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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

JOSHUA PARK, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

BRENDA'S LLC DBA BRENDA'S
FRENCH SOUL FOOD, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CGC-22-599371

Honorable Richard B. Ulmer
Department 302

CLASS ACTION

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

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

Hearing Date: April 10, 2023
Hearing Time: 9:30 a.m.
Hearing Place: Department 302

Complaint Filed: April 26, 2022
FAC Filed: February 27, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on April 10, 2023 at 9:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Richard B. Ulmer in Department 302 of the San Francisco
3 County Superior Court located at 400 McAllister Street, San Francisco, California 94102-4514,
4 Plaintiff Joshua Park (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Joint Stipulation and Class Action and PAGA Settlement
7 Agreement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **Exhibit 3** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the Class Representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Notice of Class Action Settlement (“Class Notice” or “Notice”)
14 attached as **Exhibit A** to the Settlement Agreement;
- 15 • Approving the Election Not to Participate In (“Opt Out” From) Class Action
16 Settlement Form (“Exclusion Form”) attached as **Exhibit B** to the Settlement
17 Agreement;
- 18 • Approving the Notice of Objection Form (“Objection Form”) attached as **Exhibit**
19 **C** to the Settlement Agreement;
- 20 • Directing the mailing of the Class Notice, Exclusion Form, and Objection Form
21 (collectively, the “Notice Packet”) with a postage-paid return envelope to the
22 Class;
- 23 • Approving the proposed deadlines for Settlement Administration;
- 24 • Approving Phoenix Class Action Settlement Administration Solutions as the
25 Settlement Administrator; and
- 26 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
27 Agreement, at which time the Court will also consider whether to grant Final
28 Approval of the requests for the Attorney Fee Award, Cost Award, Class

Representative Enhancement Payment, and Administration Costs, and approval of the allocation of the 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); [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 9, 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 \$450,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and former hourly-
4 paid or non-exempt employees of Defendant Brenda’s LLC dba Brenda’s French Soul Food
5 (“Defendant”) within the State of California during the period from October 29, 2017, through
6 March 27, 2023 (“Class,” “Class Members,” and “Class Period”). (Declaration of Douglas Han In
7 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”),
8 ¶ 9.) At the time of this filing, the number of Class Members is estimated to be 214. (*Id.* at ¶ 8.)

9 **II. BACKGROUND**

10 On April 26, 2022, Plaintiff filed a wage-and-hour class action lawsuit in the San Francisco
11 County Superior Court, alleging eight causes of action. (Han Decl., *supra*, at ¶ 10.)

12 On January 26, 2023, the Parties attended mediation with mediator Mark Rudy, which
13 resulted in the settlement of this matter. (Han Decl., *supra*, at ¶ 11.)

14 In line with the settlement, on January 30, 2023, Plaintiff provided written notice to the
15 California Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
16 provisions of the Labor Code he contends Defendant violated and the theories supporting his
17 contentions. (Han Decl., *supra*, at ¶ 12; Exhibit 4.) The Parties also stipulated to file a First
18 Amended Complaint adding a cause of action for violation of Labor Code section 2698, *et seq.*
19 (PAGA). (*Id.* at ¶ 13.) On February 27, 2023, Plaintiff filed the FAC in the San Francisco County
20 Superior Court. (*Ibid.*; Exhibit 2.)

21 **III. INVESTIGATION/ LITIGATION HISTORY**

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

23 Plaintiff propounded one set of form interrogatories, one set of special interrogatories, one
24 set of requests for admission, and one set of requests for production of documents. (Han Decl.,
25 *supra*, at ¶ 15.) Thereafter, the Parties met and conferred and agreed to engage in an informal
26 exchange of information and attend mediation. (*Ibid.*)

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1 Prior to the mediation, Defendant produced documents relating to its wage-and-hour
2 policies, practices, and procedures. (See Han Decl., *supra*, at ¶ 16.) As part of Defendant’s
3 production, Plaintiff also reviewed time and pay records and information relating to the size and
4 scope of the Class. (*Ibid.*) Several putative class members were also interviewed to attain a better
5 understanding of the extent and frequency of the day-to-day alleged violations. (*Ibid.*)

