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

DESIREE SANCHEZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

HORIZON HEALTH & SUB-ACUTE, LLC,
a California limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 30-2021-01226692-CU-OE-CXC

Assigned for All Purposes to:
Honorable Peter Wilson
Department CX-101

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); Declaration of Proposed
Settlement Administrator (Jodey Lawrence);
and [Proposed] Order filed concurrently
herewith]

Hearing Date: July 27, 2023
Hearing Time: 2:00 p.m.
Hearing Place: Department CX-101

Complaint Filed: October 18, 2021
FAC Filed: February 21, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on July 27, 2023, at 2:00 p.m. or as soon as the matter
2 may be heard, before the Honorable Peter Wilson in Department CX-101 of the Orange County
3 Superior Court (Civil Complex Center) located at 751 West Santa Ana Boulevard, Santa Ana,
4 California 92701, Plaintiff Desiree Sanchez (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2**
8 to the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds;
- 10 • Conditionally certifying the proposed Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
14 attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class
15 Action Settlement and Settlement Agreement;
- 16 • Approving the proposed Request for Exclusion Form (“Opt Out” From)
17 (“Exclusion Form”) attached as **Exhibit B** to the [Proposed] Order Preliminarily
18 Approving Class Action Settlement and Settlement Agreement;
- 19 • Approving the proposed Objection Form attached as **Exhibit C** to [Proposed]
20 Order Preliminarily Approving Class Action Settlement and Settlement
21 Agreement;
- 22 • Directing the mailing of the proposed Class Notice, Exclusion Form, and
23 Objection Form (collectively, known as the “Notice Packet”) with a postage-paid
24 return envelope to the proposed Class;
- 25 • Approving the proposed deadlines for the notice and settlement administration
26 process;

- Approving Phoenix Class Action Administration Solutions as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorneys' Fees, Costs, Class Representative Enhancement Payment, Administration Costs, and Private Attorneys General Act of 2004 ("PAGA") Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration of the Proposed Settlement Administrator (Jodey Lawrence); [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: May 12, 2023

JUSTICE LAW CORPORATION

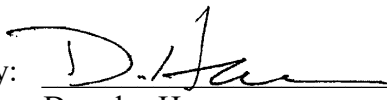
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$720,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of herself and all current and former
4 hourly-paid or non-exempt employees employed by Defendant in California during the time
5 period from April 22, 2017 to March 31, 2023 (“Class,” “Class Members,” and “Class Period”).
6 At the time of this filing, the number of Class Members confirmed by Defendant is estimated to
7 be one thousand three hundred and fifty (1,350). (Declaration of Douglas Han In Support of
8 Plaintiff’s Motion For Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

9 It is requested this Court grant Preliminary Approval because when analyzing the
10 strengths and vulnerabilities of the class claims alongside the potential liability exposure, this
11 Settlement is well within the range of reasonableness. Plaintiff and Class Counsel are convinced
12 the Settlement is in the best interests of the Class Members based on the negotiations and detailed
13 knowledge of the issues presented in this matter.

14 **II. BACKGROUND**

15 On October 18, 2021, Plaintiff filed a wage-and-hour class action lawsuit against
16 Defendant Horizon Health & Sub-Acute, LLC in the Superior Court of California, County of
17 Orange. Plaintiff’s lawsuit alleged the following violations: (a) Labor Code sections 510 and 1198
18 (unpaid overtime); (b) Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (c)
19 Labor Code section 226.7 (unpaid rest period premiums); (d) Labor Code sections 1194 and 1197
20 (unpaid minimum wages); (e) Labor Code sections 201 and 202 (final wages not timely paid); (f)
21 Labor Code section 226(a) (non-compliant wage statements); (g) Labor Code sections 2800 and
22 2802 (unreimbursed business expenses); and (h) Business & Professions Code section 17200, *et*
23 *seq.* (Han Decl., *supra*, at ¶ 10.)

