

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
LIZETTE RODRIGUEZ (SBN 335182)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JESSICA CENDEJAS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PERFORMANCE MACHINE, LLC, a
Delaware limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 22STCV33442
[Consolidated With Case No. 23STCV06759]

Assigned for All Purposes to:
Honorable Lawrence P. Riff
Department 7

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 Class
Representative (Jessica Cendejas); Declaration
of Jodey Lawrence; Declaration of Nicholas
Kanter; Declaration of Chris Lindstrom; and
[Proposed] Order filed concurrently herewith]

Hearing Date: January 24, 2024
Hearing Time: 10:00 a.m.
Hearing Place: Department 7

Complaint Filed: October 13, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on January 24, 2024 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Lawrence P. Riff in Department 7 of the Los Angeles
3 County Superior Court (Spring Street Courthouse) located at 312 North Spring Street, Los
4 Angeles, California 90012, Plaintiff Jessica Cendejas (“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’ Class Action and PAGA Settlement
8 Agreement (“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;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiff as the class representative;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the deadlines for the notice and settlement administration process;
- 20 • Approving Phoenix Class Action Administration Solutions as the Administrator;
21 and
- 22 • Scheduling a hearing to consider whether to grant final approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant final
24 approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payment, and
26 Administration Expenses Payment, and Private Attorneys General Act of 2004
27 (“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 Class
3 Representative (Jessica Cendejas); Declaration of Jodey Lawrence; Declaration of Nicholas
4 Kanter; Declaration of Chris Lindstrom; [Proposed] Order filed concurrently with this motion;
5 pleadings and other records on file with the Court in this matter; and such documentary evidence
6 and oral argument as may be presented at the hearing.

7
8 Dated: December 7, 2023

JUSTICE LAW CORPORATION

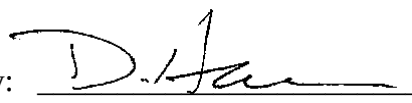
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10 By: 
11 Douglas Han
12 Attorneys for Plaintiff
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 settlement by Plaintiff on behalf of herself and all current and former hourly-paid or non-exempt
4 employees of Defendant Performance Machine, LLC (“Defendant”) within the State of California
5 at any time during the period from October 13, 2018, through the date of preliminary approval
6 (“Class” and “Class Period”). At this time, the number of Class Members is estimated to be one
7 hundred forty-seven (147), which was confirmed by Defendant. (Declaration of Douglas Han In
8 Support of Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

9 **II. BACKGROUND**

10 On October 12, 2022, Plaintiff provided written notice to the California Labor and
11 Workforce Development and Defendant. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

12 On October 13, 2022, Plaintiff filed a wage-and-hour class action lawsuit against
13 Defendant in the Superior Court of California, County of Los Angeles (Case No. 22STCV33442),
14 alleging nine (9) causes of action. (Han Decl., *supra*, at ¶ 11; Exhibit 4.)

15 On March 28, 2023, Plaintiff filed a PAGA action in the Superior Court of California,
16 County of Los Angeles (Case No. 23STCV06759). (Han Decl., *supra*, at ¶ 12; Exhibit 5.)

17 On July 19, 2023, the Court consolidated the class action and PAGA action pursuant to a
18 joint stipulation and designated the class action as the lead case. (Han Decl., *supra*, at ¶13.)

19 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
20 mediation with the mediator Jason Marsili on August 31, 2023, eventually resulting in a tentative
21 settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 14.)

22 **III. INVESTIGATION/ LITIGATION HISTORY**

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

24 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.)
25 The Parties propounded form interrogatories, special interrogatories, requests for admission, and
26 requests for production of documents. (*Ibid.*) The Parties responded to the formal discovery
27 requests. (*Ibid.*) Thereafter, the Parties met and conferred and agreed to engage in an informal
28 exchange of information and then eventually remotely attended mediation. (*Ibid.*)

1 Prior to mediation, the Parties conducted investigation and discovery of the relevant facts
2 and law. (Han Decl., *supra*, at ¶ 17.) Defendant produced several documents relating to its
3 policies, practices, and procedures. (*Ibid.*) Defendant also assembled and produced, and Plaintiff
4 reviewed, a random sampling of time and pay records, information relating to the size and scope
5 of the Class. (*Ibid.*) Putative class members were also located and interviewed to attain a better
6 understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

7 Based upon the information provided by Defendant and interviews with putative class
8 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
9 with legally mandated rest and meal breaks; (2) failed to pay employees for all hours worked; (3)
10 failed to factor non-discretionary bonuses into employees’ regular rate of pay; (4) failed to
11 reimburse employees for necessary business expenses; (5) issued noncompliant wage statements;
12 and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-26.)

