

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 Plaintiffs

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

GENO VALVERDE, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

RIVULIS IRRIGATION, INC., a California
corporation, and DOES 1 through 100,
inclusive;

Defendants.

Case No.: MCV089185

Assigned for All Purposes to:
Honorable Brian W. Enos
Department 45

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); and [Proposed] Order filed
concurrently herewith]

Hearing Date: November 12, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 45

Complaint Filed: April 13, 2023
FAC Filed: October 9, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on November 12, 2024 at 8:30 a.m., or as soon as the
2 matter may be heard, before the Honorable Brian W. Enos in Department 45 of the Madera County
3 Superior Court located at 200 South “G” Street Madera, California 93637, Plaintiffs Geno
4 Valverde and Bernie Ferris (“Plaintiffs,” “Plaintiff Valverde,” and “Plaintiff Ferris”) will and
5 hereby do move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 Declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiff Ferris as the class representative and Plaintiff Valverde as the
13 Private Attorneys General Act of 2004 (“PAGA”) representative;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the Court Approved Notice of Class Action Settlement and Hearing
16 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
17 Settlement Agreement;
- 18 • Approving the PAGA Settlement Notice attached as **Exhibit B** to the Agreement;
- 19 • Directing the mailing of the Class Notice with a postage-paid return envelope to
20 the Class;
- 21 • Approving the proposed deadlines for the settlement administration process;
- 22 • Approving CPT Group, Inc. as the Administrator; 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 and PAGA Representative Service Payments,
27 Administration Expenses Payment, and approval of the allocation of the PAGA
28 Penalties.

1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); [Proposed] Order filed concurrently with
3 this motion; pleadings and other records on file with the Court in this matter; and such documentary
4 evidence and oral argument as may be presented at the hearing on this motion.

5
6 Dated: October 15, 2024

JUSTICE LAW CORPORATION

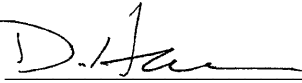
7 By: 
8 Douglas Han
9 *Attorneys for Plaintiffs*

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	11
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	11
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	11
i.	The Parties Attended Mediation Which Led to the Settlement	11
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations	12
iii.	The Settlement Is the Result of Thorough Investigation and Discovery	12
c.	Terms of the Proposed Settlement	12
i.	Deductions from the Settlement.....	12
ii.	Calculating Settlement Payments	13
iii.	Notice to the Class	13
iv.	Distribution of Funds	13
v.	Release of Claims	14
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	16
i.	The Settlement Amount of \$1,000,000 Is Fair and Reasonable	16
ii.	The PAGA Penalties of \$80,000 Is Reasonable	17
c.	Discount Analysis Justifies the Settlement	18
d.	Conditional Certification of the Class Is Appropriate	19
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	19
ii.	Class Members Share a Well-defined Community of Interest	20
1.	Common Issues Predominate.....	20

2.	Plaintiff Ferris’ Claims Are Typical of the Class Claims	21
3.	Plaintiff Ferris Is an Adequate Class Representative.....	21
4.	Class Action is Superior for the Fair and Efficient Adjudication of this Controversy	21
e.	The Settlement Is Fair, Reasonable, and Adequate	22
f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
V.	CONCLUSION.....	22

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page(s)</u>
---------------------	-----------------------

<i>Acosta v. TransUnion, LLC</i>	
(C.D. Cal. 2007) 240 F.R.D. 564	19
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	17
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	14
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	20
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	15
<i>Boyd v. Bechtel Corp.</i>	
(N.D.Cal. 1979) 485 F.Supp.610	12
<i>Brinker Restaurant Corp. v. Superior Court</i>	
(2012) 53 Cal.4th 1004	20
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	20
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	21
<i>Detroit v. Grinnell Corp.</i>	
(2d Cir. 1974) 495 F.2d 448.....	19
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	17
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	15, 22
///	
///	

<u>Cases</u>	<u>Page(s)</u>
--------------	----------------

<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS	
2904	20
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106	19
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	17
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	19
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	18
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905	15
<i>Jones v. JGC Dallas LLC</i>	
(N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS	
185042.....	20
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	20
<i>Linney v. Cellular Alaska P’ship</i>	
(9th Cir. 1998) 151 F.3d 1234	19
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	16

///

<u>Cases</u>	<u>Page(s)</u>
---------------------	-----------------------

Nordstrom Com. Cases

(2010) 186 Cal.App.4th 576	18
----------------------------------	----

Sav-On Drug Stores, Inc. v. Superior Court

(2004) 34 Cal.4th 319	17, 19, 20
-----------------------------	------------

Thurman v. Bayshore Transit Mgmt.