24 On October 3, 2022, the Parties remotely attended mediation with Hon. Carl West, Jr.
25 (Ret.), a well-respected mediator experienced in wage-and-hour class actions. The Parties did not
26 settle at mediation, however, subsequently Class Counsel learned of Defendant’s financial
27 condition that forced Defendant to enter into a Management Assignment Transaction. Based on
28

1 these financial condition and realities of further litigation and difficulties of collection the Parties
2 reached settlement. (Han Decl., *supra*, at ¶ 11.)

3 On October 21, 2022, Plaintiff provided written notice to the California Labor and
4 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 12.)

5 In line with the settlement, Plaintiff filed a First Amended Complaint on February 21,
6 2023, that added a cause of action under California Labor Code section 2698 et seq. (PAGA).
7 (Han Decl., *supra*, at ¶ 13.)

8 **III. INVESTIGATION/ LITIGATION HISTORY**

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

10 Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
11 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production
12 of documents. (Han Decl., *supra*, at ¶ 15.) After responding to discovery, the Parties met and
13 conferred and agreed to engage in an informal exchange of information and eventually attend
14 mediation. (*Ibid.*)

15 Both before and after the case was filed, the Parties conducted significant investigation
16 and discovery of the relevant facts and law. (Han Decl., *supra*, at ¶ 16.) Prior to mediation,
17 Defendant produced documents relating to their wage-and-hour policies, practices, and
18 procedures, including those regarding meal and rest breaks, overtime, and timekeeping
19 procedures. (*Ibid.*) Plaintiff also reviewed time and pay records and information relating to the
20 size and scope of the Class, as well as data permitting Plaintiff to understand the number of
21 workweeks and pay periods in the Class Period. (*Ibid.*) Furthermore, several putative class
22 members who worked for Defendant during the Class Period (at least 30) were interviewed to
23 obtain a better understanding of the extent and frequency of the alleged day-to-day violations.
24 (*Ibid.*)

25 Once Defendant raised issues regarding financial condition, Class Counsel demanded and
26 reviewed extensive financial records. (Han Decl., *supra*, at ¶ 17.) Defendant provided its most
27 current balance sheet and profit and loss statement. (*Ibid.*) Defendant also provided its year-end
28 balance sheets for 2019, 2020, and 2021 and profit and loss statements for the same years. (*Ibid.*)

1 Defendant provided accounts payable aging report, accounts receivable aging reports, PPP loan
2 promissory notes and PPP loan amortization schedules along with notes accompanying each of
3 these statements. (Han Decl., *supra*, at ¶ 17.) Finally, Defendant provided its summary of inter-
4 company debt owed to its affiliates. (*Ibid.*) Moreover, Class Counsel hired a forensic accountant
5 to review and analyze these documents who confirmed that Defendant’s representations were
6 valid. (*Ibid.*)

7 Based upon the information provided by Defendant and interviews with putative class
8 members, Plaintiff contends – and Defendant deny – Defendant: (1) failed to provide employees
9 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
10 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
11 statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-24.)

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

13 **i. The Parties Attended Mediation and Negotiated in Good Faith**

14 The Parties remotely attended mediation with experienced wage-and-hour mediator Hon.
15 Carl West, Jr. (Ret.) on October 3, 2022. (Han Decl., *supra*, at ¶ 26.) During the mediation, the
16 Parties discussed the risks of continued litigation, likelihood of certification, and merits of the
17 Parties’ claims and defenses versus the benefits of settlement. (*Ibid.*) While the Parties did not
18 settle at mediation, continued negotiations eventually resulted in a settlement, the terms of which
19 were memorialized in the Joint Stipulation and Settlement Agreement (“Settlement Agreement,”
20 “Settlement,” or “Agreement”) the Parties seek Preliminary Approval of. (*Id.* at ¶ 26; Exhibit 2.)

