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

SHAUN HARRIS, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

MANCINI'S SLEEPWORLD, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: RG21114991

Assigned for All Purposes to:
Honorable Brad Seligman
Department 23

CLASS ACTION

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

[Reservation ID: 464587648405]

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed
Administrator (Julie Green); Declaration of
Cynthia L. Rice; and [Proposed] Order filed
concurrently herewith]

Hearing Date: February 14, 2023
Hearing Time: 3:00 p.m.
Hearing Place: Department 23

Complaint Filed: October 6, 2021
FAC Filed: October 25, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 14, 2023 at 3:00 p.m., or as soon as the
2 matter may be heard, before the Honorable Brad Seligman in Department 23 of the Alameda
3 County Superior Court (Administration Building) located at 1221 Oak Street Oakland, California
4 94612, Plaintiff Shaun Harris (“Plaintiff”) moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Class Action and PAGA Settlement
7 Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **Exhibit 2** to the declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds, the allocations for payments under
10 the Private Attorneys General Act of 2004 (“PAGA”), Class Counsel Fees
11 Payment, Class Counsel Litigation Expenses Payment, Class Representative
12 Service Payment, and Administration Expenses Payment;
- 13 • Conditionally certifying the Class for settlement purposes only;
- 14 • Appointing Plaintiff as the class representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the Notice of Class Action Settlement (“Class Notice”) attached as
17 **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action
18 Settlement and Setting Hearing for Final Approval of Settlement;
- 19 • Directing the mailing of the Class Notice with a postage-paid return envelope to
20 the Class;
- 21 • Approving the deadlines for the notice and settlement administration process;
- 22 • Approving CPT Group, Inc. as the Administrator; and
- 23 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
24 Agreement, at which time the Court will also consider whether to grant Final
25 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
26 Litigation Expenses Payment, Class Representative Service Payment,
27 Administration Expenses Payment, and the allocation of the PAGA Penalties.

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

6
7 Dated: December 1, 2022

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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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 Ultimately Led to the Settlement Agreement.....	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 Settlement.....	12
i.	Deductions from the Settlement.....	12
ii.	Calculation of the Class Members’ Settlement Payments	13
iii.	The Allocation of 20% to Wages and 80% to Interest and Penalties Is Justified Under the Claims of this Action.....	13
iv.	Notice to the Class	14
v.	Distribution of Funds	14
vi.	The <i>Cy Pres</i> Recipient is Appropriate	14
vii.	Release of Claims	15
d.	Counsel for Both Parties Are Experienced in Similar Litigation	16
IV.	ARGUMENT	16
a.	Class Action Settlements Are Subject to Court Review	16
b.	The Settlement Is a Reasonable Compromise of Claims.....	17
i.	The Gross Settlement Amount of \$2,500,000 Is Fair and Reasonable....	18
ii.	The PAGA Penalties of \$250,000 Is Reasonable	18
c.	Discount Analysis Justifies the Settlement.....	19
d.	Conditional Certification of the Class Is Appropriate	21

1	i.	The Class Is Ascertainable and Sufficiently Numerous	21
2	ii.	The Class Members Share a Well-defined Community of Interest	22
3	1.	Common Issues Predominate.....	22
4	2.	Plaintiff’s Claims Are Typical of the Class Claims.....	23
5	3.	Plaintiff Is Adequate to Represent the Class.....	23
6	4.	Class Action Is Superior for the Fair and Efficient Adjudication of	
7		this Controversy	23
8	e.	The Settlement Is Fair, Reasonable, and Adequate	23
9	f.	Notice to Class Members Complies with California Rules of Court,	
10		Rule 3.769(f).....	24
11	V.	CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	18
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	16
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	21
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	17
<i>Boyd v. Bechtel Corp.</i>	
(N.D. Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant Corporation v. Superior Court</i>	
(2012) 53 Cal.4th 1004	22
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	22
<i>Carrington v. Starbucks Corp.</i>	
(2018) 30 Cal.App.5th 504	19
<i>City of Detroit v. Grinnell Corporation</i>	
(2d. Cir. 1974) 495 F.2d 448.....	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	23
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	18
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	16, 23, 24
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	22

