

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 Cristal Lombera

[Additional counsel for plaintiffs on the following page]

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

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

Plaintiff,

v.

CREEKSIDE AUTO GROUP, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 23CV415661
[Consolidated with Case Nos. 23CV418331
and 24CV428865]

Assigned for All Purposes to:
Honorable Charles F. Adams
Department 7

CLASS ACTION

**PLAINTIFFS’ 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**

[Declarations of Proposed Class Counsel
(Douglas Han and John Yslas); Declaration of
Lisa Mullins; and [Proposed] Order filed
concurrently herewith]

Hearing Date: November 7, 2024
Hearing Time: 1:30 p.m.
Hearing Place: Department 7

Complaint Filed: May 10, 2023
Consolidated FAC Filed: April 2, 2024
Trial Date: None Set

1 JOHN G. YSLAS (SBN 187324)
2 DIEGO AVILES (SBN 315533)
3 HARRY ERGANYAN (SBN 333091)
4 MARIAM NAZARETYAN (SBN 334154)

5 **WILSHIRE LAW FIRM**
6 3055 Wilshire Blvd., 12th Floor
7 Los Angeles, California 90010
8 Telephone: (213) 381-9988
9 Facsimile: (213) 381-9989

10 *Attorneys for Plaintiff Jesus Cabrera*
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PLEASE TAKE NOTICE** that on November 7, 2024 at 1:30 p.m., or as soon as the
2 matter may be heard, before the Honorable Charles F. Adams in Department 7 of the Santa Clara
3 Superior Court located at 191 North First Street, San Jose, California 95113, Plaintiffs Cristal
4 Lombera and Jesus Cabrera (“Plaintiffs,” “Plaintiff Lombera,” and “Plaintiff Cabrera”) move for
5 an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Class Action and PAGA Settlement Agreement and
8 Release of Claims (“Settlement Agreement,” “Settlement,” or “Agreement”),
9 attached as **Exhibit 2** to the declaration of Douglas Han, including, and not limited
10 to, the means of allocation and distribution of funds, the allocations for payments
11 under the Private Attorneys General Act of 2004 (“PAGA”), Class Counsel Fees
12 Payment, Class Counsel Litigation Expenses Payment, Class Representative
13 Service Payments, and Settlement Administration Expenses;
- 14 • Conditionally certifying the proposed Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the class representatives;
- 16 • Appointing Justice Law Corporation and Wilshire Law Firm as Class Counsel;
- 17 • Approving the proposed Notice of Proposed Settlement of Class Action and
18 Hearing Date (“Class Notice”) attached as **Exhibit A** to the Settlement Agreement
19 and [Proposed] Order Preliminarily Approving Class Action Settlement;
- 20 • Directing the mailing of the proposed Class Notice with a postage-paid return
21 envelope to the proposed Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving ILYM Group, Inc. as the Administrator;
- 25 • Approving the settlement of the PAGA claims; and

26 ///

27 ///

28 ///

- 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 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, Settlement Administration Expenses, and allocation of the PAGA Payment.

This motion is based upon the following memorandum of points and authorities; Declarations of Proposed Class Counsel (Douglas Han and John Yslas); Declaration of the Proposed Administrator (Lisa Mullins); [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: May 31, 2024

JUSTICE LAW CORPORATION

By: 

Douglas Han

Attorneys for Plaintiff Cristal Lombero

TABLE OF CONTENTS

I.	INTRODUCTION	11
II.	BACKGROUND	11
III.	INVESTIGATION/ LITIGATION HISTORY	12
a.	Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions	12
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action	13
i.	The Parties Attended Mediation Which Ultimately Led to the Settlement Agreement.....	13
ii.	The Settlement Was Reached as a Result of Arm’s-length Negotiations	13
iii.	The Settlement Is the Result of Thorough Investigation	13
c.	Terms of the Proposed Settlement	14
i.	Deductions from the Settlement.....	14
ii.	Calculation of the Class Members’ Individual Class Payments	14
iii.	The Allocation of 20% to Wages and 80% to Interests and Penalties Is Justified Under the Claims of this Action.....	14
iv.	Notice to the Class	15
v.	Distribution of Funds	15
vi.	Release of Claims	16
d.	Counsel for Both Parties Are Experienced in Similar Litigation	16
IV.	ARGUMENT	17
a.	Class Action Settlements Are Subject to Court Review	17
b.	The Proposed Settlement Is a Reasonable Compromise of Claims.....	17
i.	The Gross Settlement Amount of \$2,500,000.00 Is Fair and Reasonable	18
ii.	The PAGA Payment of \$150,000.00 Is Reasonable.....	19
c.	Discount Analysis Justifies the Settlement	20
d.	Conditional Certification of the Class Is Appropriate	21