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

22 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at
23 ¶ 29.) Though cordial and professional, the settlement negotiations have always been adversarial
24 and non- collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted extensive
25 arm’s-length settlement negotiations until an agreement was ultimately reached. (*Ibid.*)
26 Nevertheless, the ultimate factor determining the settlement was Defendant’s financial condition
27 and ability to pay. (*Ibid.*)

28 ///

1 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
2 and length of additional proceedings necessary to continue the litigation through class
3 certification, trial, and any possible appeals. (Han Decl., *supra*, at ¶ 30.) Plaintiff and Class
4 Counsel have considered the uncertainty and risk of further litigation, potential outcome, and
5 difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel also
6 considered Defendant’s current and ongoing financial hardship. Based on the foregoing, Plaintiff
7 and Class Counsel believe the settlement set forth in the Agreement is a fair, adequate, and
8 reasonable settlement, and is in the Class Members’ best interests. (*Ibid.*)

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

10 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
11 of the Parties claims and defenses and engaged in sufficient investigation, research, and discovery
12 to support the Settlement Agreement. (Han Decl., *supra*, at ¶ 31.) The Settlement Agreement was
13 only possible following significant investigation and evaluation of the relevant policies and
14 procedures in place and the data produced. (*Ibid.*) Once Defendant raised issues regarding
15 financial condition, Class Counsel demanded and reviewed extensive financial records. (Han
16 Decl., *supra*, at ¶ 17.) Defendant provided its most current balance sheet and profit and loss
17 statement. (*Ibid.*) Defendant also provided its year-end balance sheets for 2019, 2020, and 2021
18 and profit and loss statements for the same years. (*Ibid.*) Defendant provided accounts payable
19 aging report, accounts receivable aging reports, PPP loan promissory notes and PPP loan
20 amortization schedules along with notes accompanying each of these statements. (*Ibid.*) Finally,
21 Defendant provided its summary of inter-company debt owed to its affiliates. (*Ibid.*) Moreover,
22 Class Counsel hired a forensic accountant to review and analyze these documents who confirmed
23 that Defendant’s representations were valid. (*Ibid.*) Collectively, this information permitted Class
24 Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl.,
25 *supra*, at ¶ 31.) Furthermore, this case has reached the stage where “the Parties certainly have a
26 clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement.
27 (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

28 ///

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

2 **i. Deductions from the Settlement**

3 The Parties agreed (subject to and contingent upon the Court’s approval) this case be
4 settled and compromised for the Gross Settlement Amount. (Han Decl., *supra*, at ¶ 26.) The
5 Gross Settlement Amount includes a fixed Minimum Settlement Payment of \$720,000 plus any
6 Cash Recoveries made by Defendant (“Escalator Payments”). (*Ibid.*) From the Gross Settlement
7 Amount the following will be deducted: (a) Attorneys’ Fees of \$240,000 (one-third of the Gross
8 Settlement Amount) to Class Counsel; (b) Costs of up to \$25,000 to Class Counsel; (c) Class
9 Representative Enhancement Payment of up to \$10,000 to Plaintiff; (d) Administration Costs of
10 up to \$15,500 to Phoenix Class Action Administration Solutions, the Settlement Administrator;
11 and (e) PAGA Payment of \$50,000, seventy-five percent (75%) of which (\$37,500) will be paid
12 to the LWDA and twenty-five percent (25%) of which (\$12,500) shall be distributed to Eligible
13 Aggrieved Employees, on a pro rata basis. (*Ibid.*)

14 **ii. Calculation of the Individual Settlement Payments**

15 After all Court-approved deductions from the Minimum Settlement Payment, it is
16 currently estimated \$379,500 (“Net Settlement Amount”) will be distributed to all Class Members
17 who do not submit valid and timely requests to exclude themselves from the Settlement
18 (“participating Class Members”), resulting in a gross average Individual Settlement Payment of
19 \$281.11.¹ (Han Decl., *supra*, at ¶ 28.)