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

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

15 The Parties remotely attended mediation on August 31, 2023 with experienced wage-and-
16 hour mediator Jason Marsili. (Han Decl., *supra*, at ¶ 27.) During the mediation, the Parties
17 discussed the risks of continued litigation, likelihood of certification, and merits of the claims and
18 defenses versus the benefits of settlement. (*Ibid.*) With the assistance of the mediator, the Parties
19 eventually reached a settlement via a mediator’s proposal, the terms of which were memorialized
20 in the Settlement Agreement. (*Id.* at ¶ 27; Exhibits 2, 6.)

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 ¶ 30.) 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 exceptional settlement was reached. (*Ibid.*)

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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. (Han Decl., *supra*, at ¶
3 31.) Plaintiff and Class Counsel considered the uncertainty and risk of further litigation, potential
4 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the foregoing,
5 Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement,
6 and is in the Class Members’ best interests. (*Ibid.*)

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

8 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
9 of the claims and defenses before reaching the Settlement and engaged in sufficient investigation,
10 research, and discovery to support the Settlement. (Han Decl., *supra*, at ¶ 32.) The Settlement
11 was possible following significant investigation and evaluation of the relevant policies and
12 procedures and the data produced for the putative class. (*Ibid.*) This case has reached the stage
13 where the Parties understand “the strength of the case; the reasonableness of the settlement in
14 light of the attendant risks of litigation, and in light of the best possible recovery” sufficient to
15 support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 32; *Boyd*
16 *v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court’s approval) this matter be settled and
20 compromised for the non-reversionary total sum of \$195,000 (“Gross Settlement Amount”),
21 which includes: (1) Class Counsel Fees Payment not to exceed \$68,250 (35% of the Gross
22 Settlement Amount); (2) Class Counsel Litigation Expenses Payment not to exceed \$15,000; (3)
23 Class Representative Service Payment not to exceed \$10,000; (4) Administration Expenses
24 Payment not to exceed \$15,000; and (e) PAGA Penalties not to exceed \$15,000. (Han Decl.,
25 *supra*, at ¶ 28; Exhibit 7.)

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1 **ii. Calculation of Settlement Payments**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$71,750 (“Net Settlement Amount”) will be distributed to Class Members who do not submit
4 valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”) –
5 with an *average* gross Individual Class Payment of \$488.10. (Han Decl., *supra*, at ¶ 29.)

6 The Administrator will calculate and pay Individual Class Payments using the formula set
7 forth in the Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § C(2)(d).) Individual
8 Class Payments will be allocated twenty percent (20%) to the settlement of wage claims and
9 eighty percent (80%) to the settlement of claims for interest and penalties. (*Id.* at § C(2)(i).)
10 Defendant will pay employer’s share of payroll taxes separately and apart from the Gross
11 Settlement Amount. (*Id.* at §§ C(1), G(8)(h).)

12 The Administrator will also calculate and pay Individual PAGA Payments using the
13 formula set forth in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § C(2)(e)(i).)
14 Individual PAGA Payments will be allocated one hundred percent (100%) to the settlement of
15 interest and penalties. (*Id.* at § C(2)(e)(ii).)

16 **iii. Notice to the Class**

17 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
18 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at
19 ¶ 27; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
20 Class Data, the Administrator will send the Class Notice in English and Spanish to all Class
21 Members identified in the Class Data via first-class USPS mail. (*Id.* at § G(4)(c).)

22 **iv. Distribution of Funds**

23 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
24 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ D(2), D(3).)
25 Uncashed settlement checks will be canceled and transmitted to the California Controller’s
26 Unclaimed Property Fund. (*Id.* at §§ D(3)(a), D(3)(c).)

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1 **v. Release of Claims**

2 Effective on the date when Defendant fully funds the Gross Settlement Amount, all
3 Participating Class Members, on behalf of themselves and former and present representatives,
4 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
5 the Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(3).)