6 Based on the information provided by Defendant and interviews with putative class
7 members, Plaintiff contends – and Defendant denies – that Defendant: (1) failed to provide
8 employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours
9 worked; (3) failed to properly calculate and pay overtime and premium wages and sick leave pay;
10 (4) failed to reimburse employees for necessary business expenses; (5) issued noncompliant wage
11 statements; and (6) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

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

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

14 The Parties attended mediation with mediator Mark Rudy on January 26, 2023. (Han Decl.,
15 *supra*, at ¶ 26.) Under the auspices of the mediator, the Parties reached a settlement, the terms of
16 which were memorialized in the Settlement Agreement. (*Ibid.*; Exhibits 3.)

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

18 At the mediation, both Parties’ counsel engaged in extensive arm’s-length settlement
19 negotiations until an agreement was ultimately reached. (Han Decl., *supra*, at ¶ 37.) Though cordial
20 and professional, the settlement negotiations have always been adversarial and non-collusive in
21 nature. (*Ibid.*)

22 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
23 necessary to continue the litigation through trial and through any possible appeals. (Han Decl.,
24 *supra*, at ¶ 38.) Plaintiff and Class Counsel have also considered the uncertainty and risks, potential
25 outcome, and difficulties and delays inherent in further litigation. (*Ibid.*) Based on the foregoing,
26 Plaintiff and Class Counsel believe the Settlement is fair, adequate, and reasonable, and is in the
27 best interests of the Class Members. (*Ibid.*)

28 ///

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

2 The Parties investigated and evaluated the strengths and weaknesses of the claims and
3 defenses before reaching the Settlement and engaged in research and discovery to support the
4 Settlement. (Han Decl., *supra*, at ¶ 39.) The Settlement was only possible following significant
5 investigation and evaluation of Defendant’s relevant policies and practices, as well as the data
6 Defendant produced for the Class, which permitted Class Counsel to engage in a comprehensive
7 analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where “the
8 Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to
9 support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v. Bechtel Corp.*
10 (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

12 **i. Deductions from the Settlement**

13 The Parties agreed (subject to the Court’s approval) that this action be settled and
14 compromised for the non-reversionary total sum of \$450,000 (“Gross Settlement Amount”) which
15 includes: (1) the Attorney Fee Award not to exceed \$157,500 (35% of the Gross Settlement
16 Amount); (2) the Cost Award not to exceed \$25,000; (3) the Class Representative Enhancement
17 Payment not to exceed \$10,000; (4) Administration Costs not to exceed \$12,000; and (5) the
18 PAGA Payment not to exceed \$20,000. (Han Decl., *supra*, at ¶ 27.)

19 **ii. Calculating Settlement Payments**

20 After all Court-approved deductions, it is estimated that \$225,500 (“Net Settlement
21 Amount”) will be distributed to all Class Members who did not submit valid and timely requests
22 to exclude themselves from the class action Settlement (“Participating Class Members”) – with a
23 gross *average* Individual Settlement Share estimated at \$1,053.74. (Han Decl., *supra*, at ¶ 28.)

24 Participating Class Member will receive a proportionate share of the Net Settlement
25 Amount calculated using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at
26 ¶ 29.) Individual Settlement Shares will be apportioned twenty percent (20%) as wages and eighty
27 percent (80%) as interest and penalties. (*Ibid.*)

28 ///

1 In addition, the portion of the PAGA Payment that will be paid to each Eligible Aggrieved
2 Employee shall be determined using the formula set forth in the Settlement Agreement. (Han Decl.,
3 *supra*, at ¶ 30.) Eligible Aggrieved Employees' portions of the PAGA Payment will be allocated
4 as one hundred percent (100%) penalties. (*Ibid.*)

5 **iii. Notice to the Class**

6 Within 21 calendar days after entry of the Preliminary Approval Order, Defendant shall
7 deliver the Class List to the Settlement Administrator. (Han Decl., *supra*, at ¶ 31.) Within 14
8 calendar days after receipt of the Class List from Defendant, the Settlement Administrator will
9 mail the Notice Packet to all identified Class Members via first-class regular U.S. Mail. (*Ibid.*)