1	<i>Green v. Obledo</i>	
2	(1981) 29 Cal.3d 126	16
3	<i>Harris v. Superior Court</i>	
4	(2007) 154 Cal.App.4th 164	18
5	<i>Hicks v. Kaufman & Broad Home Corp.</i>	
6	(2001) 89 Cal.App.4th 908	21
7	<i>Hopson v. Hanesbrands Inc.</i>	
8	(N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900	19
9	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
10	(1981) 452 U.S. 905.....	17
11	<i>Jones v. JGC Dallas LLC</i>	
12	(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
13	185042.....	22
14	<i>Kullar v. Foot Locker Retail, Inc.</i>	
15	(2008) 168 Cal.App.4th 116	17
16	<i>Linder v. Thrifty Oil Co.</i>	
17	(2000) 23 Cal.4th 429	21
18	<i>Linney v. Cellular Alaska Partnership</i>	
19	(9th Cir. 1998) 151 F.3d 1234	20
20	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
21	(2010) 186 Cal.App.4th 399	17
22	<i>Nordstrom Com. Cases</i>	
23	(2010) 186 Cal.App.4th 576	19
24	<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
25	(2004) 34 Cal.4th 319	18, 21, 22
26	<i>In re Tableware Antitrust Litig.</i>	
27	(N.D.Cal. 2007) 484 F.Supp.2d 1059	20
28	///	

1	<i>Thurman v. Bayshore Transit Mgmt.</i>	
2	(2012) 203 Cal.App.4th 1112	19
3	<i>Vasquez v. Superior Court</i>	
4	(1971) 4 Cal.3d 800	16
5	<i>Walsh v. IKON Solutions, Inc.</i>	
6	(2007) 148 Cal.App.4th 1440	18
7	<u>Rules</u>	
8	California Rules of Court, Rule 3.769	16
9	California Rules of Court, Rule 3,769 (f)	24
10	California Rules of Court, Rule 3.769 (g).....	16
11	Federal Rule 23	16
12	<u>Statutes</u>	
13	Business and Professions Code § 17200.....	18
14	Code of Civil Procedure § 382.....	21, 23
15	Code of Civil Procedure § 384.....	15
16	Code of Civil Procedure § 384(a)	14
17	Code of Civil Procedure § 384(b).....	14
18	Code of Civil Procedure § 877.6.....	17
19	Code of Civil Procedure § 1542.....	15
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 § 226.3.....	18
28	Labor Code § 226.7.....	18

1	Labor Code § 226(a)	18
2	Labor Code § 246.....	18
3	Labor Code § 432.5.....	18
4	Labor Code § 510.....	18
5	Labor Code § 512(a)	18
6	Labor Code § 551.....	18
7	Labor Code § 552.....	18
8	Labor Code § 558.....	18
9	Labor Code § 1174(d)	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	10, 15, 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 non-reversionary \$2,500,000 wage-and-hour
3 class action and representative PAGA settlement by Plaintiff on behalf of himself and all current
4 and former non-exempt or commissioned sales employees of Defendant Mancini’s Sleepworld,
5 Inc. (“Defendant”) within the State of California at any time during the period from April 9, 2017
6 to November 30, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing,
7 the number of Class Members confirmed by Defendant is about five hundred five (505).
8 (Declaration of Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval of Class
9 Action Settlement (“Han Dec.”), ¶¶ 8-9.)

10 It is requested the Court grant Preliminary Approval because when analyzing the strengths
11 and vulnerabilities of the claims alongside Defendant’s potential liability exposure, the Settlement
12 is well within the range of reasonableness. Plaintiff and Class Counsel are convinced the
13 Settlement is in the best interests of the Class Members.

14 **II. BACKGROUND**

15 On October 6, 2021, Plaintiff filed a wage-and-hour class action lawsuit alleging eight (8)
16 causes of action. (Han Decl., *supra*, at ¶ 10.)

17 After engaging in discovery, investigation, and negotiations, the Parties remotely attended
18 mediation on May 31, 2022 with the mediator Deborah C. Saxe. (Han Decl., *supra*, at ¶ 11.)
19 While the Parties did not initially settle, continued negotiations and a second mediation on
20 September 9, 2022 eventually allowed the Parties to reach a settlement. (*Ibid.*)

21 In line with the settlement, Plaintiff provided written notice to the California Labor and
22 Workforce Development Agency (“LWDA”) and Defendant on September 13, 2022. (Han Decl.,
23 *supra*, at ¶ 12; Exhibit 3.)