6 Effective on the date when Defendant fully funds the Gross Settlement Amount, all
7 Participating and Non-Participating Class Members, who are Aggrieved Employees, are deemed
8 to release, on behalf of themselves and former and present representatives, agents, attorneys,
9 heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA
10 Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § E(4).)

11 Effective on the date when Defendant fully funds the Gross Settlement Amount, Plaintiff
12 and her former and present spouses, representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns generally release and discharge Released Parties from Plaintiff’s Released
14 Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at §§ E(1), E(2).) Furthermore, Plaintiff
15 knowingly and voluntarily waives any and all rights or benefits she may have under the terms of
16 Civil Code section 1542. (*Id.* at § E(1)(a).)

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

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

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

7 **IV. ARGUMENT**

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

9 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
10 "Before final approval, the court must conduct an inquiry into the fairness of the proposed
11 settlement." (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
12 preliminary approval of class settlements:

- 13 (a) A settlement or compromise of an entire class action, or a cause of action in
14 a class action, or as to a party, requires the approval of the court after
15 hearing.
16 ...
17 (c) Any party to a settlement agreement may serve and file a written notice of
18 motion for preliminary approval of the settlement. The settlement
19 agreement and proposed notice to class members must be filed with the
20 motion, and the proposed order must be lodged with the motion.

21 Courts have discretion to approve settlements that are fair, not collusive, and consider
22 "all the normal perils of litigation as well as the additional uncertainties inherent in complex
23 class actions.'" (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert.
24 den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)
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26 ¹ The final factor mentioned in *Dunk v. Motor Co.* (1996) 48 Cal.App.4th 1794 – the
27 number of objectors – is not determinable until the Class Notice has been provided to the Class
28 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.

² 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 cite Federal Rule 23 and federal case law in addition to California law.

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

2 An understanding of the amount in controversy is an important factor in whether the
3 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses
4 of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)
5 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
6 186 Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case
7 for plaintiffs on the merits, balanced against the amount offered in settlement.”” (*Kullar*, at p.
8 130; see also *Munoz*, at p. 409.)

9 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
10 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
11 *Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the
12 maximum amount the class could recover if plaintiff prevailed on all claims, provided there is a
13 record allowing ““an understanding of the amount that is in controversy and the realistic range of
14 outcomes of the litigation.”” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186
15 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under
16 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
17 within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

18 **i. The Settlement Amount of \$195,000 Is Fair and Reasonable**

19 The Settlement was only possible following significant investigation and evaluation of the
20 relevant policies and procedures and the data produced for the putative class, as referenced in
21 Section III above, which permitted Class Counsel to engage in a comprehensive analysis of
22 liability and potential damages. (Han Decl., *supra*, at ¶ 32.)

23 This investigation and evaluation informed the central theories of liability predicated on
24 the alleged: (1) failure to properly pay overtime wages; (2) failure to provide compliant meal and
25 rest breaks and properly and consistently pay premium wages; (3) failure to pay minimum wages;
26 (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to
27 reimburse business expenses; (7) violation of Labor Code section 2698, *et seq.* (PAGA); and (8)
28

violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 33.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 34.)

While Plaintiff believes the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 35.) 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.*) These factors led discounting the calculations of potential damages.

ii. The PAGA Penalties of \$15,000 Is Reasonable

The provisions of the Labor Code triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 46.) Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a strong argument it would be unjust to award maximum PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 46; *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 **\$7,200** (72 employees x \$100 penalty for initial violation) on the low end and **\$43,200** (72 employees x \$100 penalty for initial violation x 6 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 47-49.)

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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 Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguir 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].)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 50.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$15,000 to PAGA civil penalties was reasonable given that Defendant is paying an additional \$180,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

Considering the defenses, supporting evidence, and position that 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 **\$1,548,798.23** on the low end and **\$1,680,055.73** on the high end. (Han Decl., *supra*, at ¶ 51.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$443,838.50	75%	65%	\$38,835.87
Meal Break Premiums	\$39,049.15	65%	55%	\$6,150.24
Overtime/Minimum Wage: Off-the-Clock Work	\$262,376.25 to \$393,633.75	65%	55%	\$41,324.26 to \$61,997.32
Regular Rate	\$22,889.13	35%	45%	\$8,182.86
Unreimbursed Business Expenses	\$100,790	35%	75%	\$16,378.38
Wage Statement Penalty	\$212,400	65%	65%	\$26,019
Waiting Time Penalty	\$467,455.20	65%	65%	\$57,263.26
MAXIMUM TOTAL EXPOSURE	\$1,548,798.23 to \$1,680,055.73⁵			\$194,153.87 to \$214,826.93⁶

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

⁵ (Han Decl., *supra*, at ¶¶ 36-45.)

