

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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 ALAMEDA

JESUS ALDANA, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

LYRICAL FOODS, INC. d/b/a KITE HILL, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 22CV005107

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**

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

[Reservation ID: 431833774749]

Hearing Date: May 5, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 21

Complaint Filed: January 7, 2022
FAC Filed: March 1, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 5, 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 Plaintiff Jesus Aldana (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2**
8 to the declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds;
- 10 • Conditionally certifying the 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 and PAGA Settlement (“Notice”) attached
14 as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class Action
15 Settlement and Setting Hearing for Final Approval of Settlement and Settlement
16 Agreement;
- 17 • Approving the Election Not to Participate In (“Opt Out” From) Class Action
18 Settlement (“Exclusion Form”) attached as **Exhibit B** to the [Proposed] Order
19 Preliminarily Approving Class Action Settlement and Setting Hearing for Final
20 Approval of Settlement and Settlement Agreement;
- 21 • Directing the mailing of the Notice and Exclusion Form (collectively, known as
22 the “Notice Packet”) with a postage-paid return envelope to the Class;
- 23 • Approving the deadlines for the notice and settlement administration process;
- 24 • Approving Phoenix Class Action Administration Solutions as the Settlement
25 Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, Administration Costs, and Private Attorneys General Act of 2004 (“PAGA”) Payment.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration of the Proposed Settlement Administrator (Jodey Lawrence); Declaration of Paul Teinert; Declaration of Joan Graff; [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: April 4, 2023

JUSTICE LAW CORPORATION

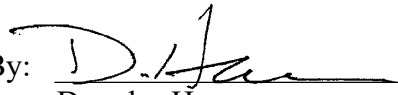
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$325,000 wage-and-hour
3 class action and representative PAGA settlement by Plaintiff on behalf of himself and all current
4 and former hourly-paid or non-exempt employees of Defendant Lyrical Foods, Inc. d/b/a Kite
5 Hill Co. (“Defendant”) within the State of California at any time during the period from July 12,
6 2017, to December 31, 2022 (“Class,” “Class Members,” and “Class Period”). At the time of this
7 filing, the number of Class Members confirmed by Defendant is about one hundred ninety-six
8 (196). (Declaration of Douglas Han In Support of Plaintiff’s Motion For Preliminary Approval
9 of Class Action Settlement (“Han Decl.”), ¶¶ 7-8.)

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

14 **II. BACKGROUND**

15 On January 7, 2022, Plaintiff, a former employee of Defendant, filed a wage-and-hour
16 class action lawsuit in the Superior Court of California, County of Alameda, alleging eight (8)
17 causes of action. (Han Decl., *supra*, at ¶ 9.)

18 After engaging in discovery, investigation, and negotiations, the Parties remotely attended
19 mediation on November 17, 2022 with the mediator Lynn S. Frank. (Han Decl., *supra*, at ¶ 10.)
20 Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

21 In line with the settlement, Plaintiff provided written notice to the California Labor and
22 Workforce Development Agency (“LWDA”) and Defendant on January 20, 2023. (Han Decl.,
23 *supra*, at ¶ 11; Exhibit 3.)

24 Next, on March 1, 2023, Plaintiff filed a First Amended Complaint that added the
25 following cause of action: violation of Labor Code section 2698, *et seq.* (PAGA). (Han Decl.,
26 *supra*, at ¶ 12; Exhibit 4.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Defendant generally and specifically denies any and all liability or wrongdoing, makes no
4 concessions or admissions of liability, and contends for any purpose other than settlement, this
5 matter is not appropriate for class or representative treatment. (Han Decl., *supra*, at ¶ 13)
6 Furthermore, Defendant asserts several defenses and counterarguments to the claims. (*Ibid.*)

7 Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
8 interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of
9 documents onto Defendant. (Han Decl., *supra*, at ¶ 14) The Parties met and conferred, agreed to
10 engage in an informal exchange of information and eventually attended mediation. (*Ibid.*)