(2012) 203 Cal.App.4th 1112	17
-----------------------------------	----

Vasquez v. Superior Court

(1971) 4 Cal.3d 800	15
---------------------------	----

Walsh v. IKON Office Solutions, Inc.

(2007) 148 Cal.App.4th 1440	17
-----------------------------------	----

Rules

California Rules of Court, Rule 3.769	15
---	----

California Rules of Court, Rule 3.769 (f)	22
---	----

California Rules of Court, Rule 3.769 (g).....	15
--	----

Federal Rule 23	15
-----------------------	----

Statutes

Business & Professions Code § 17200	16
---	----

Civil Code § 1542	14
-------------------------	----

Code of Civil Procedure § 382.....	19, 22
------------------------------------	--------

Code of Civil Procedure § 877.6.....	16
--------------------------------------	----

Labor Code § 201.....	17
-----------------------	----

Labor Code § 202.....	17
-----------------------	----

Labor Code § 203.....	17
-----------------------	----

Labor Code § 204.....	17
-----------------------	----

Labor Code § 210.....	17
-----------------------	----

Labor Code § 218.5.....	17
-------------------------	----

Labor Code § 221.....	17
-----------------------	----

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 226.3.....	17
Labor Code § 226.7.....	17
Labor Code § 226 (a)	17
Labor Code § 246.....	17
Labor Code § 432.5.....	17
Labor Code § 510.....	17
Labor Code § 512 (a)	17
Labor Code § 551.....	17
Labor Code § 552.....	17
Labor Code § 558.....	17
Labor Code § 1174 (d).....	17
Labor Code § 1194.....	17
Labor Code § 1197.....	17
Labor Code § 1197.1.....	17
Labor Code § 1198.....	17
Labor Code § 2800.....	17
Labor Code § 2802.....	17

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and all former hourly-paid or non-
4 exempt employees of Jain Irrigation, Inc. within the State of California at any time during the
5 period from August 28, 2016, through June 29, 2023 (“Class,” “Class Members,” and “Class
6 Period”). At the time of this filing, the number of Class Members is estimated to be one hundred
7 twenty-nine (129), which was confirmed by Defendant Rivulis Irrigation, Inc. (“Defendant”).
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 August 28, 2020, Plaintiff Ferris filed a wage-and-hour class action lawsuit against Jain
12 Irrigation, Inc. in the Superior Court of California, County of San Bernardino, alleging eight (8)
13 causes of action (Case No. CIVDS2018206). (Han Decl., *supra*, at ¶ 10.)

14 On February 16, 2021, Plaintiff Ferris’ lawsuit was transferred to the Superior Court of
15 California, County of Fresno. (Han Decl., *supra*, at ¶ 11.)

16 On January 11, 2023, Plaintiff Valverde in the instant case provided written notice to the
17 California Labor and Workforce Development Agency. (Han Decl., *supra*, at ¶ 12; Exhibit 3.)

18 On April 13, 2023, Plaintiff Valverde filed a representative PAGA action against
19 Defendant in the Superior Court of California, County of Madera (Case No. MCV089185). (Han
20 Decl., *supra*, at ¶ 13; Exhibit 4.)

21 On June 29, 2023, Defendant acquired and merged with Jain Irrigation, Inc., such that the
22 Jain Irrigation, Inc. entity ceased to exist, and Defendant is the surviving corporation. (Han Decl.,
23 *supra*, at ¶ 14.)

24 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
25 mediation with the mediator Monique Ngo-Bonnici on June 24, 2024, resulting in the Parties
26 reaching a tentative global settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 15.)