20 Individual Settlement Payments will be calculated using the formula set forth in the
21 Settlement. (Settlement Agreement § 11(a); attached as Exhibit 2 to Han Decl.) Eligible
22 Aggrieved Employees’ portion of the PAGA Payment will be calculated using the formula set
23 forth in the Settlement. (Settlement Agreement § 12(a)).

24 _____
25 ¹ Class Counsel cannot (at this time) provide the expected *high, average, and low* Individual
26 Settlement Payments or Plaintiff’s expected Individual Settlement Payment. This is because,
27 pursuant to the Settlement Agreement, Defendant must first provide the Settlement Administrator
28 the Class List within fifteen (15) calendar days after entry of the Preliminary Approval Order.
Thus, the Settlement Administrator will not have the information needed to calculate the expected
high, average, and low Individual Settlement Payments or Plaintiff’s expected Individual
Settlement Payment until after entry of the Preliminary Approval Order.

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

3 Individual Settlement Payments will be apportioned as follows: twenty percent (20%) as
4 wages and eighty percent (80%) as penalties and interest. (Settlement Agreement § 26.)

5 The allocation of wages, penalties, and interest indicated above was based on the potential
6 realistic exposure analysis. (Han Decl., *supra*, at ¶ 48.) The potential wage exposure range is
7 \$284,729.41 to \$427,094.00. (*Ibid.*) The average of these two numbers is \$355,911.71. The
8 realistic exposure analysis for meal break penalties, rest break penalties, business expenses, wage
9 statement penalties and waiting time penalties equals \$1,813,436.64. (*Ibid.*) The ratio of potential
10 wage exposure is 19.62% percent of the potential penalties exposure. Therefore, the 20% percent
11 allocation to wages are justified.

12 **iv. Notice to the Class**

13 Within fifteen (15) calendar days after entry of the Preliminary Approval Order,
14 Defendant shall deliver the Class List to the Settlement Administrator. (Settlement Agreement §
15 15.) The Settlement Administrator will then conduct a National Change of Address Database
16 search for all Class Members to obtain the most up-to-date address. (Settlement Agreement § 16.)

17 Within fourteen (14) calendar days after the receipt of the Class List, the Settlement
18 Administrator will mail the Notice Packet to all identified Class Members via first-class regular
19 U.S. Mail, using the most current mailing address information available. (Settlement Agreement
20 § 17.) The Notice Packet will only be mailed in English and Spanish. Participating Class Members
21 are not required to submit a claim form to receive their Individual Settlement Payments.

22 **v. Distribution of Funds**

23 The Settlement will be funded and distributed in the manner and schedule set forth in the
24 Settlement Agreement. (Settlement Agreement § 23.)

25 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
26 their Individual Settlement Payment checks within one hundred twenty (120) calendar days after
27 the checks are mailed to them. (Settlement Agreement § 24.) Uncashed settlement checks will
28 be paid to the California State Controller's Unclaimed Property Division. (*Ibid.*)

1 **vi. Release of Claims**

2 As of the Effective Date, the claims or causes of action alleged by Plaintiff based by the
3 Amended Complaint, or which could have been alleged by Plaintiff based on upon the facts,
4 causes of action and legal theories stated by Plaintiff by the Amended Complaint will be released.
5 (Settlement Agreement § 35.)

6 As of the Effective Date Plaintiff, the State of California, the LWDA, and Eligible
7 Aggrieved Employees shall be barred from asserting any and all PAGA Claims alleged by the
8 Amended Complaint or by the PAGA noticed filed on October 21, 2022. (Settlement Agreement
9 § 38.) Plaintiff will also provide a general release. (Settlement Agreement § 35(e).)

