and reasonable settlement,
14 and is in the best interests of the Class Members. (*Ibid.*)

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

16 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
17 the Parties' claims and defenses before reaching the Settlement and engaged in sufficient
18 investigation, research, and discovery. (Han Decl., *supra*, at ¶ 31.) The Settlement was only
19 possible following significant investigation and evaluation of Defendant's relevant policies and
20 procedures, as well as the data produced. (*Ibid.*) Furthermore, this case has reached the stage
21 where "the Parties certainly have a clear view of the strengths and weaknesses of their cases"
22 sufficient to support the Settlement's reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v.*
23 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

25 **i. Deductions from the Settlement**

26 The Parties agreed (contingent upon the Court's approval) this action be settled and
27 compromised for the maximum sum up to \$2,500,000 ("Maximum Settlement Amount") which
28 includes: (1) Attorneys Fees of \$875,000; (2) Costs not to exceed \$35,000; (3) Class

Representative Enhancement Payment not to exceed \$10,000; (4) Claims Administration Costs not to exceed \$25,000; (5) PAGA Payment of \$50,000; and (6) Defendant's share of applicable payroll taxes. (Han Decl., *supra*, at ¶ 26.)

ii. Calculating Individual Settlement Payments

After all Court-approved deductions from the Maximum Settlement Amount, it is estimated \$1,505,000 ("Net Settlement Amount") will be distributed to Claimants – with an *average* gross Individual Settlement Payment estimated at \$540.00. (Han Decl., *supra*, at ¶ 28.) The Individual Settlement Payments will be paid based on a claims-made process. (Settlement Agreement, at ¶ 59.) The amount distributed to Claimants will equal at least fifty percent (50%) of the Net Settlement Amount. If the total Individual Settlement Payments to the Claimants would equal less than Fifty Percent (50%) of the Net Settlement Amount based on the number of claimants, the Claims Administrator will proportionately increase the Individual Settlement Payment for each Claimant to ensure that total Individual Settlement Payments equal Fifty Percent (50%) of the Net Settlement Amount. Any unclaimed amounts above Fifty Percent (50%) of the Net Settlement Amount will be the exclusive property of Defendant. (*Ibid.*)

Individual Settlement Payments will be calculated and apportioned from the Net Settlement Amount based on the number of Gross Monies a Class Member earned during the Class Period during the timeframe of April 9, 2016 to June 27, 2022. (Settlement Agreement, at ¶ 60.) To determine each Class Member's estimated Individual Class Settlement Payment, the Claims Administrator will use the following formula: Estimated Individual Settlement Payment = (Net Settlement Amount ÷ Total Class Gross Monies) x Individual Gross Monies for each individual Class Member. (Settlement Agreement, at ¶ 60(b).)

Individual Settlement Payment made to Claimants will be apportioned thirty percent (30%) as wages and seventy percent (70%) as penalties and interests. (Settlement Agreement, at ¶ 81.) The PAGA Payment that is paid to each Eligible Aggrieved Employee will be distributed, pro rata, based on the number of Gross Monies earned by all PAGA Aggrieved Employees. (Settlement Agreement at ¶ 58.) Eligible Aggrieved Employees' portion of the PAGA Payment will be allocated as one hundred percent (100%) penalties.

1 **iii. Notice to the Class**

2 Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant
3 shall deliver to the Claims Administrator the Class Data. (Settlement Agreement, at ¶ 63.) The
4 Claims Administrator shall mail the Notice Packet to the Class Members via first-class regular
5 U.S. Mail within fourteen (14) calendar days after the receipt of the Class List. (Settlement
6 Agreement, at ¶ 64.)