27 ///

28 ///

1 In line with the settlement, Plaintiff Valverde filed a First Amended Complaint that: (1)
2 added Plaintiff Ferris as a named plaintiff; and (2) added the class and individual claims previously
3 asserted by Plaintiff Ferris against Jain Irrigation, Inc. (Han Decl., *supra*, at ¶ 16.)

4 **III. INVESTIGATION/ LITIGATION HISTORY**

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

6 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 18.)
7 Plaintiffs propounded general interrogatories, special interrogatories, requests for admission, and
8 requests for production of documents, and responses were provided to the formal discovery
9 requests. (*Ibid.*) The Parties met and conferred and agreed to engage in the informal exchange of
10 information and then eventually remotely attended mediation. (*Ibid.*)

11 Prior to the mediation, several documents relating to the policies, practices, and procedures
12 were produced. (Han Decl., *supra*, at ¶ 19.) As part of the production, Plaintiffs also reviewed time
13 records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative
14 class members were also located and interviewed to attain a better understanding of the extent and
15 frequency of the alleged day-to-day violations. (*Ibid.*)

16 Based on the information provided and interviews with putative class members, Plaintiffs
17 contend – and Defendant denies – there was a: (1) failure to provide employees with legally
18 mandated meal and rest breaks; (2) failure to pay employees for all hours worked; (3) failure to
19 include non-discretionary bonuses in employees' regular rate of pay; (4) failure to reimburse
20 employees for necessary business expenses; (5) issuance noncompliant wage statements; and (6)
21 liability for waiting time penalties. (Han Decl., *supra*, at ¶¶ 21-29.)

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 mediator. (Han Decl., *supra*,
25 at ¶ 30.) Under the auspices of the mediator, the Parties reached a settlement via a mediator's
26 proposal, the terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 30; Exhibits 2, 5.)

27 ///

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 33.) 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 ultimately reached. (*Ibid.*)

6 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
7 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶
8 34.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
9 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
10 foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable
11 settlement and is in the best interests of the Class Members. (*Ibid.*)

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

13 The Parties investigated and evaluated the strengths and weaknesses of the claims and
14 defenses before reaching the Settlement and engaged in research and discovery to support the
15 Settlement. (Han Decl., *supra*, at ¶ 35.) The Settlement was only possible following significant
16 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
17 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
18 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
19 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
20 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
21 at ¶ 35; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

23 **i. Deductions from the Settlement**

24 The Parties agreed this action be settled and compromised for the non-reversionary total
25 sum of \$1,000,000 (“Gross Settlement Amount”) which includes: (1) Class Counsel Fees Payment
26 up to \$350,000 (35% of the Gross Settlement Amount); (2) Class Counsel Litigation Expenses
27 Payment up to \$50,000; (3) Class and PAGA Representative Service Payments totaling \$20,000;
28 (4) Administration Expenses Payment up to \$15,000; (5) PAGA Penalties up to \$80,000; and (6)

1 Prior Settlement Payments of \$53,333.20. (Han Decl., *supra*, at ¶ 31.)

2 **ii. Calculating Settlement Payments**

3 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
4 \$431,666.80 (“Net Settlement Amount”) will be paid to Participating Class Members – with a
5 gross *average* Individual Class Payment estimated at \$3,346.25. (Han Decl., *supra*, at ¶ 32.)

6 The Participating Class Members will receive a proportionate share of the Net Settlement
7 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 30;
8 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
9 to the settlement of wage claims and eighty percent (80%) to the settlement of claims for interests
10 and penalties. (*Id.* at § C(2)(d)(i).)

11 The portion of the PAGA Penalties that is to be paid to each PAGA Member shall be
12 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 30;
13 Exhibit 2, *supra*, at § C(2)(e)(i).) PAGA Members’ portion of the PAGA Penalties will be allocated
14 as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

15 **iii. Notice to the Class**

16 No later than fourteen (14) calendar days after the Court grants Preliminary Approval of
17 the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶
18 30; Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the
19 Class Data, the Administrator will send the Class Notice with a translation to all Class Members
20 identified in the Class Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

21 **iv. Distribution of Funds**

22 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
23 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 30; Exhibit 2, *supra*, at §§ D(2), D(3).)
24 Uncashed settlement checks will be canceled and transmitted to the *cy pres* recipient the Katherine
25 and George Alexander Community Law Center. (*Id.* at §§ D(3)(a), D(3)(c).)