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

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

19 Counsel for both Parties are particularly experienced in wage-and-hour employment law
20 and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
21 numerous cases on behalf of employees for Labor Code violations and are experienced and
22 qualified to evaluate the class claims, advantages and disadvantages of settlement versus trial,
23 and viability of the defenses. (*Ibid.*) Class Counsel’s experience guided their determination to
24 endorse the Settlement.² (*Ibid.*)

25
26 _____
27 ² The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
28 number of objectors – is not determinable until the Notice Packet has been provided to the Class
Members, and they have had an opportunity to respond. This information will be provided to the
Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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.³
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 (b) Any party to a settlement agreement may serve and file a written notice of
11 motion for preliminary approval of the settlement. The settlement
12 agreement and proposed notice to class members must be filed with the
13 motion, and the proposed order must be lodged with the motion.

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

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

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

25 In weighing the strength of the case, *Kullar* instructs the court is not to “decide the merits
26 of the case or to substitute its evaluation of the most appropriate settlement for that of the
27 attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not

28 ³ The California Supreme Court authorized California’s trial courts to use Federal Rule 23
and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, the Parties Federal Rule 23 and federal case law in addition to California law.

1 require a statement of the maximum sum the class could recover if the plaintiff prevailed on all
2 claims, provided there is a record allowing “an understanding of the amount that is in controversy
3 and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of*
4 *Los Angeles, supra*, 186 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement
5 as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that
6 the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

7 **i. The Settlement Amount of \$720,000 Is Fair and Reasonable**

8 The Settlement was only possible following significant investigation and evaluation of the
9 relevant policies and procedures and the data produced for the putative class, as referenced in
10 Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability
11 and potential damages. (Han Decl., *supra*, at ¶ 31.)

12 This investigation and evaluation informed the central theories of liability. The claims are
13 predicated on the alleged: (a) failure to pay overtime wages; (b) failure to provide meal and rest
14 breaks and pay applicable premiums; (c) failure to pay minimum wages; (d) failure to timely pay
15 wages; (e) failure to issue compliant wage statements; (f) failure to reimburse business expenses;
16 (g) violation of Labor Code sections 2698, *et seq.* (PAGA); and (h) violation of Business &
17 Professions Code sections 17200, *et seq.* (Han Decl., *supra*, at ¶ 32.) Defendant vehemently deny
18 the theories of liability. (*Id.* at ¶ 33.)

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

25
26 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
27 of class claiming misclassification and ordering summary adjudication in favor of employees],
28 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

1 **ii. The PAGA Payment of \$50,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
3 not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510,
4 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 42.)
5 Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties
6 are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained they had a
7 strong argument it would be unjust to award maximum PAGA penalties given the law’s unsettled
8 state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
9 penalties by 30% under this authority].) Defendant argued without stacking and limited to the
10 initial violation, the PAGA penalties would be limited to \$78,500 (785 employees x \$100 initial
11 violation) on the low end and \$471,000 (785 employees x \$100 x 6 theories of recovery) on the
12 high end. (Han Decl., *supra*, at ¶¶ 42-45.)

13 Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
14 at ¶ 47.) Many of the causes of action brought were duplicative of the statutory claims, such as
15 Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*)
16 Thus, allocating \$50,000 to PAGA civil penalties was reasonable, given the fact given the fact
17 that Defendant is also paying an additional \$670,000 in the Settlement. (*Ibid.*) When PAGA
18 penalties are negotiated in good faith and “there is no indication that [the] amount was the result
19 of self-interest at the expense of other Class Members,” such amounts are generally considered
20 reasonable.⁵ (Han Decl., *supra*, at ¶ 56.)

21 Considering Defendant’s defenses, supporting evidence, and position that the case is not
22 suitable for class treatment, the settlement amount is reasonable, adequate, and fair.

23
24 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141
25 Cal.App.4th 1422 [affirming denial of certification].)