10 **iv. Distribution of Funds**

11 The Settlement will be funded and disbursed pursuant to the timeline and manner set forth
12 in the Settlement Agreement. (Han Decl., *supra*, at ¶ 32.) The Settlement Administrator will pay
13 the amount of the residual uncashed settlement checks to the State Controller's Unclaimed
14 Property Fund. (*Ibid.*)

15 **v. Release of Claims**

16 As of the Effective Final Settlement Date, Participating Class Members waive, release,
17 promise never to assert in any forum, remise, and forever discharge the Released Parties from the
18 Class Released Claims during the Class Period. (Han Decl., *supra*, at ¶ 33.)

19 As of the Effective Final Settlement Date, Plaintiff, LWDA, and any other representative,
20 proxy, or agent thereof, including, but not limited to, any and all Eligible Aggrieved Employees
21 waive, release, promise never to assert in any forum, remise, and forever discharge the Released
22 Parties from the PAGA Released Claims during the PAGA Period. (Han Decl., *supra*, at ¶ 34.)

23 As of the Effective Final Settlement Date, and in exchange for the consideration provided
24 for by the Settlement Agreement, including Plaintiff's Class Representative Enhancement
25 Payment, Plaintiff agrees to a comprehensive release of all known and unknown claims, under
26 federal law or state law, against Defendant and the Released Parties, including a Civil Code section
27 1542 waiver. (Han Decl., *supra*, at ¶ 35.)

28 ///

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

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

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

16 **IV. ARGUMENT**

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

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

22 ///

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

28 ² The California Supreme Court has also 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 (a) A settlement or compromise of an entire class action, or a cause of action in
2 a class action, or as to a party, requires the approval of the court after
3 hearing.

4 . . .

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

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

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

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

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

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1 **i. The Gross Settlement Amount of \$450,000 Is Fair and Reasonable**

2 The Settlement was only possible following significant investigation and evaluation of
3 Defendant's relevant policies and practices, as well as the data Defendant produced for the Class,
4 which permitted Class Counsel to engage in a comprehensive analysis of liability and potential
5 damages. (Han Decl., *supra*, at ¶ 39.)

6 Plaintiff's claims are predicated on Defendant's purported: (a) failure to properly calculate
7 and pay overtime wages; (b) failure to provide meal and rest breaks and pay applicable premium
8 wages; (c) failure to pay minimum wages; (d) failure to timely pay wages; (e) failure to issue
9 compliant wage statements; (f) failure to reimburse business expenses; (g) violation of PAGA; and
10 (h) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 40.)
11 Defendant vehemently denies the theories of liability. (*Id.* at ¶ 41.)

12 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
13 to certification are always present. (Han Decl., *supra*, at ¶ 42.) As the California Supreme Court
14 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
15 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
16 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
17 (*Ibid.*) Thus, the calculations for potential damages were discounted.

18 **ii. The PAGA Payment of \$20,000 Is Reasonable**

19 The provisions of the Labor Code potentially triggering PAGA penalties in this case
20 include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246(l), 510,
21 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶
22 51.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
23 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained that it

24 _____
25 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

1 had a strong argument that it would be unjust to award maximum PAGA penalties given the law's
2 current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 51.; *Thurman v.*
3 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
4 authority].) If PAGA penalties are granted on any one of the violations alleged in the operative
5 complaint, the total civil penalties exposure under PAGA could be approximately **\$11,500.00** (115
6 employees x \$100 penalty for initial violation) on the low end. (Han Decl., ¶ 53.) Multiplying the
7 PAGA exposure by the number of alleged violations under the theories of recovery under PAGA
8 gives potential civil penalties of around **\$80,500.00** (115 employees x \$100 penalty for initial
9 violation x 7 theories of recovery) on the high end. (*Ibid.*)

10 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at
11 ¶ 55.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
12 Thus, allocating \$20,000 to PAGA civil penalties was reasonable given the fact Defendant is
13 paying an additional \$430,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated
14 in good faith and “there is no indication that [the] amount was the result of self-interest at the
15 expense of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

16 Considering Defendant's defenses, supporting evidence, and position the case is not
17 suitable for class treatment, the Settlement Agreement is reasonable, adequate, and fair.