11 Defendant produced hundreds of documents relating to its policies, practices, and
12 procedures. (Han Decl., *supra*, at ¶ 15) As part of Defendant's production, Plaintiff also reviewed
13 a sampling of time records, pay records, and information relating to the size and scope of the
14 Class. (*Ibid.*) Furthermore, putative class members were also interviewed to obtain a better
15 understanding of the alleged day-to-day violations. (*Ibid.*)

16 Based upon the information provided by Defendant and interviews with putative class
17 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
18 with legally mandated meal and rest breaks and pay applicable premium wages; (2) failed to pay
19 employees for all hours worked; (3) failed to factor non-discretionary bonuses into regular rate of
20 pay; (4) failed to reimburse employees for necessary business expenses; (5) failed to issue
21 compliant wage statements; and (6) failed to timely pay wages. (Han Decl., *supra*, at ¶¶ 17-24.)

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

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

24 The Parties remotely attended mediation with an experienced wage-and-hour mediator on
25 November 17, 2022. (Han Decl., *supra*, at ¶ 25.) Under the auspices of the mediator, the Parties
26 reached a settlement, the terms of which were memorialized in the Agreement the Parties now
27 seek Preliminary Approval of. (*Id.* at ¶ 25; Exhibits 2, 5.)

28 ///

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

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

6 Plaintiff and Class Counsel believe in the merits of the case but recognize the expense and
7 length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶ 39.)
8 Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation, potential
9 outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the forgoing,
10 Plaintiff and Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and
11 reasonable and is in the Class Members’ best interests. (*Ibid.*)

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

13 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties’
14 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
15 research, and discovery. (Han Decl., *supra*, at ¶ 40.) The information produced permitted Class
16 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This
17 case has reached the stage where “the Parties certainly have a clear view of the strengths and
18 weaknesses of their cases” sufficient to support the Settlement. (Han Decl., *supra*, at ¶ 40; *Boyd*
19 *v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

20 **c. Terms of the Settlement**

21 **i. Deductions from the Settlement**

22 The Parties agreed (subject to the Court’s approval) this action be settled and
23 compromised for the non-reversionary total sum of \$325,000 (“Gross Settlement Amount”)
24 which includes the: (a) Attorney Fee Award of up to \$108,333.33 (1/3 of the Gross Settlement
25 Amount); (b) Cost Award of up to \$20,000; (c) Class Representative Enhancement Payment of
26 up to \$10,000; (d) Administration Costs of up to \$10,000; and (e) PAGA Payment of up to
27 \$20,000. (Han Decl., *supra*, at ¶ 26.)

28 ///

1 **ii. Calculation of Settlement Payments**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$156,666.67 (“Net Settlement Amount”) will be distributed to all Class Members who do not
4 submit valid and timely requests to exclude themselves from the Class portion of this Settlement
5 (“Participating Class Members”), resulting in a gross *average* Individual Settlement Share of
6 \$799.32. (Han Decl., *supra*, at ¶ 27.)

7 The Settlement Administrator will calculate and disburse Individual Settlement Shares
8 using the formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 28.) The Settlement
9 Administrator will also calculate and disburse the twenty-five percent (25%) portion of the PAGA
10 Payment using the formula set forth in the Agreement. (*Ibid.*)

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

13 Individual Settlement Shares will be allocated as twenty percent (20%) wages and eighty
14 percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶ 28.)