26 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579,
28 “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any
damages to the PAGA claims”).)

c. Discount Analysis Justifies the Settlement

48. Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately \$9,543,059.28 on the low end and \$10,254,992.80 on the high end.. (Han Decl., *supra*, at ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic ⁶ Exposure
Rest Break Premiums	\$1,269,050.42	70%	60%	\$152,286.05
Meal Break Premiums	\$534,094.21	60%	60%	\$85,455.04
Overtime/Minimum Wage: Off-the-Clock Work	\$1,423,647.05 to \$2,135,470.57	60%	50%	\$284,729.41 to \$427,094.00
Unreimbursed Business Expenses	\$337,120	20%	70%	\$80,908.80
Wage Statement Penalty	\$1,530,750	50%	50%	\$382,687.50
Waiting Time Penalty	\$4,448,397.60	50%	50%	\$1,112,099.25
MAXIMUM TOTAL EXPOSURE	\$9,543,059.28 to \$10,254,992.80			\$2,098,166.05 to \$2,240,530.64

Based on this analysis, the realistic recovery is \$2,098,166.05 on the low end and \$2,240,530.64 on the high end. (Han Decl., *supra*, at ¶ 55.) The Minimum Settlement Payment of \$720,000 is about seven percent (7%) of the maximum potential exposure and around thirty-two percent (32%) of the maximum realistic exposure at trial. (*Ibid.*) Given that financial condition of Defendant, the Minimum Settlement Payment alone is a fair and reasonable 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

⁶ The potential exposure and the discount analysis is detailed in Han Decl. ¶¶ 36-41 and ¶¶ 49-54

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 considering the risks at certification, trial and Defendant’s financial condition.

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 if 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 ¶ 56.) Plaintiff contends, as a former hourly-paid, non-exempt employee of Defendant, her 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, and a class action is superior to other available means for the fair and efficient adjudication of the case. (*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 Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

This case involves approximately one thousand three hundred and fifty (1,350) Class Members, which is sufficiently numerous. (Han Decl., *supra*, at ¶ 57.) All Class Members can

1 and will be identified by the Settlement Administrator through a review of employment records
2 concerning all hourly-paid, non-exempt California employees of Defendant during the Class
3 Period. (Han Decl., *supra*, at ¶ 57.)

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

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

14 **1. Common Issues Predominate**

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

26 Plaintiff asserts common issues of fact and law predominate as to each of the claims
27 alleged. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends all Class Members were subject to the
28 same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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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 she and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 59.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Plaintiff's 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 has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 60.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands her fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of the work environment and requirements. (*Ibid.*) Furthermore, Plaintiff has no interest averse to the interests of the Class. (*Ibid.*)

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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 numerous individual actions would necessitate. Because some Class Members may still be 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.

25

In deciding 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.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is

1 presumed fair under the following circumstances: (1) parties reached settlement after arm's-
2 length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court
3 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors
4 is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) All these elements are
5 present here.

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

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

8 If the court has certified the action as a class action, notice of the final approval
9 hearing must be given to class members in the manner specified by the court. The
10 notice must contain an explanation of the proposed settlement and procedures for
11 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.

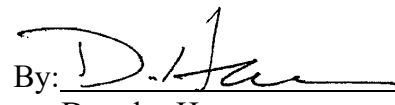
12 The Notice Packet meets all these requirements. The Notice Packet advises the Class
13 Members of their right to participate in the Settlement, how and when to object to or request
14 exclusion from the Settlement, and date, time, and location of the Final Approval Hearing. (See
15 Han Decl., *supra*, Exhibit 2.)

16 **V. CONCLUSION**

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

21
22 Dated: May 12, 2023

JUSTICE LAW CORPORATION

23
24 By: 
25 Douglas Han
26 Attorneys for Plaintiff
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is hdonnelly@justicelawcorp.com

On May 12, 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: **Sanchez v. Horizon Health & Sub-Acute, LLC**
LWDA/Court Case No.: **LWDA-CM-915245-22**
30-2021-01226692-CU-OE-CXC
Orange County Superior Court

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

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

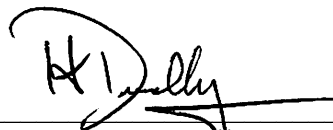
[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on May 12, 2023, at Pasadena, California.



Heather Donnelly