1	i.	The Proposed Class Is Ascertainable and Sufficiently Numerous.....	22
2	ii.	The Class Members Share a Well-defined Community of Interest	22
3	1.	Common Issues Predominate.....	22
4	2.	Plaintiffs’ Claims Are Typical of the Class Claims.....	23
5	3.	Plaintiffs Are Adequate to Represent the Class.....	23
6	4.	Class Action Is Superior for the Fair and Efficient Adjudication of	
7		this Controversy	23
8	e.	The Settlement Is Fair, Reasonable, and Adequate	24
9	f.	Notice to Class Members Complies with California Rules of Court,	
10		Rule 3.769(f)	24
11	V.	CONCLUSION.....	24

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.....	21
<i>Aguilar v. Cintas Corp. No. 2</i>	
(2006) 144 Cal.App.4th 121	19
<i>Amaro v. Anaheim Arena Management, LLC</i>	
(2021) 69 Cal.App.5th 521	16
<i>Bartold v. Glendale Federal Bank</i>	
(2000) 81 Cal.App.4th 816	22
<i>In re Beef Industry Antitrust Litigation</i>	
(5th Cir. 1979) 607 F.2d 167	17
<i>Boyd v. Bechtel Corp.</i>	
(N.D. Cal. 1979) 485 F.Supp.610	14
<i>Brinker Restaurant Corp. v. Superior Court</i>	
(2012) 53 Cal.4th 1004	22
<i>Capitol People First v. Department of Developmental Services</i>	
(2007) 155 Cal.App.4th 676	22
<i>Classen v. Weller</i>	
(1983) 145 Cal.App.3d 27	23
<i>Detroit v. Grinnell Corp.</i>	
(2d. Cir. 1974) 495 F.2d 448.....	21
<i>Dunbar v. Albertson's Inc.</i>	
(2006) 141 Cal.App.4th 1422	19
<i>Dunk v. Ford Motor Co.</i>	
(1996) 48 Cal.App.4th 1794	17, 24
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	23

<u>Cases</u>	<u>Page(s)</u>
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	22
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	17
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	19
<i>Hicks v. Kaufman & Broad Home Corp.</i>	
(2001) 89 Cal.App.4th 908	22
<i>Hopson v. Hanesbrands Inc.</i>	
(N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900	20
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106	21
<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n</i>	
(1981) 452 U.S. 905.....	17
<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.....	23
<i>Kullar v. Foot Locker Retail, Inc.</i>	
(2008) 168 Cal.App.4th 116	17, 18
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	22
<i>Linney v. Cellular Alaska Partnership</i>	
(9th Cir. 1998) 151 F.3d 1234	21
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i>	
(2010) 186 Cal.App.4th 399	18
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	20

<u>Cases</u>	<u>Page(s)</u>
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	19, 21, 22
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	19
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	17
<i>Walsh v. IKON Office Solutions, Inc.</i>	
(2007)148 Cal.App.4th 1440	19
<u>Rules</u>	
California Rules of Court, Rule 3.769	17
California Rules of Court, Rule 3.769(f)	24
California Rules of Court, Rule 3.769(g).....	17
Federal Rule 23	17
<u>Statutes</u>	
Business and Professions Code § 17200.....	18
Code of Civil Procedure § 382.....	21, 24
Code of Civil Procedure § 877.6.....	18
Code of Civil Procedure § 1542.....	16
Labor Code § 201.....	19
Labor Code § 202.....	19
Labor Code § 203.....	19
Labor Code § 204.....	19
Labor Code § 210.....	19
Labor Code § 218.5.....	19
Labor Code § 221.....	19
Labor Code § 226.3.....	19
Labor Code § 226.7.....	19