⁶ (*Id.* at ¶¶ 52-58.)

1 Based on this analysis, the realistic recovery for this case is **\$194,153.87** on the low end
2 and **\$214,826.93** on the high end. (Han Decl., *supra*, at ¶ 59.) The Gross Settlement Amount is
3 about eleven percent (11.61%) of the maximum potential exposure and around ninety percent
4 (90.77%) of the maximum realistic exposure, which is an excellent settlement. (*Ibid.*)

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

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

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

22 The Class is ascertainable and numerous as to make it impracticable to join all Class
23 Members, and there are common questions of law and fact that predominate over any individual
24 questions. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends, as a former hourly-paid non-exempt
25 employee of Defendant, her claims are typical of the claims of the Class, and Class Counsel will
26 fairly and adequately protect the Class’s interests. (*Ibid.*) Plaintiff assert prosecution of separate
27 actions by Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

28 ///

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

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

9 This case involves approximately one hundred forty-seven (147) Class Members, meaning
10 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 61; see *Ghazaryan v. Diva Limousine,*
11 *Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190
12 current and former employees” is sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

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

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

7 Plaintiff asserts common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 62.) Plaintiff contends all Class Members were subject to the
9 same or similar employment practices, policies, and procedures described above. (*Ibid.*)

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

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

13 Plaintiff is a former employee of Defendant and allege she and the Class Members were
14 employed by the same company and injured by the common policies and practices related to the
15 claims described above. (Han Decl., *supra*, at ¶ 63; Declaration of Jessica Cendejas Re Adequacy
16 In Support of Motion for Preliminary Approval (“Cendejas Decl.”), ¶¶ 2-7, 11-13.) Plaintiff seeks
17 relief for these claims and derivative claims on behalf of all Class Members. (Han Decl., *supra*,
18 at ¶ 63; Cendejas Decl., *supra*, at ¶¶ 2-7, 11-13.) Thus, the claims arise from the same employment
19 practices and are based on the same legal theories applicable to the Class. (Han Decl., *supra*, at
20 ¶ 63; Cendejas Decl., *supra*, at ¶¶ 2-7, 11-13.)

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

22 Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 64;
23 Cendejas Decl., *supra*, at ¶¶ 8-10, 14-19.) Plaintiff conducted herself diligently and responsibly
24 in representing the Class in this matter, understands her fiduciary obligations, and actively
25 participated in the prosecution of this case. (Han Decl., *supra*, at ¶ 64; Cendejas Decl., *supra*, at
26 ¶¶ 8-10, 14-19.) Plaintiff spent time in meetings and conferences with Class Counsel to provide
27 Class Counsel with an understanding of the work environment and requirements. (Han Decl.,
28 *supra*, at ¶ 64; Cendejas Decl., *supra*, at ¶¶ 8-10, 14-19.) Furthermore, Plaintiff has no interest

1 averse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 64; Cendejas Decl.,
2 *supra*, at ¶¶ 8-10, 14-19.)

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

5 A class action is superior to other available means for the fair and efficient adjudication
6 of this controversy. Plaintiff contends the joinder of all Class Members is impractical and that
7 class treatment will permit many similarly situated persons to prosecute their common claims for
8 settlement purposes simultaneously in a single forum without the duplication of effort and
9 expense that numerous individual actions would necessitate. Because several Class Members are
10 current employees, Plaintiff believes fear of retaliation further supports the superiority of class-
11 wide relief as this fear often discourages current employees from seeking legal redress.

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

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

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

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

22 If the court has certified the action as a class action, notice of the final approval hearing
23 must be given to class members in the manner specified by the court. The notice must
24 contain an explanation of the proposed settlement and procedures for class members to
 follow in filing written objections to it and in arranging to appear at the settlement hearing
 and state any objections to the proposed settlement.

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

28 ///

1 **V. CONCLUSION**

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

6
7 Dated: December 7, 2023

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiff*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 7, 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: **Cendejas v. Performance Machine, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-913479-22**
Court Case No.: 22STCV33442
Los Angeles 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 7, 2023, at Pasadena, California.



Mariah Anderson