24 Thereafter, on October 25, 2022, Plaintiff filed a First Amended Complaint updating the
25 Class definition and adding the following cause of action: violation of Labor Code section 2698,
26 *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 13.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

After filing this case, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 15.) Plaintiff propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents. (*Ibid.*) Similarly, Defendant propounded one (1) set of special interrogatories and one (1) set of requests for production of documents. (*Ibid.*) Thereafter, the Parties met and conferred, agreed to engage in an informal exchange of information, and eventually remotely attended mediation. (*Ibid.*)

Defendant produced hundreds of documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) As part of Defendant's production, Plaintiff also reviewed a sampling of time records, pay records, and information relating to the size and scope of the Class and group of Aggrieved Employees (*i.e.*, Class list). (*Ibid.*) Plaintiff also interviewed non-exempt and commissioned sales employees who worked for Defendant. (*Ibid.*)

Based upon the information provided by Defendant and interviews with non-exempt and commissioned sales employees, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks and pay applicable premium wages; (2) failed to pay employees for all hours worked; (3) failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage statements; and (5) are liable for waiting time penalties. (Han Dec., *supra*, at ¶¶ 18-24.)

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

i. The Parties Attended Mediation Which Ultimately Led to the Settlement Agreement

The Parties agreed to remotely attend two (2) mediations with experienced wage-and-hour mediator Deborah C. Saxe on May 31, 2022 and September 9, 2022. (Han Decl., *supra*, at ¶ 25.) (*Ibid.*) Under the auspices of the mediator, the Parties eventually reached a settlement, the terms of which were memorialized in the Settlement Agreement the Parties now seek Preliminary Approval of. (*Id.* at ¶ 25; Exhibits 2, 4.)

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

2 Though cordial and professional, the settlement negotiations have always been adversarial
3 and non-collusive in nature. (Han Decl., *supra*, at ¶ 39.) At the mediations, the Parties’ counsel
4 conducted extensive arm’s-length settlement negotiations until reaching an agreement. (*Ibid.*)

5 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
6 necessary to continue the litigation. (Han Decl., *supra*, at ¶ 40.) Plaintiff and Class Counsel have
7 also considered the uncertainty and risk of further litigation, potential outcome, and difficulties
8 and delays inherent herein. (*Ibid.*) Plaintiff and Class Counsel believe the Settlement Agreement
9 is fair, adequate, and reasonable and is in the Class Members’ best interests. (*Ibid.*)

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

11 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties’
12 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
13 research, and discovery. (Han Dec., *supra*, at ¶ 41.) The information produced by Defendant
14 permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages.
15 (*Ibid.*) This case has reached the stage where “the Parties certainly have a clear view of the
16 strengths and weaknesses of their cases” sufficient to support the Settlement. (Han Dec., *supra*,
17 at ¶ 41; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

18 **c. Terms of the Settlement**

19 **i. Deductions from the Settlement**

20 The Parties agreed this action be settled and compromised for the non-reversionary total
21 sum of \$2,500,000 (“Gross Settlement Amount”) which includes the: (1) Class Counsel Fees
22 Payment to Class Counsel of \$833,333.33; (2) Class Counsel Litigation Expenses Payment to
23 Class Counsel of \$30,000; (3) Class Representative Service Payment to Plaintiff of \$10,000; (4)
24 Administrator Expenses Payment to the Administrator of \$20,000; and (5) PAGA Penalties of
25 \$250,000 to the LWDA and Aggrieved Employees. (Han Dec., *supra*, at ¶ 26.)

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1 **ii. Calculation of the Class Members' Settlement Payments**

2 It is estimated \$1,356,666.67 ("Net Settlement Amount") will be distributed to Class
3 Members who do not submit valid and timely Requests for Exclusion from the Settlement
4 ("Participating Class Members"), resulting in a gross *average* Individual Class Payment of
5 \$2,686.47. (Han Dec., *supra*, at ¶ 27.)

6 The Administrator will calculate and disburse the Individual Class Payment using the
7 formula set forth in the Agreement. (Han Dec., *supra*, at ¶ 28.) The Administrator will also
8 calculate and disburse Individual PAGA Payments using the formula set forth in the Agreement,
9 which will be allocated as one hundred percent (100%) penalties. (*Id.* at ¶ 29.)

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

12 Individual Class Payments will be allocated as follows: (1) twenty percent (20%) wages;
13 and (2) eighty percent (80%) interest and penalties. (Han Dec., *supra*, at ¶ 28.)