15 The allocation of wages, interest, and penalties indicated above was based on the realistic
16 exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages if
17 the case went to trial. (Han Decl., *supra*, at ¶ 59.) Plaintiff added the realistic exposure for rest
18 break premiums and meal break premiums ($\$13,165.66 + \$92,323.32 = \$105,488.98$). (*Ibid.*)
19 Plaintiff then added the \$105,488.98 to the low end realistic exposure for unpaid wages due to
20 off-the-clock work and underpaid overtime wages ($\$105,488.98 + \$93,104.29 + \$12,365.50 =$
21 $\$210,958.77$). (*Ibid.*) The realistic exposure of \$210,958.77 Plaintiff can expect to receive if they
22 were to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-
23 clock work, and underpaid overtime wages represents about twenty-one percent (20.93%) of the
24 low end total realistic exposure and PAGA penalties ($\$210,958.77 \div \$1,007,692.28 = 0.2093 \times$
25 $100 = 20.93\%$). (*Ibid.*) Because this represents almost twenty percent (20%) of wages, allocating
26 twenty percent (20%) for the settlement of wage claims and eighty percent (80%) for the
27 settlement of claims for interest and penalties pursuant to the Settlement Agreement is
28 appropriate. (*Ibid.*)

1 **iv. Notice to the Class**

2 Within fifteen (15) calendar days of preliminary approval by the Court of a stipulated
3 settlement, Defendant shall provide to the Settlement Administrator the Class Data. (Han Decl.,
4 *supra*, at ¶ 29.) The Settlement Administrator shall mail the Notice Packet to the Class Members
5 via first-class regular U.S. Mail using the most current mailing address information available
6 within fourteen (14) calendar days after the receipt of the Class Data from Defendant. (*Ibid.*)

7 **v. Distribution of Funds**

8 The Gross Settlement Amount and subsequent payments to be made will be funded and
9 disbursed in the manner and time set forth in the Settlement. (Han Decl., *supra*, at ¶ 30.)

10 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
11 their settlement checks within one hundred eighty (180) calendar days after the checks are mailed
12 to them. (Han Decl., *supra*, at ¶ 31.) Uncashed settlement checks will be canceled and paid to
13 the *cy pres* recipient Legal Aid At Work (“LAAW”). (*Ibid.*)

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

15 LAAW satisfies the policy of California “to ensure that the unpaid cash residue and
16 unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
17 possible, in a manner designed either to further the purposes of the underlying class action or
18 causes of action, or to promote justice for all Californians.” (Han Decl., *supra*, at ¶ 32; Code Civ.
19 Proc., § 384(a).) The Code of Civil Procedure further states:

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

25 (Han Decl., *supra*, at ¶ 32; Code Civ. Proc., § 384 (b).)

26 ///

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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 ¶ 33.) The core of LAAW’s work is providing free legal services
3 to low-wage workers with employment claims. (*Ibid.*) In addition, LAAW’s Community Legal
4 Services Program also provides advice and counseling to low-wage workers on the full range of
5 employment law issues they face through twelve statewide Workers’ Rights Clinic locations
6 throughout California. (*Ibid.*) There can be no doubt LAAW is the type of non-profit organization
7 the legislature had in mind when drafting and amending section 384. (*Ibid.*) Finally, the Parties
8 have no connection to or relationship with LAAW that could reasonably create the appearance of
9 impropriety. (*Ibid.*)

10 **vii. Release of Claims**

11 Upon final approval by the Court and fully funding of the Gross Settlement Amount,
12 Plaintiff and the Participating Class Members will fully and finally release and discharge the
13 Released Parties from the Released Claims. (Han Decl., *supra*, at ¶ 34.)

14 Upon final approval by the Court and fully funding of the Gross Settlement Amount,
15 Plaintiff, as an agent and proxy of the LWDA, and any other representative, proxy, or agent
16 thereof, will be barred from seeking PAGA Released Claims from the Released Parties. (Han
17 Decl., *supra*, at ¶ 35.)