26 ///

27 ///

28 ///

1 **v. Release of Claims**

2 Effective on the date when Defendant fully funds the entire Gross Settlement Amount
3 (minus Prior Settlement Payments) and funds all employer payroll taxes owed on the Wage Portion
4 of the Individual Class Payments, all Participating Class Members, on behalf of themselves and
5 their former and present representatives, agents, attorneys, heirs, administrators, successors, and
6 assigns, release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 30;
7 Exhibit 2, *supra*, at § E(2).)

8 Effective on the date when Defendant fully funds the entire Gross Settlement Amount
9 (minus Prior Settlement Payments) and funds all employer payroll taxes owed on the Wage Portion
10 of the Individual Class Payments, all Participating and Non-Participating Class Members, who are
11 PAGA Members, are deemed to release, on behalf of themselves and their former and present
12 representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released
13 Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 30; Exhibit 2, *supra*, at § E(3).)

14 Effective on the date when Defendant fully funds the entire Gross Settlement Amount
15 (minus Prior Settlement Payments) and funds all employer payroll taxes owed on the Wage Portion
16 of the Individual Class Payments, Plaintiffs and their former and present spouses, representatives,
17 agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge the
18 Released Parties from the Plaintiffs' Release. (Han Decl., *supra*, at ¶ 30; Exhibit 2, *supra*, at §
19 E(1).) Furthermore, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits,
20 if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

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

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

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

8 **IV. ARGUMENT**

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

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

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

16 ...

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

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

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

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

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

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

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

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

19 The Settlement Agreement was only possible following significant investigation and
20 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
21 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
22 potential damages. (Han Decl., *supra*, at ¶ 35.)

23 The claims are predicated on the purported: (1) failure to properly calculate and pay
24 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
25 consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5)
26 failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation
27 of PAGA; and (8) violation of Business & Professions Code section 17200. (Han Decl., *supra*, at
28 ¶ 36.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 37.)

1 While Plaintiffs believe that the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Decl., *supra*, at ¶ 38.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
5 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³
6 (*Ibid.*) Thus, the calculations for potential damages were discounted.

7 **ii. The PAGA Penalties of \$80,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
9 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
10 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 48.)
11 Defendant asserted that, regardless of the results of the underlying causes of action, PAGA
12 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained
13 that it had a strong argument it would be unjust to award maximum PAGA penalties given the
14 law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 48; *Thurman v.*
15 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
16 authority].) Furthermore, Defendant argued that without stacking and limited to the initial
17 violation, the PAGA penalties would be limited to about **\$23,800** (238 employees x \$100 penalty
18 for initial violation) on the low end and **\$166,600** (238 employees x \$100 penalty for initial
19 violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 49-51.)

20 Plaintiffs recognized that the risk that any PAGA award could be reduced. (Han Decl.,
21 *supra*, at ¶ 52.) Many of the causes of action brought were also duplicative of the statutory claims.
22 (*Ibid.*) Allocating \$80,000 to PAGA civil penalties was reasonable given that Defendant is also
23 paying an additional \$920,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated

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

in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable.⁴ (Han Decl., *supra*, at ¶ 52.)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$3,377,270.72** on the low end and around **\$3,766,580.50** on the high end. (Han Decl., *supra*, at ¶ 53.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$532,212.39	65%	60%	\$74,509.73
Meal Break Premiums	\$486,946.65	55%	50%	\$109,563
Overtime/Minimum Wage: Off-the-Clock Work	\$778,223.51 to \$1,167,533.29	50%	50%	\$194,555.88 to \$291,883.32
Regular Rate	\$115,090.75	25%	50%	\$43,159.03
Rounding	\$29,844.42	35%	50%	\$9,699.44
Unreimbursed Business Expenses	\$128,325	25%	65%	\$33,685.31
Wage Statement Penalty	\$797,300	35%	35%	\$336,859.25
Waiting Time Penalty	\$509,328	35%	35%	\$215,191.08
MAXIMUM TOTAL EXPOSURE	\$3,377,270.72 to \$3,766,580.50⁵			\$1,017,222.72 to \$1,114,550.16⁶

The realistic recovery for this case is about **\$1,017,222.72** on the low end and **\$1,114,550.16** on the high end. (Han Decl., *supra*, at ¶ 62.) The Gross Settlement Amount is about twenty-six percent (26.55%) of the maximum potential exposure and around eighty-nine percent (89.72%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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

⁵ (Han Decl., *supra*, at ¶¶ 39-47.)