18 **c. Discount Analysis Justifies the Settlement**

19 Excluding the civil penalties, which could be completely discretionary, the total estimated
20 potential exposure, assuming certification and prevailing at trial, would be about **\$1,639,089.95**
21 on the low end and around **\$1,813,689.95** on the high end. (Han Decl., *supra*, at ¶ 56.)

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26 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009
27 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
28 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$224,930.50	60%	50%	\$44,986.10
Meal Break Premiums	\$142,409.45	50%	50%	\$35,602.36
Overtime/Minimum Wage: Off-the-Clock Work	\$349,000.00 to \$523,600.00	50%	60%	\$69,800.00 to \$104,720.00
Overtime/Minimum Wage: Regular Rate	\$8,380.00	30%	40%	\$3,519.60
Unreimbursed Business Expenses	\$74,484.00	50%	60%	\$14,896.80
Wage Statement Penalty	\$224,250.00	40%	40%	\$80,730.00
Waiting Time Penalty	\$615,636.00	40%	40%	\$221,628.96
MAXIMUM TOTAL EXPOSURE	\$1,639,089.95 to \$1,813,689.95⁵			\$471,163.82 to \$506,083.82⁶

Thus, the realistic recovery for this case is **\$471,163.82** on the low end and **\$506,083.82** on the high end. (Han Decl., *supra*, at ¶ 64.) The Gross Settlement Amount of \$450,000 is about twenty-five percent (24.81%) of the maximum potential exposure and approximately eighty-nine percent (88.92%) of the maximum realistic exposure at trial. (*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. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”).) Nevertheless, this Settlement is in line with the realistic exposure if Plaintiff prevailed at trial and provides a significant recovery for Class Members.

⁵ (Han Decl., *supra*, at ¶¶ 44-50.)

⁶ (*Id.* at ¶¶ 57-63.)

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

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

7 The Class is ascertainable and numerous as to make it impracticable to join all Class
8 Members, and there are common questions of law and fact that predominate over any questions
9 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 65.) Plaintiff contends that his
10 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
11 the interests of the Class. (*Ibid.*) Plaintiff asserts that the prosecution of separate actions by
12 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

21 This case involves approximately 214 Class Members, meaning the Class is sufficiently
22 numerous. (Han Decl., *supra*, at ¶ 66; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
23 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is
24 sufficiently numerous].)

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

26 The community of interest requirement “embodies three factors: (1) predominant common
27 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and
28 (3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v.*

1 *Superior Court, supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for
2 certification *does not mandate that class members have uniform or identical claims.*” (*Capitol*
3 *People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis
4 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . .
5 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
6 certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

7 **1. Common Issues Predominate**

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

19 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
20 alleged. (Han Decl., *supra*, at ¶ 67.) Plaintiff contends that all Class Members were subject to the
21 same or similar employment practices, policies, and procedures. (*Ibid.*)

22 **2. Plaintiff’s Claims Are Typical of the Class Claims**

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

25 Plaintiff is a former employee of Defendant and alleges that he and the Class Members were
26 employed by the same company and injured by Defendant’s common policies and practices related
27 to the claims described above. (Han Decl., *supra*, at ¶ 68.) Plaintiff seeks relief for these claims
28 and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiff’s claims arise from the same

1 employment practices and are based on the same legal theories applicable to the Class. (Han Decl.,
2 *supra*, at ¶ 68.)

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

4 Plaintiff has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶ 69.)
5 Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation,
6 understands his fiduciary obligations, and actively participated in the prosecution of this case.
7 (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with
8 a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff has no interest
9 averse to the interests of the other Class Members. (*Ibid.*)

10 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 11 **of this Controversy**

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

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

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

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 Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is aokada@justicelawcorp.com

On March 9, 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: **Park v. Brenda's LLC d/b/a Brenda's French Soul Food**
LWDA/Court Case No.: **LWDA Case No.: CM- 932651-23**
Court Case No.: CGC-22-599371
San Francisco County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on March 9, 2023, at Pasadena, California.



Anna Okada