<u>Statutes</u>	<u>Page(s)</u>
Labor Code § 226(a)	19
Labor Code § 246.....	19
Labor Code § 510.....	19
Labor Code § 512(a)	19
Labor Code § 551.....	19
Labor Code § 552.....	19
Labor Code § 558.....	19
Labor Code § 1174(d).....	19
Labor Code § 1194.....	19
Labor Code § 1197.....	19
Labor Code § 1197.1.....	19
Labor Code § 1198.....	19
Labor Code § 2800.....	19
Labor Code § 2802.....	19

1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary wage-and-hour class and
3 representative action settlement by Plaintiffs on behalf of themselves and all current and former
4 employees employed by Defendant Creekside Auto Group dba Capitol Toyota (“Defendant”) as
5 hourly-paid or non-exempt employees in the State of California during the period of time from
6 May 10, 2019 through June 12, 2024 (“Class,” “Class Members,” and “Class Period”). At the
7 time of this filing, the number of Class Members confirmed by Defendant is estimated to be four
8 hundred eight (408). (Declaration of Douglas Han In Support of Plaintiffs’ Motion For
9 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7, 8.)

10 **II. BACKGROUND**

11 On February 16, 2023, Plaintiff Lombera, represented by Justice Law Corporation,
12 provided written notice to the California Labor and Workforce Development Agency (“LWDA”)
13 and Defendant. (Han Decl., *supra*, at ¶ 9, Exhibit 4.)

14 On May 10, 2023, Plaintiff Lombera filed a representative action under the Private
15 Attorneys General Act of 2004 (“PAGA”) in the Superior Court of California, County of Santa
16 Clara (Case No. 23CV415661). (Han Decl., *supra*, at ¶ 10, Exhibit 5.)

17 On June 30, 2023, Plaintiff Cabrera, represented by Wilshire Law Firm, filed a wage-and-
18 hour class action lawsuit in the Superior Court of California, County of Santa Clara, alleging eight
19 (8) causes of action (Case No. 23CV418331). (Han Decl., *supra*, at ¶ 11; Declaration of John
20 Yslas (“Yslas Decl.”), *supra*, at ¶ 10.)

21 On May 24, 2023, Plaintiff Cabrera provided written notice to the LWDA and Defendant.
22 (Han Decl., *supra*, at ¶ 12, Exhibit 6; Yslas Decl., *supra*, at ¶ 11.)

23 On January 10, 2024, Plaintiff Cabrera filed a separate representative PAGA action in the
24 Superior Court of California, County of Santa Clara (Case No. 24CV428865). (Han Decl., *supra*,
25 at ¶ 13, Exhibit 7; Yslas Decl., *supra*, at ¶ 11.)

26 ///

27 ///

28 ///

1 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
2 mediation with the mediator Lynn Frank on March 14, 2024, ultimately resulting in the Parties
3 reaching a tentative global settlement through a mediator’s proposal. (Han Decl., *supra*, at ¶ 14;
4 Yslas Decl., *supra*, at ¶ 12.)

5 On April 2, 2024 Plaintiff Lombera filed an amended and consolidated class and
6 representative action complaint that: (1) added wage-and-hour class action causes of action; (2)
7 adjusted the “class” definition; (3) adjusted the “aggrieved employees” definition; and (4)
8 designated Case No. 23CV415661 as the lead case. (Han Decl., *supra*, at ¶ 15, Exhibit 8.)

9 **III. INVESTIGATION/ LITIGATION HISTORY**

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

11 After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 17;
12 Yslas Decl., *supra*, at ¶¶ 14-17.) Specifically, the Parties met and conferred and agreed to engage
13 in an informal exchange of information and then eventually remotely attended mediation. (Han
14 Decl., *supra*, at ¶ 17; Yslas Decl., *supra*, at ¶¶ 14-17.)

15 Prior to mediation, the Parties conducted significant investigation and discovery of the
16 facts and law. (Han Decl., *supra*, at ¶ 18; Yslas Decl., *supra*, at ¶¶ 14-17.) Defendant produced
17 several documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 18;
18 Yslas Decl., *supra*, at ¶¶ 15-18.) As part of Defendant’s production, Plaintiffs also reviewed time
19 records, wage statements, and information relating to the size and scope of the Class. (Han Decl.,
20 *supra*, at ¶ 18; Yslas Decl., *supra*, at ¶¶ 15-18.) Plaintiffs even located and interviewed putative
21 class members. (Han Decl., *supra*, at ¶ 18.)