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) 594
3 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
4 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
5 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
6 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska*
7 *P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation
8 and avoidance of wasteful and expensive litigation that induce consensual settlements. The
9 proposed settlement is not to be judged against a hypothetical or speculative measure of what
10 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
11 if Plaintiffs prevailed at trial and provides a 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 of
14 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.) California courts certify class actions if plaintiff identifies “both [1]
17 an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

18 The Class is ascertainable and numerous as to make it impracticable to join all Class
19 Members, and there are common questions of law and fact that predominate over any questions
20 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 63.) Plaintiff Ferris contends that
21 his claims are typical of the claims of the Class and that Class Counsel will fairly and adequately
22 protect the interests of the Class. (*Ibid.*) Plaintiff Ferris asserts the prosecution of separate actions
23 by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

25 “Ascertainability is required in order to give notice to putative class members as to whom
26 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
27 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
28 by describing a set of common characteristics sufficient to allow a member of that group to identify

1 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
2 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
3 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

4 This case involves approximately one hundred twenty-nine (129) Class Members, meaning
5 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 64.) All Class Members can and will be
6 identified by the Administrator through a review of the employment records. (*Ibid.*)

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

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

17 **1. Common Issues Predominate**

18 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
19 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
20 *Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts
21 determine whether the elements necessary to establish liability are susceptible to common proof,
22 even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v.*
23 *Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class
24 certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC*
25 *Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS
26 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.*
27 (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court
28 certified class of dancers on state law claims].)

1 Plaintiff Ferris assert that common issues of fact and law predominate as to each of the
2 claims alleged. (Han Decl., *supra*, at ¶ 65.) Plaintiffs Ferris further contend that all Class Members
3 were subject to the same or similar employment practices, policies, and procedures described in
4 detail above. (*Ibid.*)

5 **2. Plaintiff Ferris' Claims Are Typical of the Class Claims**

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

8 Plaintiff Ferris is a former employee and alleges that he and the Class Members were
9 employed by the same company and injured by the common policies and practices related to the
10 claims described above. (Han Decl., *supra*, at ¶ 66.) Plaintiff Ferris seeks relief for these claims
11 and derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same
12 employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

13 **3. Plaintiff Ferris Is an Adequate Class Representative**

14 Plaintiff Ferris has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶
15 67.) Plaintiff Ferris conducted himself diligently and responsibly, understands the fiduciary
16 obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff Ferris spent
17 time in meetings and conferences with Class Counsel to provide them with a complete
18 understanding of the work experience and environment. (*Ibid.*) Plaintiff Ferris also has no interest
19 that is averse to the interests of the other Class Members. (*Ibid.*)

20 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 21 **of this Controversy**

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

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

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

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

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

11 If the court has certified the action as a class action, notice of the final approval
12 hearing must be given to class members in the manner specified by the court. The
13 notice must contain an explanation of the proposed settlement and procedures for
14 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.

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

18 **V. CONCLUSION**

19 Plaintiffs submit that the Settlement is in the Class’s best interests. Under the applicable
20 class action criteria and guidelines, the Settlement should be preliminarily approved by the Court,
21 Class should be conditionally certified for settlement purposes, and Class Notice and PAGA
22 Settlement Share should be approved.

23
24 Dated: October 15, 2024

JUSTICE LAW CORPORATION

25 By: 
26 Douglas Han
27 Attorneys for Plaintiffs
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On October 15, 2024, 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: **Valverde v. Rivulis Irrigation, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-928876-23**
Court Case No.: MCV089185
Madera 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

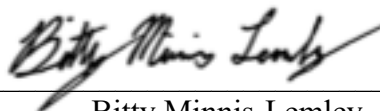
[X] BY ELECTRONIC SUBMISSION

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 October 15, 2024, at Pasadena, California.



Bitty Minnis-Lemley