7 **iv. Distribution of Funds**

8 Within five (5) business days after the Final Approval of the Settlement, the Claims
9 Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant
10 pursuant to the terms of the Settlement. Defendant will deposit Two Million Dollars
11 (\$2,000,000) of the Court approved Attorneys Fees and Costs, Class Representative
12 Enhancement Payment, Claims Administration Costs, PAGA Payment, the total of the Individual
13 Settlement Payments expected to be paid based on the Claim Forms timely submitted, and the
14 employer-side payroll taxes computed by the Claims Administrator into a Qualified Settlement
15 Fund account to be established by the Claims Administrator within sixty (60) calendar days of
16 the Final Approval of the Settlement in accordance with the instructions provided by the Claims
17 Administrator. The remainder of the Maximum Settlement Amount, if any, shall be deposited
18 within one hundred eighty (180) calendar days after the initial payment. (Settlement Agreement,
19 at ¶ 52.) Uncashed settlement checks will be mailed to the California Controller's Unclaimed
20 Property Division in accordance with California Unclaimed Property Law so that the Claimant
21 will have his or her Individual Settlement Payment available to him or her per the applicable claim
22 procedure to request that money from the State of California. (Settlement Agreement, at ¶ 78.)

23 **v. Release of Claims**

24 Upon the Effective Date and condition on the fully funding of the settlement, Plaintiff and
25 all Class Members who have not submitted valid and timely Requests for Exclusion, will be
26 deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
27 discharged with respect to all of the Released Parties any and all Released Claims for any period
28 during the Released Claims Period (Settlement Agreement, at ¶ 78.) Class Representative will

1 provide a general release. (Settlement Agreement, at ¶ 55.)

2 With regards to class action releases, “[A] court may release not only those claims alleged
3 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
4 or in connection with any matter or fact set forth or referred to in’ the complaint.” (Amaro v.
5 Anaheim Arena Management, LLC (2021) 69 Cal.App.5th 521, 537.) The scope of the release in
6 this case are acceptable because it is limited to the scope of the allegations “. . .that were alleged
7 in the Complaint or reasonably could have been alleged based on the facts and legal theories
8 contained in the operative Complaint.” In other words, the released claims do not “go beyond
9 the scope of the allegations in the operative complaint” (Amaro v. Anaheim Arena
10 Management, LLC *supra* at 537.)

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

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

18 **III. ARGUMENT**

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

20 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
21 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
22

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

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

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

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

23 In weighing the strength of the plaintiff’s case, *Kullar* instructs the court is not to “decide
24 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
25 the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) Finally,
26 *Kullar* does not require an explicit statement of the maximum amount the class could recover if
27 the plaintiff prevailed on all his claims, provided there is a record that allows “an understanding
28 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.) Put differently,
“as 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 \$2,500,000 Is Fair and Reasonable

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

Plaintiff’s claims are predicated on Defendant’s purported: (a) misclassification of employees as independent contractors; (b) failure to properly calculate and pay overtime wages; (c) failure to pay minimum wages; (d) failure to provide meal and rest breaks and pay applicable premium wages; (e) failure to timely pay wages; (f) failure to issue compliant wage statements; (g) failure to reimburse business expenses; (h) violation of PAGA; and (i) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 32.) Defendant denies Plaintiff’s theories of liability. (*Id.* at ¶ 33.)

Although Plaintiff believes the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 34.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*) This led Plaintiff to discount the calculations for potential damages.

///

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

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Plaintiff also recognized the risk any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 48.) Many of the causes of action brought were duplicative of the statutory claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties was reasonable given Defendant has designated an additional \$ 2,450,000 in the class settlement.⁴ (Han Decl., *supra*, at ¶ 48.) 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.⁵ (*Ibid.*)

⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000].)