22 Based upon the information provided by Defendant and interviews with putative class
23 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees
24 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked;
25 (3) failed to factor non-discretionary bonuses into employees’ regular rate; (4) failed to
26 maintained valid alternative workweek schedules; (5) failed to reimburse employees for
27 necessary business expenses; (6) issued noncompliant wage statements; and (7) is liable for
28 waiting time penalties. (Han Decl., *supra*, at ¶¶ 20-28.)

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

2 **i. The Parties Attended Mediation Which Ultimately Led to the**
3 **Settlement Agreement**

4 The Parties remotely attended mediation with an experienced wage-and-hour mediator.
5 (Han Decl., *supra*, at ¶ 29; Yslas Decl., *supra*, at ¶ 12.) During the mediation, the Parties discussed
6 the risks of continued litigation, the likelihood of certification, and the merits of the claims and
7 defenses versus the benefits of settlement. (Han Decl., *supra*, at ¶ 29.) With the assistance of the
8 mediator, the Parties reached a global settlement, the terms of which were memorialized in the
9 Settlement Agreement. (*Id.* at ¶ 29, Exhibits 2, 9.)

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

11 The Agreement was reached because of arm's-length negotiations. (Han Decl., *supra*, at
12 ¶ 32.) Though cordial and professional, the settlement negotiations have always been adversarial
13 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive
14 arm's-length settlement negotiations until an agreement was reached after mediation through a
15 mediator's proposal. (*Ibid.*)

16 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense
17 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
18 33; Yslas Decl., *supra*, at ¶ 18.) Plaintiffs and Class Counsel considered the uncertainty and risk
19 of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (Han
20 Decl., *supra*, at ¶ 33; Yslas Decl., *supra*, at ¶ 18.) Plaintiffs and Class Counsel believe the
21 settlement set forth in the Settlement Agreement is fair, adequate, and reasonable and is in the
22 Class's best interests. (Han Decl., *supra*, at ¶ 33; Yslas Decl., *supra*, at ¶ 18.)

23 **iii. The Settlement Is the Result of Thorough Investigation**

24 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
25 of the claims and defenses and engaged in sufficient investigation, research, and discovery. (Han
26 Decl., *supra*, at ¶ 34; Yslas Decl., *supra*, at ¶ 18.) The Settlement was only possible following
27 significant investigation and evaluation of the relevant policies and procedures. (Han Decl.,
28 *supra*, at ¶ 34; Yslas Decl., *supra*, at ¶ 18.) This information permitted Class Counsel to engage

1 in a comprehensive analysis of liability and potential damages. This case has reached the stage
2 the Parties understand “the strength of the case; the reasonableness of the settlement in light of
3 the attendant risks of litigation, and in light of the best possible recovery” sufficient to support
4 the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 34; *Boyd v.*
5 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

7 **i. Deductions from the Settlement**

8 The Parties agreed (subject to the Court’s approval) this action be settled and
9 compromised for the non-reversionary total sum of \$2,500,000.00 which includes the: (1) Class
10 Counsel Fees Payment of up to \$833,333.33 (1/3 of the Gross Settlement Amount); (2) Class
11 Counsel Litigation Expenses Payment of up to \$35,000.00; (3) Class Representative Service
12 Payments totaling \$20,000.00; (4) Settlement Administration Expenses of up to \$15,000.00; and
13 (5) PAGA Payment of \$150,000.00. (Han Decl., *supra*, at ¶ 30.)

14 **ii. Calculation of the Class Members’ Individual Class Payments**

15 If the Court approves the proposed deductions from the Gross Settlement Amount, it is
16 estimated \$1,446,666.67 (“Net Settlement Amount”) will be distributed to all Class Members
17 who do not submit valid and timely Requests for Exclusion (“Participating Class Members”),
18 resulting in a gross *average* Individual Class Payment of \$3,545.75. (Han Decl., *supra*, at ¶ 31.)