14 The allocation of wages, interest and penalties indicated above was based on the realistic
15 exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages if
16 the case went to trial. (Han Dec., *supra*, at ¶ 59.) Plaintiff first added the realistic exposure for
17 rest break premiums and meal break premiums (\$60,911.56 + \$138,820.67 = \$199,732.23).
18 (*Ibid.*) Plaintiff then added the \$199,732.23 to the low end realistic exposure for unpaid wages
19 due to off-the-clock work (\$199,732.23 + \$123,627.03 = \$323,359.26). (*Ibid.*) The realistic
20 exposure of \$323,359.26 Plaintiff can expect to receive if he were to prevail at trial for meal and
21 rest break premiums and low end unpaid wages due to off-the-clock work represents about
22 twenty-one percent (21.04%) of the low end total realistic exposure and PAGA penalties
23 (\$323,359.26 ÷ \$1,536,809.28 = 0.21040 x 100 = 21.04%). (*Ibid.*) Because this represents almost
24 twenty percent (20%) of wages, allocating twenty percent (20%) as wages and eighty percent
25 (80%) as interest and penalties pursuant to the Agreement is appropriate. (*Ibid.*)

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1 **iv. Notice to the Class**

2 Within thirty (30) days after the Court grants Preliminary Approval of the Settlement,
3 Defendant will deliver the Class Data to the Administrator in the form of a Microsoft Excel
4 spreadsheet. (Han Dec., *supra*, at ¶ 30.) Within fourteen (14) days after receiving the Class Data,
5 the Administrator will send to all Class Members identified in the Class Data, via first-class
6 United States Postal Service mail, the Class Notice. (*Ibid.*)

7 **v. Distribution of Funds**

8 The Gross Settlement Amount and subsequent payments to be made will be funded and
9 disbursed in the manner and time set forth in the Settlement. (Han Dec., *supra*, at ¶ 31.)

10 Participating Class Members and Aggrieved Employees must cash in their settlement
11 checks within one hundred eighty (180) days after the date of their mailing. (Han Dec., *supra*, at
12 ¶ 32.) Uncashed settlement checks will be canceled after the void date and transmitted to the *cy*
13 *pres* recipient California Rural Legal Assistance, Inc. (“CRLA”). (*Ibid.*)

14 **vi. The *Cy Pres* Recipient is Appropriate**

15 CRLA satisfies the policy of the State of California “to ensure that the unpaid cash residue
16 and unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
17 possible, in a manner designed either to further the purposes of the underlying class action or
18 causes of action, or to promote justice for all Californians.” (Code Civ. Proc., § 384(a).) (Han
19 Dec., *supra*, at ¶ 33.) The Code of Civil Procedure further states:

20 [T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid
21 residue or unclaimed or abandoned class member funds, plus any interest that has accrued
22 thereon, to nonprofit organizations or foundations to support projects that will benefit the
23 class or similarly situated persons, or that promote the law consistent with the objectives
and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit
organizations providing civil legal services to the indigent.

24 (Code Civ. Proc., § 384 (b).) (Han Dec., *supra*, at ¶ 33.)

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1 CRLA directly satisfies the legislature’s purpose and goal under Code of Civil
2 Procedure section 384. (Han Dec., *supra*, at ¶ 34; Declaration of Cynthia L. Rice, ¶¶ 4-8.) There
3 can be no doubt CRLA is the type of non-profit organization the legislature had in mind when
4 drafting and amending Code of Civil Procedure section 384. (*Ibid.*) The Parties are not affiliated
5 with and do not have any financial interest in CRLA. (*Ibid.*) In other words, Plaintiff and Class
6 Counsel have no affiliation with or have any interest pertaining to CRLA. (*Ibid.*)

7 **vii. Release of Claims**

8 All Participating Class Members, on behalf of themselves and their respective former and
9 present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release
10 Released Parties from all claims, rights, demands, liabilities, and causes of action that were
11 alleged, or reasonably could have been alleged, for unpaid wages, overtime, damages, penalties,
12 interest, and attorneys’ fees, arising from, or reasonably related to, the claims asserted in the
13 operative complaint and ascertained in the course of this matter, during the Class Period. (Han
14 Dec., *supra*, at ¶ 35.)