18

PLAINTIFF’S MOTION FOR PRELIMINARY APPROVAL

Considering Defendant's defenses, its supporting evidence, and its position the case is not suitable for class treatment, the Settlement of \$2,500,000 is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about \$17,790,158.15 on the low end and \$18,209,988.00 on the high end. (Han Decl., *supra*, at ¶ 49.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,248,042.77	70%	60%	\$149,765.12
Meal Break Premiums	\$1,364,106.92	60%	60%	\$218,257.10
Overtime/Minimum Wage: Off-the-Clock Work	\$839,659.70 to \$1,259,489.55	60%	50%	\$167,931.94 to \$251,897.91
Overtime/Minimum Wage: Regular Rate	\$26,832.36	40%	50%	\$8,049.60
Unreimbursed Business Expenses	\$300,632.00	30%	70%	\$63,132.72
Wage Statement Penalty	\$1,210,950.00	60%	60%	\$193,752.00
Waiting Time Penalty	\$12,799,934.40	60%	60%	\$2,047,989.50
MAXIMUM TOTAL EXPOSURE	\$17,790,158.15 to \$18,209,988.00			\$2,848,877.98 to \$2,932,843.95 ⁶

Based on this analysis, the realistic recovery for this case is \$2,848,877.98 on the low end and \$2,932,843.95 on the high end. (Han Decl., *supra*, at ¶ 57.) The Maximum Settlement Amount of \$2,500,000 is about fourteen percent (13.7%) of the maximum potential exposure and approximately one hundred and eighty-five percent (85.2%) of the maximum realistic exposure at trial, which is a good settlement (*Ibid.*)

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

⁶ Detailed exposure and discount analysis is provided in Han Decl., ¶¶ 37-56.

disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”.) Nevertheless, this settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides a significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends as a former hourly-paid, non-exempt employee of Defendant, his claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

“Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*

1 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
2 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

3 This case involves approximately two thousand, seven hundred and eighty-seven (2,787)
4 Class Members. (Han Decl., *supra*, at ¶ 59.) Thus, the Class is sufficiently numerous. (*Ibid.*;
5 *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a
6 proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

17 **1. Common Issues Predominate**

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

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

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

5 Typical claims rely on legal theories and facts that are substantially like those of other class
6 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiff is a former misclassified
7 independent contractor of Defendant and alleges she and the Class Members were employed by
8 the same company and injured by Defendant's common policies and practices related to the claims
9 described above. (Han Decl., *supra*, at ¶ 61.) Plaintiff seeks relief for these claims and derivative
10 claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same
11 employment practices and are based on the same legal theories as those applicable to the Class.
12 (*Ibid.*)

13 **3. Plaintiff Is Adequate to Represent the Class**

14 Plaintiff has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶ 62.)
15 Plaintiff conducted herself diligently and responsibly in representing the Class in this litigation,
16 understands her fiduciary obligations, and actively participated in the prosecution of this case.
17 (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with
18 a complete understanding of his work environment and requirements. (*Ibid.*) Plaintiff has no
19 interest adverse to the interests of the other Class Members. (*Ibid.*)

20 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 21 **of this Controversy**

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

1 seeking legal redress.

2 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

10 **f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

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

12 If the court has certified the action as a class action, notice of the final approval
13 hearing must be given to class members in the manner specified by the court. The
14 notice must contain an explanation of the proposed settlement and procedures for
15 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.

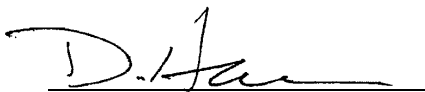
16 The Notice Packet meets all these requirements. The Notice Packet advises the Class
17 Members of their right to participate in the Settlement, how and when to object to or request
18 exclusion from the Settlement, and the date, time, and location of the Final Approval hearing. (See
19 Han Decl., *supra*; Exhibits A, B to Exhibit 2.)

20 **V. CONCLUSION**

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

24
25 Dated: March 3, 2023

JUSTICE LAW CORPORATION

26
27 

28 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 aokada@justicelawcorp.com

On March 6, 2023, I served the foregoing document described as

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

for the following case: **Hoard v. Productions Plus, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-892144-22**
Court Case No.: BCV-22-101736-BCB
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 March 6, 2023, at Pasadena, California.



Anna Okada