18 Upon final approval by the Court and fully funding of the Gross Settlement Amount,
19 Plaintiff will provide a general release to the Released Parties. (Han Decl., *supra*, at ¶ 36.)
20 Plaintiff shall also be deemed to have, and by operation of the Final Judgment shall have,
21 expressly waived and relinquished to the fullest extent permitted by law the provisions, rights,
22 and benefits of section 1542 of the Civil Code, or any other similar provision under federal or
23 state law that purports to limit the scope of a general release. (*Ibid.*)

24 With regard to class action releases, ““[A] court may release not only those claims alleged
25 in the complaint and before the court, but also claims which ‘could have been alleged by reason
26 of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
27 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases
28 in this case are acceptable because they are limited to the scope of the allegations in the

1 Complaint. Moreover, the released claims are ““based on *the identical factual predicate* as that
2 underlying the claims in the settled class action.”” (*Amaro v. Anaheim Arena Management, LLC*,
3 *supra*, Cal.App.5th at p. 537.) In other words, the released claims do not ““go beyond the scope
4 of the allegations in the operative complaint”” (*Ibid.*)

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

6 The Parties’ counsel are experienced in wage-and-hour, employment law and class
7 actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases
8 on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel’s experience
9 guided their determination to endorse the Settlement.¹ (*Ibid.*)

10 **IV. ARGUMENT**

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

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

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

18 ...

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

23 ///

24 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
25 number of objectors – is not determinable until the Notice Packet has been provided to the Class
26 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.

27 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
28 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court*
(1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

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

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

6 Understanding the sum in controversy is an important factor in if the settlement “of the
7 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and
8 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
9 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
10 399, 409.) The most important factor is “the strength of the case for plaintiffs on the merits,
11 balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see also *Munoz*, at p. 409.)

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

22 **i. The Gross Settlement Amount of \$325,000 Is Fair and Reasonable**

23 The Settlement Agreement was only possible following significant investigation and
24 evaluation of the relevant policies and procedures and the data produced for the putative class,
25 permitting Class Counsel to engage in a comprehensive analysis of liability and potential
26 damages. (Han Decl., *supra*, at ¶ 40.)

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1 The claims are predicated on Defendant's alleged: (1) failure to properly calculate and
2 pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3)
3 failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant
4 wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections
5 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.*
6 (Han Decl., *supra*, at ¶ 41.) Defendant denies the theories of liability. (*Id.* at ¶ 42.)

7 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
8 certification are present. (Han Decl., *supra*, at ¶ 43.) As the California Supreme Court ruled in
9 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter
10 of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have
11 reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*) These
12 factors led to discounting the calculations of potential damages.

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

14 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
15 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7,
16 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at
17 ¶ 52.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA
18 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintained it
19 had a strong argument it would be unjust to award maximum PAGA penalties given the law's
20 unsettled state. (Han Decl., *supra*, at ¶ 52; *Thurman v. Bayshore Transit Mgmt.* (2012) 203
21 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Without stacking and limited
22 to the initial violation, the PAGA penalties would be limited to **\$12,200** (122 employees x \$100
23
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 initial violation) on the low end and **\$85,400** (122 employees x \$100 initial violation x 7 theories
2 of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 53-56.)

3 Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
4 at ¶ 57.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*)
5 The maximum penalties for each pay period are likely not justified, and it was arguable the Court
6 would award the maximum penalties. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties
7 was reasonable based on a rate of **\$4.95** per pay period [\$20,000 ÷ 4,038 pay periods in PAGA
8 date range], given the fact Defendant is paying an additional \$305,000 in the class settlement.⁴
9 (*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the]
10 amount was the result of self-interest at the expense of other Class Members,” such amounts are
11 generally considered reasonable.⁵ (*Ibid.*)

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

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

15 Excluding the civil penalties, which could be completely discretionary, the total estimated
16 potential exposure, assuming certification and prevailing at trial, would be about **\$2,142,160.38**
17 on the low end and **\$2,328,453.48** on the high end. (Han Decl., *supra*, at ¶ 58.)

