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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SANTIAGO ALEJANDRE, individually, and
on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

DHB DELIVERY LLC, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 22STCV10802

Assigned for All Purposes to:
Honorable Carolyn B. Kuhl
Department 12

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed Class
Representative (Santiago Alejandre);
Declaration of Jodey Lawrence; Declaration of
Daniel Bourgault; and [Proposed] Order filed
concurrently herewith]

Hearing Date: October 4, 2023
Hearing Time: 11:00 a.m.
Hearing Place: Department 12

Complaint Filed: March 29, 2022
FAC Filed: March 16, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 4, 2023 at 11:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Carolyn B. Kuhl in Department 12 of the Los Angeles County
3 Superior Court (Spring Street Courthouse) located at 312 North Spring Street Los Angeles,
4 California 90012, Plaintiff Santiago Alexandre (“Plaintiff”) will and hereby does move for an
5 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 as the class representative;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the proposed deadlines for the settlement administration process;
- 20 • Approving Phoenix Class Administration Solutions as the Administrator; and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, Class Representative Service Payment, and
25 Administration Expenses Payment, and approval of the allocation of the Private
26 Attorney General Act of 2004 (“PAGA”) Penalties.

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

7
8 Dated: August 3, 2023

JUSTICE LAW CORPORATION

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10 By: 
11 Douglas Han
12 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$125,000 proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself and all current and former hourly-
4 paid or non-exempt employees of Defendant DHB Delivery LLC (“Defendant”) within the State
5 of California at any time during the period from March 29, 2018 to May 25, 2023 (“Class,” “Class
6 Members,” and “Class Period”). At the time of this filing, the number of Class Members is
7 estimated to be seven hundred seventy-seven (777), which was confirmed by Defendant.
8 (Declaration of Douglas Han In Support of Plaintiff’s Motion for Preliminary Approval of Class
9 Action Settlement (“Han Decl.”), ¶¶ 7-8.)

10 **II. BACKGROUND**

11 On March 29, 2022, Plaintiff, a former employee of Defendant, filed a wage-and-hour class
12 action lawsuit in the Superior Court of California, County of Los Angeles, alleging eight (8) causes
13 of action. (Han Decl., *supra*, at ¶ 9.)

14 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
15 mediation with the mediator Paul Grossman on February 24, 2023. (Han Decl., *supra*, at ¶ 10.)
16 Under the auspices of the mediator, the Parties reached a settlement. (*Ibid.*)

17 In line with the settlement, on March 2, 2023, Plaintiff provided written notice to the Labor
18 and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 11;
19 Exhibit 3.) On March 16, 2023, Plaintiff filed a First Amended Complaint adjusting the “Class”
20 definition and adding the following cause of action: violation of Labor Code section 2698, *et seq.*
21 (PAGA). (*Id.* at ¶ 12; Exhibit 4.)

22 **III. INVESTIGATION/ LITIGATION HISTORY**

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

24 After initiating this lawsuit, the Parties engaged in discovery, investigations, and
25 negotiations. (Han Decl., *supra*, at ¶ 14.) Thereafter, the Parties met and conferred and agreed to
26 engage in an informal exchange of information and then eventually attended mediation. (*Ibid.*)

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1 Prior to the mediation, Defendant produced several documents relating to its policies,
2 practices, and procedures. (Han Decl., *supra*, at ¶ 15.) As part of Defendant’s production, Plaintiff
3 also reviewed time records, pay records, and information relating to the size and scope of the Class.
4 (*Ibid.*) Defendant also produced documents pertaining to its present financial condition and the
5 financial hardships it has been experiencing in recent years. (*Ibid.*) In addition, several putative
6 class members were also interviewed to attain a better understanding of the extent and frequency
7 of the alleged day-to-day violations. (*Ibid.*)

8 Based on the information provided by Defendant and interviews with putative class
9 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
10 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
11 failed to include non-discretionary bonuses and incentives in employees’ regular rate of pay for
12 purposes of overtime compensation; (4) failed to reimburse employees for necessary business
13 expenses; (5) issued noncompliant wage statements; and (6) is liable for waiting time penalties.
14 (Han Decl., *supra*, at ¶¶ 17-24.)

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

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

17 The Parties attended mediation with an experienced mediator on February 24, 2023. (Han
18 Decl., *supra*, at ¶ 25.) Under the auspices of the mediator, the Parties reached a settlement, the
19 terms were memorialized in the Settlement Agreement. (*Id.* at ¶ 25; Exhibits 2, 5.)