19 The Administrator will calculate and pay Individual Class Payments for Participating
20 Class Members from the Net Settlement Amount using the formula set forth in the Agreement.
21 (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § III(3)(a)(i).) The Administrator shall also
22 calculate and pay Individual PAGA Payments to Aggrieved Employees using the formula set
23 forth in the Agreement. (*Id.* at § III(3)(a)(ii).)

24 **iii. The Allocation of 20% to Wages and 80% to Interests and Penalties Is**
25 **Justified Under the Claims of this Action**

26 Individual Class Payments will be apportioned twenty percent (20%) in the settlement of
27 wage claims and eighty percent (80%) in the settlement of claims for interest and penalties. (Han
28 Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § III(3)(b).)

1 The allocation of wages and penalties indicated above was based on the approximate
2 realistic exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid
3 and underpaid wages. (Han Decl., *supra*, at ¶ 54.) First, Plaintiffs added the realistic exposure for
4 rest break premiums and meal break premiums ($\$91,909.64 + \$262,603.37 = \$354,513.01$). (*Ibid.*)
5 Plaintiffs then added the $\$354,513.01$ to the low end realistic exposure for unpaid wages due to
6 off-the-clock work and underpaid overtime wages and sick leave ($\$354,513.01 + \$104,186.25 +$
7 $\$13,662.01 + \$41,733.23 = \$514,094.50$). (*Ibid.*) The realistic exposure of $\$514,094.50$ that
8 Plaintiffs can expect to receive if they were to prevail at trial for meal and rest break premiums,
9 low end unpaid wages due to off-the-clock work, and underpaid overtime wages and sick leave
10 represents about 21.93% of the low end total realistic exposure and PAGA penalties ($\$514,094.50$
11 $\div \$2,343,762.10 = 0.21934 \times 100 = 21.93\%$). (*Ibid.*) Because this represents nearly twenty percent
12 (20%) of wages, it means allocating twenty percent (20%) as wages and eighty percent (80%) as
13 interest and penalties pursuant to the Agreement is appropriate. (*Ibid.*)

14 **iv. Notice to the Class**

15 No later than thirty (30) calendar days after the Court grants preliminary approval,
16 Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 29; Exhibit 2,
17 *supra*, at § III(5)(b)(i).) No later than fourteen (14) calendar days after receiving the Class Data,
18 the Administrator will mail the Class Notices with a translation to all Class Members via first-
19 class regular U.S. Mail. (*Id.* at § III(5)(b)(ii).)

20 **v. Distribution of Funds**

21 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
22 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § III(5)(h).)

23 Uncashed settlement checks will be paid to the California Controller's Unclaimed
24 Property Fund in the name of the Participating Class Member. (Han Decl., *supra*, at ¶ 29; Exhibit
25 2, *supra*, at § III(5)(i).)

26 ///

27 ///

28 ///

1 **vi. Release of Claims**

2 Upon final approval, Participating Class Members will waive and release Defendant and
3 the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*,
4 at §§ I(29), III(6)(a).)

5 Upon final approval and in exchange for payment of the PAGA Payment, Plaintiffs, State
6 of California, and all Aggrieved Employees will waive and release the Released Parties from the
7 Released PAGA Claims (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at §§ I(30), III(6)(b).)

8 Plaintiffs and their representatives, agents, attorneys, heirs, administrators, successors,
9 and assigns generally release and discharge Defendant and the Released Parties from any and all
10 claims, known and unknown, asserted and unasserted, that they have or may have had against
11 Defendant or any Released Parties. (Han Decl., *supra*, at ¶ 29; Exhibit 2, *supra*, at § III(6)(c).)
12 Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section
13 1542 of the Civil Code. (*Id.* at § III(6)(c)(i).)

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

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

23 Counsel for the Parties are experienced in wage-and-hour employment law and class
24 actions. (Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1; Yslas Decl., *supra*, at ¶¶ 2-8.) Class Counsel have
25 prosecuted numerous cases on behalf of employees for Labor Code violations. (Han Decl., *supra*,
26 at ¶¶ 2-6, Exhibit 1; Yslas Decl., *supra*, at ¶¶ 2-8.) Thus, Class Counsel are experienced and
27 qualified to evaluate the class claims, advantages, and disadvantages of settlement versus trial,
28 and viability of the defenses. (Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1; Yslas Decl., *supra*, at ¶¶ 2-

8.) Class Counsel’s experience guided their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-6, Exhibit 1; Yslas Decl., *supra*, at ¶¶ 2-8.)

