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

MATTHEW ENGLISH, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

R. TORRE & COMPANY, INC., a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 22CV007520

Assigned for All Purposes to:
Honorable Evelio Grillo
Department 21

CLASS ACTION

**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: 628593081673]

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed
Administrator (Jodey Lawrence); Declaration
of Allison Fernandez; Declaration of Joan
Graff; and [Proposed] Order filed
concurrently herewith]

Hearing Date: August 25, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 21

Complaint Filed: February 24, 2022
FAC Filed: April 27, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 25, 2023 at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Evelio Grillo in Department 21 of the Alameda County
3 Superior Court (Administration Building) located at 1221 Oak Street, Oakland, California, 94612,
4 Plaintiffs Matthew English and Jason Harrison (“Plaintiffs”, “Plaintiff English”, and “Plaintiff
5 Harrison”) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Class Action and PAGA Settlement Agreement and
8 Class Notice (“Settlement Agreement,” “Settlement,” or “Agreement”), attached
9 as **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 Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action and PAGA Settlement and
15 Hearing Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to
16 the [Proposed] Order Preliminarily Approving Class Action Settlement and
17 Setting Hearing for Final Approval of Settlement;
- 18 • Directing the mailing of the Class Notice to all Class Members via first-class
19 United States Postal Service (“USPS”) mail;
- 20 • Approving the deadlines for the notice and settlement administration process;
- 21 • Approving Phoenix Class Action Settlement Administrators as the Administrator;
- 22 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 Payments,
27 Administration Expenses Payment, and Private Attorneys General Act of 2004
28 (“PAGA”) Penalties.

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 (Jodey Lawrence); Declaration of Allison Fernandez; Declaration of Joan Graff;
4 [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the
5 Court in this matter; and such documentary evidence and oral argument as may be presented at
6 the hearing on this motion.

7
8 Dated: August 1, 2023

JUSTICE LAW CORPORATION

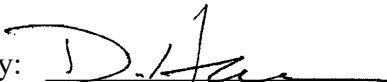
9 By: 
10 Douglas Han
11 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary wage-and-hour class action
3 and representative PAGA settlement by Plaintiffs on behalf of themselves and all current and
4 former hourly-paid or non-exempt employees of Defendant R. Torre & Company, Inc.
5 (“Defendant”) within the State of California at any time during the period from August 29, 2017,
6 to November 22, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this filing,
7 the number of Class Members confirmed by Defendant is about two hundred fifty-eight (258).
8 (Declaration of Douglas Han in Support of Motion for Preliminary Approval of Class Action
9 Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On February 24, 2022, Plaintiff English filed a wage-and-hour class action lawsuit in the
12 Superior Court of California, County of Alameda. (Han Decl., *supra*, at ¶ 10.)

13 On November 15, 2022, Plaintiff Harrison provided written notice to the California Labor
14 and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
15 Labor Code he contends were violated. (Han Decl., *supra*, at ¶ 11; Exhibit 3.)

16 After engaging in discovery, investigation, and negotiations, the Parties remotely attended
17 mediation on November 16, 2022, with the mediator Lisa Klerman, resulting in the settlement of
18 this matter. (Han Decl., *supra*, at ¶ 12.)

19 In line with the settlement, on April 27, 2023, Plaintiff English filed a First Amended
20 Complaint that: (1) adjusted the “Class” definition; (2) added Plaintiff Harrison as a named
21 plaintiff; and (3) added the following cause of action: violation of Labor Code sections 2698, *et*
22 *seq.* (PAGA). (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

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

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

6 Based upon the information provided by Defendant and interviews with putative class
7 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees
8 with legally mandated meal and rest breaks and pay applicable premium wages; (2) failed to pay
9 employees for all hours worked; (3) maintained an illegal practice of rounding; (4) failed to factor
10 non-discretionary bonuses into regular rate of pay; (5) failed to reimburse employees for
11 necessary business expenses; (6) failed to issue compliant wage statements; and (7) failed to
12 timely pay wages. (Han Decl., *supra*, at ¶¶ 18-26.)

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

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

15 The Parties remotely attended mediation with an experienced wage-and-hour mediator on
16 November 16, 2022. (Han Decl., *supra*, at ¶ 27.) Assisted by the mediator and post-mediation
17 discussion, the Parties reached a settlement, the terms of which were memorialized in the
18 Agreement the Parties now seek Preliminary Approval of. (*Id.* at ¶ 27; Exhibits 2, 5.)

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

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

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1 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense
2 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
3 32.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
4 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and
5 Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and reasonable
6 and is in the Class Members' best interests. (Han Decl., *supra*, at ¶ 32.)