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

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

25 Plaintiff and Class Counsel recognize the expense and length of additional proceedings
26 necessary to continue the litigation. (Han Decl., *supra*, at ¶ 29.) Plaintiff and Class Counsel
27 considered the uncertainty and risk of further litigation, potential outcome, and difficulties and
28 delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel also had to consider

1 Defendant's present financial condition, financial hardships it has been experiencing in recent
2 years, and its ability to fund a settlement. (Han Decl., *supra*, at ¶ 29.) Based on the foregoing,
3 Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement
4 and is in the best interests of Class Members. (*Ibid.*)

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

6 The Parties investigated and evaluated the strengths and weaknesses of the Parties' claims
7 and defenses before reaching the Settlement and engaged in research and discovery to support the
8 Settlement. (Han Decl., *supra*, at ¶ 30.) The Settlement was only possible following significant
9 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
10 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
11 reached the stage where the Parties understand "the strength of the case; the reasonableness of the
12 settlement in light of the attendant risks of litigation, and in light of the best possible recovery"
13 sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han Decl., *supra*,
14 at ¶ 30; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

16 **i. Deductions from the Settlement**

17 The Parties agreed (subject to the Court's approval) this action be settled and compromised
18 for the non-reversionary total sum of \$125,000 ("Gross Settlement Amount") which includes: (1)
19 Class Counsel Fees Payment not to exceed \$41,666.67; (2) Class Counsel Litigation Expenses
20 Payment not to exceed \$20,000; (3) Class Representative Service Payment not to exceed \$7,500;
21 (4) Administration Expenses Payment not to exceed \$15,000; and (5) PAGA Penalties not to
22 exceed \$10,000. (Han Decl., *supra*, at ¶ 26.)

23 **ii. Calculating Settlement Payments**

24 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
25 \$30,833.33 ("Net Settlement Amount") will be paid to Class Members who do not submit valid
26 and timely Requests for Exclusion from the Settlement ("Participating Class Members"). (Han
27 Decl., *supra*, at ¶ 27.)

28 ///

1 Participating Class Member will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 25;
3 Exhibit 2, *supra*, § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%) to
4 the settlement of wages claims and eighty percent (80%) to the settlement of claims for interests
5 and penalties. (*Id.* at § C(2)(d)(i).)

6 In addition, the PAGA Penalties that is paid to each Aggrieved Employee shall be
7 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 25;
8 Exhibit 2, *supra*, § C(2)(e).) Aggrieved Employees' portion of the PAGA Penalties will be
9 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(i).)

10 **iii. Notice to the Class**

11 No later than thirty (30) calendar days after the Court grants Preliminary Approval of the
12 Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 25;
13 Exhibit 2, *supra*, § G(4)(a).) Using best efforts to perform as soon as possible, and in no event later
14 than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all
15 Class Members identified in the Class Data the Class Notice. (*Id.* at § G(4)(c).)

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
18 in the Settlement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, §§ D(2), D(3).) Uncashed settlement
19 checks will be paid to the California Controller's Unclaimed Property Fund. (*Id.* at § D(3)(c).)

20 **v. Release of Claims**

21 Effective when Defendant fully funds the Gross Settlement Amount and funds all employer
22 payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class
23 Members, on behalf of themselves and their respective former and present representatives, agents,
24 attorneys, heirs, administrators, successors, and assigns, release the Released Parties from the
25 Released Class Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, § E(2).)

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Effective when Defendant fully funds the Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, § E(3).)

Effective when Defendant fully funds the Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Plaintiff's former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns agree to a general release of any and all claims, transactions, primary rights, or occurrences against Released Parties. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, § E(1).) Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties' counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims, settlement versus trial on a fully informed basis, and viability of the defenses. (*Ibid.*) This

1 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
2 their determination to endorse the Settlement.¹ (Han Decl., *supra*, at ¶¶ 2-6; Exhibit 1.)

3 **IV. ARGUMENT**

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

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

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

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

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

21 An understanding of the amount in controversy is an important factor in whether the
22 settlement “of the class members’ claims is reasonable in light of the strengths and weaknesses of
23 the claims and the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168

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 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.

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

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

i. The Settlement Amount of \$125,000 Is Fair and Reasonable

The Settlement Agreement was only possible following significant investigation and evaluation of the relevant policies and procedures, as well as the data produced and documents pertaining to Defendant’s present financial condition and recent financial hardships, as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 30.)

The claims are predicated on the purported: (1) failure to properly calculate and pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 31.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 32.)

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1 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 33.) 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 \$10,000 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a),
10 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 42.)
11 Defendant asserts, regardless of the results of the underlying causes of action, PAGA penalties are
12 not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintains it had a strong
13 argument it would be unjust to award maximum PAGA penalties given the law's current unsettled
14 state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 42; *Thurman v. Bayshore Transit Mgmt.*
15 (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore,
16 Defendant argued without stacking and limited to the initial violation, the PAGA penalties would
17 be limited to about **\$27,100** (271 employees x \$100 penalty for initial violation) on the low end
18 and **\$162,600** (271 employees x \$100 penalty for initial violation x 6 theories of recovery) on the
19 high end. (Han Decl., *supra*, at ¶¶ 43-45.)