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

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

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

Courts have discretion to approve settlements that are fair, not collusive, and consider “all the normal perils of litigation as well as the additional uncertainties inherent in complex class 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.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in whether the settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008)

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

² The California Supreme Court 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.

1 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
2 186 Cal.App.4th 399, 409.) The most important factor in this regard is ““the strength of the case
3 for Plaintiff on the merits, balanced against the amount offered in settlement.”” (*Kullar v. Foot*
4 *Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 130; see also *Munoz v. BCI Coca-Cola Bottling*
5 *Co. of Los Angeles, supra*, 186 Cal.App.4th at p. 409.)

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

15 **i. The Gross Settlement Amount of \$2,500,000.00 Is Fair and Reasonable**

16 The Settlement was only possible following significant investigation and evaluation of the
17 relevant policies and procedures in place and the data provided for the putative class, as referenced
18 in Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of
19 liability and potential damages. (Han Decl., *supra*, at ¶ 34; Yslas Decl., *supra*, at ¶ 18.)

20 The claims are predicated on the alleged: (1) failure to properly calculate and pay overtime
21 wages; (2) failure to pay minimum wages; (3) failure to pay all regular rate wages due (including
22 sick leave pay); (4) failure to provide meal and rest breaks and consistently pay applicable
23 premium wages; (5) failure to timely pay wages during employment and upon termination; (6)
24 failure to issue compliant wage statements; (7) failure to reimburse business expenses; (8) failure
25 to maintain complete and accurate payroll records; (9) failure to provide one day of rest; (10)
26 failure to keep payroll records in a central location; (11) violation of PAGA; and (12) violation
27 of Business & Professions Code section 17200. (Han Decl., *supra*, at ¶ 35; Yslas Decl., *supra*, at
28 ¶ 20.) Defendant vehemently denies the theories of liability. (Han Decl., *supra*, at ¶ 36.)

1 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 37.) 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 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores,*
5 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
6 These factors led to the discounting of the calculations for the potential damages.

7 **ii. The PAGA Payment of \$150,000.00 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a),
10 226.3, 226.7, 246, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802.
11 (Han Decl., *supra*, at ¶ 47.) Defendant contends that there are no class-wide violations of these
12 labor code sections such that PAGA liability on these claims is minimal to nonexistent. (*Ibid.*)
13 Defendant also asserts PAGA penalties are not mandatory but permissive and discretionary.
14 (*Ibid.*) Defendant maintains it had a strong argument it would be unjust to award maximum PAGA
15 penalties given the law's unsettled state. (Han Decl., *supra*, at ¶ 47; *Thurman v. Bayshore Transit*
16 *Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant
17 argued that without stacking and limited to the initial violation, the PAGA penalties would be
18 limited to **\$21,800.00** (218 employees x \$100 initial violation) on the low end and **\$174,400.00**
19 (218 employees x \$100 initial violation x 8 theories of recovery) on the high end. (Han Decl.,
20 *supra*, at ¶¶ 48-51.)

21 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
22 at ¶ 52.) Many of the causes of action brought were duplicative of the statutory claims, such as
23 Labor Code sections 201, 202, 203, 226.7, 510, 512, 1194, 1197, 1198, 2800, and 2802. (*Ibid.*)
24 Thus, allocating \$150,000.00 as the PAGA Payment was reasonable given that Defendant is

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].)

1 paying an additional \$2,350,000.00 in the class settlement. (Han Decl., *supra*, at ¶ 52.) When
2 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
3 result of self-interest at the expense of other Class Members,” such amounts are considered
4 reasonable.⁴ (*Ibid.*)