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

8 The Parties investigated and evaluated the factual strengths and weaknesses of the claims
9 and defenses before reaching the Settlement and engaged in sufficient investigation, research, and
10 discovery. (Han Decl., *supra*, at ¶ 33.) The information produced permitted Class Counsel to
11 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
12 reached the stage where the Parties have an understanding of “the strength of the case; the
13 reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best
14 possible recovery” sufficient to support the Settlement. (Han Decl., *supra*, at ¶ 33; *Boyd v.*
15 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

16 **c. Terms of the Settlement**

17 **i. Deductions from the Settlement**

18 The Parties agreed (subject to Court approval) this action be settled and compromised for
19 the non-reversionary total sum of \$1,180,000 (“Gross Settlement Amount”) which includes the:
20 (a) Class Counsel Fees Payment of up to \$393,333.33 (1/3 of the Gross Settlement Amount); (b)
21 Class Counsel Litigation Expenses Payment of up to \$20,000; (c) Class Representative Service
22 Payments totaling \$20,000; (d) Administration Expenses Payment of up to \$15,000; and (e)
23 PAGA Penalties of up to \$50,000. (Han Decl., *supra*, at ¶ 28.)

24 **ii. Calculation of Settlement Payments**

25 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
26 \$681,666.67 (“Net Settlement Amount”) will be distributed to Participating Class Members,
27 resulting in a gross *average* Individual Class Payment of \$2,642.12. (Han Decl., *supra*, at ¶ 29.)

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1 The Administrator will calculate and disburse Individual Class Payments using the
2 formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § 3.2.4.) The
3 Administrator will also calculate and disburse the Individual PAGA Payments using the formula
4 set forth in the Agreement. (*Id.* at § 3.2.5.1.) Individual PAGA Payments will be allocated at one
5 hundred percent (100%) penalties. (*Id.* at § 3.2.5.2.)

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

8 Twenty percent (20%) of Individual Class Payments will be allocated to the settlement of
9 wage claims, and eighty percent (80%) will be allocated to the settlement of claims for interest
10 and penalties. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § 3.2.4.1.)

11 The allocation of wages, interest, and penalties indicated above was based on the realistic
12 exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid and
13 underpaid wages if the case went to trial. (Han Decl., *supra*, at ¶ 53.) Plaintiffs added the realistic
14 exposure for rest break premiums and meal break premiums ($\$78,919.97 + \$79,707.80 =$
15 $\$158,627.77$). (*Ibid.*) Plaintiffs then added the $\$158,627.77$ to the low-end realistic exposure for
16 unpaid wages due to off-the-clock work, underpaid wages due to rounding, and underpaid wages
17 due to the regular rate theories ($\$158,627.77 + \$78,975.64 + \$11,935.33 + \$68,931.50 =$
18 $\$318,470.24$). (*Ibid.*) The realistic exposure of $\$318,470.24$ Plaintiffs can expect to receive if they
19 were to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-
20 clock work, underpaid wages due to rounding, and underpaid wages due to regular rate theories
21 represents about twenty-two percent (22.35%) of the low end total realistic exposure and PAGA
22 penalties ($\$318,470.24 \div \$1,425,084 = 0.2235 \times 100 = 22.35\%$). (*Ibid.*) Because this represents
23 about twenty percent (20%) of wages, allocating twenty percent (20%) to the settlement of wage
24 claims and eighty percent (80%) to the settlement of claims for interest and penalties pursuant to
25 the Settlement Agreement is appropriate. (*Ibid.*)

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1 **iv. Notice to the Class**

2 No later than fifteen (15) days after the Court grants Preliminary Approval of the
3 Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶
4 27; Exhibit 2, *supra*, at § 4.2.) No later than fourteen (14) days after receiving the Class Data, the
5 Administrator will send the Class Notice to all Class Members identified in the Class Data, via
6 first-class United States Postal Service (“USPS”) mail. (*Id.* at § 7.4.2.)

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 Agreement. (Han Decl., *supra*, at ¶
10 27; Exhibit 2, *supra*, at §§ 4.3., 4.4.)

11 Participating Class Members and Aggrieved Employees have one hundred eighty (180)
12 days to cash in their settlement checks following their mailing. (Han Decl., *supra*, at ¶ 27; Exhibit
13 2, *supra*, at § 4.4.3.) Uncashed settlement checks will be canceled and transmitted to the *cy pres*
14 recipient Legal Aid At Work (“LAAW”). (*Ibid.*)

15 **vi. The Cy Pres Recipient Is Appropriate**

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

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

28 (Code Civ. Proc., § 384, subd. (b).)