20 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
21 at ¶ 46.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
22 Allocating \$10,000 to PAGA civil penalties was reasonable given the fact Defendant is also paying
23 an additional \$115,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in

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].)

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 ¶ 46.)

Considering Defendant’s defenses, supporting evidence, position that the case is not suitable for class treatment, and its present financial condition and financial hardships in recent years, 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 **\$4,196,078.44** on the low end and around **\$4,324,856.68** on the high end. (Han Decl., *supra*, at ¶ 47.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$448,765.13	75%	75%	\$28,047.82
Meal Break Premiums	\$323,226.78	65%	65%	\$39,595.28
Overtime/Minimum Wage: Off-the-Clock Work	\$257,556.48 to \$386,334.72	65%	55%	\$40,565.15 to \$60,847.72
Overtime/Minimum Wage: Regular Rate	\$185,644.85	30%	50%	\$64,975.70
Unreimbursed Business Expenses	\$75,620	30%	70%	\$15,880.20
Wage Statement Penalty	\$230,350	70%	65%	\$24,186.75
Waiting Time Penalty	\$2,674,915.20	70%	65%	\$280,866.10
MAXIMUM TOTAL EXPOSURE	\$4,196,078.44 to \$4,324,856.68⁵			\$494,117.00 to \$514,399.57⁶

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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 ¶¶ 34-41.)

⁶ (*Id.* at ¶¶ 48-54.)

1 Thus, the realistic recovery for this case is **\$494,117** on the low end and **\$514,399.57** on
2 the high end. (Han Decl., *supra*, at ¶ 55.) The Gross Settlement Amount is about three percent
3 (2.89%) of the maximum potential exposure and around twenty-four percent (24.30%) of the
4 maximum realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering
5 Defendant’s present financial condition and the financial hardships it has been experiencing in
6 recent years. (*Ibid.*)

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

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

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

24 The Class is ascertainable and numerous as to make it impracticable to join all Class
25 Members, and there are common questions of law and fact that predominate over any questions
26 affecting individual Class Members. (Han Decl., *supra*, at ¶ 56.) Plaintiff contends the claims are
27 typical of the claims of the Class, and Class Counsel will fairly and adequately protect the Class’s
28 interests. (*Ibid.*) Plaintiff asserts the prosecution of separate actions by individual Class Members

would create the risk of inconsistent or varying adjudications. (Han Decl., *supra*, at ¶ 56.)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves approximately seven hundred seventy-seven (777) Class Members, meaning the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 57; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

1. Common Issues Predominate

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) In other words, courts determine whether the elements necessary to establish liability are susceptible to common proof,

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

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiff's Claims Are Typical of the Class Claims

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

Plaintiff is a former employee of Defendant and alleges he and Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 59; Declaration of Santiago Alejandro Re Adequacy In Support of Motion for Preliminary Approval ("Alejandre Decl."), ¶¶ 2-8, 12-15.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (Han Decl., *supra*, at ¶ 59; Alejandre Decl., *supra*, at ¶¶ 2-8, 12-15.) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (Han Decl., *supra*, at ¶ 59; Alejandre Decl., *supra*, at ¶¶ 2-8, 12-15.)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 60; Alejandre Decl., *supra*, at ¶¶ 9-11, 16-21.) Plaintiff conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and actively participated in the prosecution of this case. (Han Decl., *supra*, at ¶ 60; Alejandre Decl., *supra*, at ¶¶ 9-11, 16-21.) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience. (Han Decl., *supra*, at ¶ 60; Alejandre

Decl., *supra*, at ¶¶ 9-11, 16-21.) Plaintiff has no interest adverse to the interests of the other Class Members. (Han Decl., *supra*, at ¶ 60; Alejandro Decl., *supra*, at ¶¶ 9-11, 16-21.)

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

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

e. The Settlement Is Fair, Reasonable, and Adequate

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

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

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

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

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

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1 **V. CONCLUSION**

2 Plaintiff submits the Settlement is in the Class's best interests. Under the applicable class
3 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
4 should be conditionally certified for settlement purposes, and Class Notice should be approved.
5

6 Dated: August 3, 2023

JUSTICE LAW CORPORATION

7
8 By: 
9 Douglas Han
Attorneys for Plaintiff

**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 Ave., Ste. 101 Pasadena, California 91103. My electronic service address is shanneyan@justicelawcorp.com

On August 3, 2023, I served the foregoing document described as

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

for the following case: **Alejandro v. DHB Delivery LLC**
LWDA/Court Case No.: **LWDA-CM-939493-23**
Case No. 22STCV10802
Los Angeles County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on August 3, 2023, at Pasadena, California.



Sophia Hanneyan