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

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

8 Excluding the civil penalties, which could be completely discretionary, the total estimated
9 potential exposure, assuming certification and prevailing at trial, would be about **\$6,002,973.75**
10 on the low end and **\$6,333,873.75** on the high end. (Han Decl., *supra*, at ¶ 53.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,050,395.85	75%	65%	\$91,909.64
Meal Break Premiums	\$2,143,701	65%	65%	\$262,603.37
Overtime/Minimum Wage: Off-the-Clock Work	\$661,500 to \$992,400	65%	55%	\$104,186.25 to \$156,303
Regular Rate	\$42,036.96	35%	50%	\$13,662.01
Alternative Workweek Schedule	\$128,409.94	35%	50%	\$41,733.23
Unreimbursed Business Expenses	\$276,930	20%	60%	\$88,617.60
Wage Statement Penalty	\$773,900	25%	25%	\$435,318.75
Waiting Time Penalty	\$926,100	25%	25%	\$520,931.25
MAXIMUM TOTAL EXPOSURE	\$6,002,973.75 to \$6,333,873.75⁵			\$1,558,962.10 to \$1,611,078.85⁶

22 ///

23
24 ⁴ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist.
25 LEXIS 33900 at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial
26 court did not abuse its discretion in approving a settlement which does not allocate any damages
to the PAGA claims”).

27 ⁵ (Han Decl., *supra*, at ¶¶ 38-46.)

28 ⁶ (*Id.* at ¶¶ 55-62.)

1 Based on this analysis, the realistic recovery is **\$1,558,962.10** on the low end and
2 **\$1,611,078.85** on the high end. (Han Decl., *supra*, at ¶ 63.) The Gross Settlement Amount is about
3 thirty-nine percent (39.47%) of the maximum potential exposure and well above the maximum
4 realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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

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

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

23 The Class is ascertainable and numerous as to make it impracticable to join all Class
24 Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*,
25 at ¶ 64.) Plaintiffs contend that, as former hourly-paid, non-exempt employees of Defendant, their
26 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
27 the interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual
28 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

9 This case involves about four hundred eight (408) Class Members, meaning the Class is
10 sufficiently numerous. (Han Decl., *supra*, at ¶ 65; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
11 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former
12 employees” is sufficiently numerous].)

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

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

23 **1. Common Issues Predominate**

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

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

7 Plaintiffs assert common issues of fact and law predominate as to each of the claims
8 alleged. (Han Decl., *supra*, at ¶ 66.) Plaintiffs contend all Class Members were subject to the same
9 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

10 **2. Plaintiffs' Claims Are Typical of the Class Claims**

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

13 Plaintiffs are former employees of Defendant and allege they and the Class Members were
14 employed by the same company and injured by the common policies and practices related to the
15 claims described above. (Han Decl., *supra*, at ¶ 67.) Plaintiffs seek relief for these claims and
16 derivative claims on behalf of the Class. (*Ibid.*) Plaintiffs' claims arise from the same employment
17 practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

19 Plaintiffs have proven to be adequate representatives. (Han Decl., *supra*, at ¶ 68.)
20 Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this
21 litigation, understand the fiduciary obligations, and have actively participated in the prosecution
22 of this case. (*Ibid.*) Plaintiffs also have no interest that is averse to that of the Class. (*Ibid.*)

23 **4. Class Action Is Superior for the Fair and Efficient** 24 **Adjudication of this Controversy**

25 A class action is superior to other available means for the fair and efficient adjudication
26 of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that
27 class treatment will permit many similarly situated persons to prosecute their common claims for
28 settlement purposes simultaneously in a single forum without the duplication of effort and

1 expense. Because several Class Members are current employees, Plaintiffs believe fear of
2 retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

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

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

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

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

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

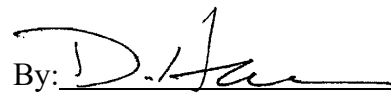
18 The Class Notice meets all these requirements. The proposed Class Notice advises the
19 Class Members of their right to participate in the Settlement; how and when to object to or request
20 exclusion from the Settlement; and date, time, and location of the Final Approval Hearing.

21 **V. CONCLUSION**

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

26 Dated: May 31, 2024

JUSTICE LAW CORPORATION

27 By: 
28 Douglas Han

Attorneys for Plaintiff Cristal Lombera

**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 mluna@justicelawcorp.com

On May 31, 2024, I served the foregoing document described as

PLAINTIFFS' 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: **Lombera v. Creekside Auto Group**
LWDA/Court Case No.: **LWDA Case No.: CM- 936776-23**
Court Case No.: 23CV415661 Santa
Clara 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 May 31, 2024, at Pasadena, California.



Madison Luna