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1 LAAW directly satisfies the legislature's purpose and goal under Code of Civil Procedure
2 section 384. (Han Decl., *supra*, at ¶ 30; See Declaration of Joan Graff.) There can be no doubt
3 LAAW is the type of non-profit organization the legislature had in mind when drafting and
4 amending section 384. (*Ibid.*) Finally, the Parties have no connection to or relationship with
5 LAAW that could reasonably create the appearance of impropriety. (*Ibid.*)

6 **vii. Release of Claims**

7 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
8 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
9 Participating Class Members, on behalf of themselves and their former and present
10 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and
11 discharge Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 27; Exhibit
12 2, *supra*, at § 5.2.)

13 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
14 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
15 Plaintiffs, as agents and proxies of the State of California, and the State of California itself
16 (including the LWDA) are deemed to release the Released Parties from the Released PAGA
17 Claims. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § 5.3.)

18 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
19 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
20 Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs,
21 administrators, successors, and assigns generally, release and discharge Released Parties from
22 Plaintiffs' Release. (Han Decl., *supra*, at ¶ 27; Exhibit 2, *supra*, at § 5.1.) Plaintiffs also expressly
23 waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code.
24 (*Id.* at § 5.1.1.)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

The Parties’ counsel are experienced in wage-and-hour, employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel’s experience guided their determination to endorse the Settlement.¹ (*Ibid.*)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

- (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.

. . .

¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice 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.

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

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

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

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

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

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1 **i. The Gross Settlement Amount of \$1,180,000 Is Fair and Reasonable**

2 The Settlement Agreement was only possible following significant investigation and
3 evaluation of the 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 Decl., *supra*, at ¶ 33.)

6 The claims are predicated on Defendant's alleged: (a) failure to properly calculate and pay
7 overtime wages; (b) failure to provide meal and rest breaks and pay applicable premiums; (c)
8 failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue compliant wage
9 statements; (f) failure to reimburse business expenses; (g) violation of Labor Code sections 2698,
10 *et seq.* (PAGA); and (h) violation of Business & Professions Code sections 17200, *et seq.* (Han
11 Decl., *supra*, at ¶ 34.) Defendant denies the theories of liability. (*Id.* at ¶ 35.)

12 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
13 certification are present. (Han Decl., *supra*, at ¶ 36.) 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 (*Ibid.*) These
17 factors led to discounting the calculations of potential damages.

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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],
review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
27 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
28 [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].)

1 **ii. The PAGA Penalties 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, 210, 218.5, 221, 226(a), 226.3, 226.7,
4 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at
5 ¶ 46.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA
6 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained it
7 had a strong argument it would be unjust to award maximum PAGA penalties given the law's
8 unsettled state. (Han Decl., *supra*, at ¶ 46; *Thurman v. Bayshore Transit Mgmt.* (2012) 203
9 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Without stacking and limited
10 to the initial violation, the PAGA penalties would be limited to **\$15,800** (158 employees x \$100
11 initial violation) on the low end and **\$110,600** (158 employees x \$100 initial violation x 7 theories
12 of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 47-50.)

13 Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
14 at ¶ 51.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*)
15 The maximum penalties for each pay period are likely not justified, and it was arguable the Court
16 would award the maximum penalties. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties
17 was reasonable given that Defendant is paying an additional \$1,130,000 in the class settlement.
18 (Han Decl., *supra*, at ¶ 51.) When PAGA penalties are negotiated in good faith and “there is no
19 indication that [the] amount was the result of self-interest at the expense of other Class Members,”
20 such amounts are generally considered reasonable.⁴ (*Ibid.*)

21 Considering the defenses, supporting evidence, and position that the case is not suitable
22 for class treatment, the Settlement is reasonable, adequate, and fair.

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27 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”).)

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 **\$3,846,026.01** on the low end and **\$4,168,375.56** on the high end. (Han Decl., *supra*, at ¶ 52.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$901,942.50	75%	65%	\$78,919.97
Meal Break Premiums	\$650,675.90	65%	65%	\$79,707.80
Overtime/Minimum Wage: Off-the-Clock Work	\$644,699.10 to \$967,048.65	65%	65%	\$78,975.64 to \$118,463.46
Underpaid Wages Due to Rounding	\$54,251.51	45%	60%	\$11,935.33
Underpaid Wages Due to Regular Rate Theories	\$313,325	45%	60%	\$68,931.50
Unreimbursed Business Expenses	\$187,960	20%	50%	\$75,184
Wage Statement Penalty	\$323,900	20%	20%	\$207,296
Waiting Time Penalty	\$769,272	20%	20%	\$492,334.08
MAXIMUM TOTAL EXPOSURE	\$3,846,026.01 to \$4,168,375.56⁵			\$1,093,284.32 to \$1,132,772.14⁶

Based on this analysis, the realistic recovery for this case is **\$1,093,284.32** on the low end and **\$1,132,772.14** on the high end. (Han Decl., *supra*, at ¶ 62.) The Gross Settlement Amount is about twenty-eight percent (28.31%) of the maximum potential exposure and around one hundred four percent (104.17%) of the maximum realistic exposure at trial. (*Ibid.*)

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⁵ (Han Decl., *supra*, at ¶¶ 37-45.)