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25 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
26 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25
to \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁵ (*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”).)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$109,713.81	70%	60%	\$13,165.66
Meal Break Premiums	\$461,616.62	60%	50%	\$92,323.32
Overtime/Minimum Wage: Off-the-Clock Work	\$372,417.15 to \$558,710.25	50%	50%	\$93,104.29 to \$139,677.56
Overtime/Minimum Wage: Regular Rate	\$35,330	30%	50%	\$12,365.50
Unreimbursed Business Expenses	\$163,842	30%	70%	\$34,406.82
Wage Statement Penalty	\$396,500	40%	40%	\$142,740
Waiting Time Penalty	\$602,740.80	40%	40%	\$216,986.69
MAXIMUM TOTAL EXPOSURE	\$2,142,160.38 to \$2,328,453.48⁶			\$605,092.28 to \$651,665.55⁷

Based on this analysis, the realistic recovery for this case is **\$605,092.28** on the low end and **\$651,665.55** on the high end. (Han Decl., *supra*, at ¶ 67.) The Gross Settlement Amount is about fourteen percent (13.96%) of the maximum potential exposure and around fifty percent (49.78%) of the maximum realistic exposure at trial, which is a good settlement. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, the Settlement provides significant recovery for the Class Members.

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⁶ (Han Decl., *supra*, at ¶¶ 44-51.)

⁷ (*Id.* at ¶¶ 59-66.)

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

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

8 The Class is ascertainable and numerous as to make it impracticable to join all Class
9 Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*,
10 at ¶ 68.) Plaintiff contends, as a former hourly-paid, non-exempt employee of Defendant, his
11 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
12 the interests of the Class. (*Ibid.*) Also, Plaintiff asserts the prosecution of separate actions by
13 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

22 This case involves about one hundred ninety-six (196) Class Members, meaning the Class
23 is sufficiently numerous. (Han Decl., *supra*, at ¶ 69.) Class Members will be identified by
24 Defendant to the Settlement Administrator through a review of the employment records. (*Ibid.*)

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

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

11 **1. Common Issues Predominate**

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

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 70.) Plaintiff contends all persons employed by Defendant as
25 hourly-paid or non-exempt employees in California during the Class Period were subject to the
26 same or similar policies, practices, and procedures described in detail above. (*Ibid.*)

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

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

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

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

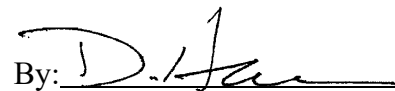
9 The Notice Packet meets all these requirements. The Notice Packet advises the Class
10 Members of their right to participate in the Settlement; how and when to object to or request
11 exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

12 **V. CONCLUSION**

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

17
18 Dated: April 4, 2023

JUSTICE LAW CORPORATION

19
20 By: 

21 Douglas Han
22 *Attorneys for Plaintiff*
23
24
25
26
27
28



Superior Court of Alameda County Public Portal

Make a Reservation

ALDANA vs LYRICAL FOODS, INC. D/B/A KITE HILL, A CALIFORNIA CORPORATION; AND DOES 1 THROUGH 100, INCLUSIVE;

Case Number: 22CV005107 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2022-01-07 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name:

ALDANA vs LYRICAL FOODS, INC. D/B/A KITE HILL, A
CALIFORNIA CORPORATION; AND DOES 1
THROUGH 100, INCLUSIVE;

Case Number:

22CV005107

Type:

Motion re: (Preliminary Approval of Class Action
Settlement)

Status:

RESERVED

Filing Party:

Jesus Aldana (Plaintiff)

Location:

Rene C. Davidson Courthouse - Department 21

Date/Time:

05/05/2023 9:00 AM

Number of Motions:

1

Reservation ID:

431833774749

Confirmation Code:

CR-ZPXPZEMNG2V9ATWZG

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:

04568G

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 shanneyan@justicelawcorp.com

On April 4, 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: **Aldana vs. Lyrical Foods, Inc. dba Kite Hill**
LWDA/Court Case No.: **LWDA Case No.: CM-930677-23**
Court Case No.: 22CV005107
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

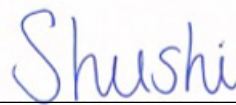
[X] BY ELECTRONIC SUBMISSION

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 April 4, 2023, at Pasadena, California.



Sophia Hanneyan