15 All Aggrieved Employees are deemed to release, on behalf of themselves and their
16 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
17 and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or
18 reasonably could have been alleged, based on the PAGA Period facts stated in the operative
19 complaint, and the PAGA Notice and ascertained in the course of this matter, including violation
20 of Labor Code section 2698, *et seq.* (PAGA). (Han Dec., *supra*, at ¶ 36.)

21 In addition to the claims being released by all Participating Class Members, Plaintiff and
22 his or her respective former and present spouses, representatives, agents, attorneys, heirs,
23 administrators, successors, and assigns generally, release and discharge Released Parties from all
24 claims, transactions, or occurrences that occurred during the Class Period. (Han Dec., *supra*, at
25 ¶ 37.) Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any,
26 of section 1542 of the Civil Code. (*Ibid.*)

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

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

10 The Parties’ counsel are experienced in wage-and-hour, employment law and class
11 actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases
12 on behalf of employees for Labor Code violations. (Ibid.) Thus, Class Counsel are experienced
13 and qualified to evaluate the class claims, advantages and disadvantages of settlement versus trial,
14 and viability of the defenses. (Ibid.) Thus, Class Counsel’s experience guided their determination
15 to endorse the Settlement.¹ (Ibid.)

16 **IV. ARGUMENT**

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

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

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23 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
24 number of objectors – is not determinable until the Class Notice has been provided to the Class
25 Members, and they have had an opportunity to respond. This information will be provided to the
26 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

27 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
28 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 (a) A settlement or compromise of an entire class action, or a cause of action in
2 a class action, or as to a party, requires the approval of the court after
3 hearing.

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

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

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

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

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

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1 **i. The Gross Settlement Amount of \$2,500,000 Is Fair and Reasonable**

2 The Settlement was only possible following significant investigation and evaluation of
3 Defendant's relevant policies and procedures and the data produced for the putative class,
4 permitting Class Counsel to engage in a comprehensive analysis of liability and potential
5 damages. (Han Dec., *supra*, at ¶ 41.)

6 Plaintiff's claims are predicated on Defendant's alleged: (1) failure to pay overtime wages;
7 (2) failure to provide meal and rest breaks and pay applicable premiums; (3) failure to pay
8 minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements;
9 (f) failure to reimburse business expenses; (6) violation of Labor Code sections 2698, *et seq.*
10 (PAGA); and (7) violation of Business & Professions Code sections 17200, *et seq.* (Han Dec.,
11 *supra*, at ¶ 42.) Defendant continues to deny Plaintiff's theories. (*Id.* at ¶ 43.)

12 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
13 certification are present. (Han Dec., *supra*, at ¶ 44.) As the California Supreme Court ruled in
14 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter
15 of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have
16 reached different conclusions concerning certification of wage-and-hour claims.³ (Han Dec.,
17 *supra*, at ¶ 44.) These factors led Plaintiff to discount the calculations of potential damages.

18 **ii. The PAGA Penalties of \$250,000 Is Reasonable**

19 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
20 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7,
21 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han
22 Dec., *supra*, at ¶ 52.) Defendant asserted, regardless of the results of the underlying causes of
23 action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant
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 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].)

maintained, in addition to its strong arguments against the underlying claims, it had a strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled state. (Han Dec., *supra*, at ¶ 52; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$15,900** (159 employees x \$100 initial violations) on the low end and **\$95,400** (159 employees x \$100 x 6 theories of recovery) on the high end. (Han Dec., *supra*, at ¶¶ 53-56.)

Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) The maximum penalties for each pay period are likely not justified, and it was arguable the Court would award the maximum penalties. (*Ibid.*) Thus, allocating \$250,000 to PAGA civil penalties was reasonable based on a rate of **\$64.55** per pay period [$\$250,000 \div 3,873$ pay periods in PAGA date range], given the fact Defendant is paying an additional \$2,250,000 in the class settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in good faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are generally considered reasonable.⁵ (*Ibid.*)

Considering Defendant's defenses, supporting evidence, and position the case is not suitable for class treatment, the Settlement 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 **\$4,658,280.18** on the low end and **\$5,044,614.65** on the high end. (Han Decl., *supra*, at ¶ 58.)

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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].)