⁶ (*Id.* at ¶¶ 54-61.)

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

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

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

19 The Class is ascertainable and numerous as to make it impracticable to join all Class
20 Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*,
21 at ¶ 63.) Plaintiffs contend, as former hourly-paid, non-exempt employees of Defendant, their
22 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
23 the interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual
24 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

2 “Ascertainability is required in order to give notice to putative class members as to whom
3 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
4 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
5 by describing a set of common characteristics sufficient to allow a member of that group to
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 about two hundred fifty-eight (258) Class Members, meaning the Class
10 is sufficiently numerous. (Han Decl., *supra*, at ¶ 64.) Class Members will be identified by
11 Defendant to the Administrator through a review of the employment records. (*Ibid.*)

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

13 The community of interest requirement “embodies three factors: (1) predominant common
14 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
15 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*
16 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
17 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
18 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692
19 (emphasis in original).) Rather, courts focus on the defendant’s internal policies and “pattern and
20 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
21 renders class certification appropriate.” (*Id.* at p. 693.)

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1 **3. Plaintiffs Are Adequate to Represent the Class**

2 Plaintiffs have proven to be adequate representatives. (Han Decl., *supra*, at ¶ 67.)
3 Plaintiffs conducted themselves diligently and responsibly in representing the Class, understand
4 their fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*)
5 Plaintiffs also have no interests averse to the interests of the Class Members. (*Ibid.*)

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

8 A class action is superior to other available means for the fair and efficient adjudication
9 of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that
10 class treatment will permit many similarly situated persons to prosecute their common claims for
11 settlement purposes simultaneously in a single forum without the duplication of effort and
12 expense. Because some Class Members are current employees, Plaintiffs believe the fear of
13 retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

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

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

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

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

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

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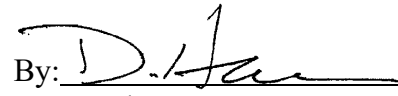
1 The Class Notice meets all these requirements. The Class Notice advises the Class
2 Members of their right to participate in the Settlement; how and when to object to or request
3 exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

4 **V. CONCLUSION**

5 Plaintiffs submit the Settlement is in the best interests of the Class, as it is fair, adequate,
6 and reasonable. Under the applicable class action criteria and guidelines, the Settlement should
7 be preliminarily approved by the Court, the Class should be conditionally certified for purposes
8 of settlement only, and the Class Notice should be approved.

9
10 Dated: August 1, 2023

JUSTICE LAW CORPORATION

11
12 By: 
13 Douglas Han
14 *Attorneys for Plaintiffs*



Superior Court of Alameda County Public Portal

Make a Reservation

ENGLISH vs R. TORRE & COMPANY, INC., A CALIFORNIA CORPORATION; AND DOES 1 THROUGH 100, INCLUSIVE;

Case Number: 22CV007520 Case Type: Civil Unlimited Category: Other Employment Complaint Case
Date Filed: 2022-02-24 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name:

ENGLISH vs R. TORRE & COMPANY, INC., A
CALIFORNIA CORPORATION; AND DOES 1
THROUGH 100, INCLUSIVE;

Case Number:

22CV007520

Type:

Motion re: (Preliminary Approval of Class Action
Settlement)

Status:

RESERVED

Filing Party:

Matthew English (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 21

Date/Time:

08/25/2023 9:00 AM

Number of Motions:

1

Reservation ID:

628593081673

Confirmation Code:

CR-6KGQXFADVPA3VPNRC

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount:

\$1.00

Type:

Visa

Account Number:

XXXX1109

Authorization:

00950G

Payment Date:

1969-12-31

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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 bitty@justicelawcorp.com

On August 1, 2023, I served the foregoing document described as

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: **English v. R. Torre & Company, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-919716-22**
Court Case No.: 22CV007520
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

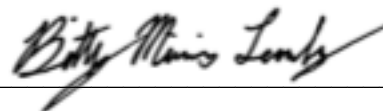
[X] BY ELECTRONIC SUBMISSION

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 August 1, 2023, at Pasadena, California.



Bitty Minnis-Lemley