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 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".)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$676,795.10	70%	70%	\$60,911.56
Meal Break Premiums	\$1,156,838.94	60%	70%	\$138,820.67
Overtime/Minimum Wage: Off-the-Clock Work	\$772,668.94 to \$1,159,003.41	60%	60%	\$123,627.03 to \$185,440.55
Unreimbursed Business Expenses	\$342,540	20%	60%	\$109,612.80
Wage Statement Penalty	\$373,650	35%	35%	\$157,867.13
Waiting Time Penalty	\$1,335,787.20	35%	35%	\$564,370.09
MAXIMUM TOTAL EXPOSURE	\$4,658,280.18 to \$5,044,614.65⁶			\$1,155,209.28 to \$1,217,022.80⁷

Based on this analysis, the realistic recovery for this case is **\$1,155,209.28** on the low end and **\$1,217,022.80** on the high end. (Han Decl., *supra*, at ¶ 66.) The Gross Settlement Amount is about forty-nine percent (49.56%) of the maximum potential exposure and well above the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re 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 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular 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, the Settlement provides significant recovery for the Class Members.

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⁶ (Han Decl., *supra*, at ¶¶ 45-51.)

⁷ (*Id.* at ¶¶ 60-65.)

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

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

8 The Class is ascertainable and numerous as to make it impracticable to join all Class
9 Members, and there are common questions of law and fact amongst the Class. (Han Dec., *supra*,
10 at ¶ 67.) Plaintiff contends, as a former employee of Defendant, his claims are typical of the claims
11 of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*)
12 Also, Plaintiff asserts the prosecution of separate actions by individual Class Members would
13 create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

15 “Ascertainability is required in order to give notice to putative class members as to whom
16 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
17 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
18 by describing a set of common characteristics sufficient to allow a member of that group to
19 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
20 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
21 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

22 This case involves about five hundred five (505) Class Members, meaning the Class is
23 sufficiently numerous. (Han Dec., *supra*, at ¶ 68.) Class Members will be identified by Defendant
24 to the Administrator through a review of Defendant’s employment records. (*Ibid.*)

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27 ///

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

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

11 **1. Common Issues Predominate**

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

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 69.) Plaintiff contends all persons employed by Defendant as non-
25 exempt or commissioned sales employees in California during the Class Period were subject to
26 the same or similar policies, practices, and procedures described in detail above. (*Ibid.*)

27 ///

28 ///

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 employee of Defendant and alleges he and the Class Members were employed by the same company and injured by Defendant's common policies, practices, and procedures related to the claims described above. (Han Dec., *supra*, at ¶ 70.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate representative. (Han Dec., *supra*, at ¶ 71.) Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff also has no interests averse to the interests of the Class Members. (*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. Because some Class Members are current employees, Plaintiff believes the fear of retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find the proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 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

1 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors
2 is small. (*Dunk*, 48 Cal.App.4th at p. 1802.) These elements are present herein.

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

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

5 If the court has certified the action as a class action, notice of the final approval
6 hearing must be given to class members in the manner specified by the court. The
7 notice must contain an explanation of the proposed settlement and procedures for
8 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.

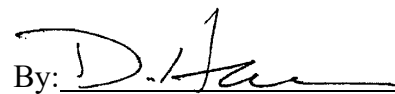
9 The Class Notice meets all these requirements. The Class Notice advises the Class
10 Members of their right to participate in the Settlement; how and when to object to or request
11 exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

12 **V. CONCLUSION**

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

17
18 Dated: December 1, 2022

JUSTICE LAW CORPORATION

19
20 By: 

Douglas Han
Attorneys for Plaintiff



Court Reservation Receipt

Reservation

Reservation ID:
464587648405

Status:
RESERVED

Reservation Type:
Motion re: (Preliminary Approval of Class Action
Settlement)

Number of Motions:
1

Case Number:
RG21114991

Case Title:
Harris VS Mancini's Sleepworld Inc, a California
corporation

Filing Party:
Shaun Harris (Plaintiff)

Location:
Rene C. Davidson Courthouse - Department 23

Date/Time:
February 14th 2023, 3:00PM

Confirmation Code:
CR-7MDNQMXXARIQFGUMVA

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	.00	1	.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:
\$1.00

Type:
Visa

Account Number:
XXXX1109

Authorization:
01897G

Payment Date:
2022-10-20

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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, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On December 1, 2022, 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: **Harris v. Mancini's Sleepworld, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-907563-22**
Court Case No.: RG21114991
Alameda County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 1, 2022, at Pasadena, California.



Mariah Anderson