

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
HALINA E. SZYMANSKI (SBN 341183)
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 MERCED**

DYLAN GUTIERREZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

SJ LOGISTICS LLC, a California limited
liability company; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 22CV-02682

Assigned for All Purposes to:
Honorable Brian McCabe
Courtroom 8

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**

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

Hearing Date: March 7, 2024
Hearing Time: 8:15 a.m.
Hearing Place: Courtroom 8

Complaint Filed: August 22, 2022
FAC Filed: May 9, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 7, 2024 at 8:15 a.m., or as soon as the matter
2 may be heard, before the Honorable Brian McCabe in Courtroom 8 of the Merced County Superior
3 Court located at 627 West 21st Street, Merced, California 95340, Plaintiffs Dylan Gutierrez and
4 Tania Billings (“Plaintiffs,” “Plaintiff Gutierrez,” and “Plaintiff Billings”) will and hereby do
5 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 Plaintiffs as the class representatives;
- 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 Action Administration Solutions as the Administrator;
21 and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payments, and
26 Administration Expenses Payment, and approval of the allocation of the Private
27 Attorney General Act of 2004 (“PAGA”) Penalties.

28 ///

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

6 Dated: January 29, 2024

JUSTICE LAW CORPORATION

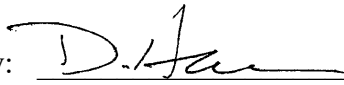
7
8 By: 
9 Douglas Han
10 Attorneys for Plaintiffs
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I.	INTRODUCTION	10
II.	BACKGROUND	10
III.	INVESTIGATION/ LITIGATION HISTORY	10
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	10
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	11
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	13
d.	Counsel for Both Parties Are Experienced in Similar Litigation	14
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	15
i.	The Settlement Amount of \$100,000 Is Fair and Reasonable	16
ii.	The PAGA Penalties of \$10,000 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

1	2.	Plaintiffs’ Claims Are Typical of the Class Claims.....	21
2	3.	Plaintiffs Are Adequate to Represent the Class.....	21
3	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
4		this Controversy	21
5	e.	The Settlement Is Fair, Reasonable, and Adequate	22
6	f.	Notice to the Class Complies with California Rules of Court, Rule 3.769(f).....	22
7	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.....	18
<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	19
<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	22
<i>Espinoza v. Galardi South Enters.</i>	
(S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS.....	20

<u>Cases</u>	<u>Page(s)</u>
<i>Ghazaryan v. Diva Limousine, Ltd.</i>	
(2008) 169 Cal.App.4th 1524	20
<i>Green v. Obledo</i>	
(1981) 29 Cal.3d 126	15
<i>Harris v. Superior Court</i>	
(2007) 154 Cal.App.4th 164	16
<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	17
<i>In re General Motors Corp. Engine Interchange Litigation</i>	
(7th Cir. 1979) 594 F.2d 1106.....	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	15, 16
<i>Linder v. Thrifty Oil Co.</i>	
(2000) 23 Cal.4th 429	20
<i>Linney v. Cellular Alaska Partnership</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	15, 16
<i>Nordstrom Com. Cases</i>	
(2010) 186 Cal.App.4th 576	17

<u>Cases</u>	<u>Page(s)</u>
<i>Sav-On Drug Stores, Inc. v. Superior Court</i>	
(2004) 34 Cal.4th 319	16, 19, 20
<i>Thurman v. Bayshore Transit Mgmt.</i>	
(2012) 203 Cal.App.4th 1112	17
<i>Vasquez v. Superior Court</i>	
(1971) 4 Cal.3d 800	15
<i>Walsh v. IKON Office Solutions, Inc.</i>	
(2007) 148 Cal.App.4th 1440	17
<u>Rules</u>	
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
<u>Statutes</u>	
Business & Professions Code § 17200	16
Code of Civil Procedure § 382.....	19, 22
Code of Civil Procedure § 877.6.....	16
Code of Civil Procedure § 1542.....	14
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
Labor Code § 226.3.....	17
Labor Code § 226.7.....	17

1	<u>Statutes</u>	<u>Page(s)</u>
2	Labor Code § 226 (a)	17
3	Labor Code § 246.....	17
4	Labor Code § 432.5.....	17
5	Labor Code § 510.....	17
6	Labor Code § 512 (a)	17
7	Labor Code § 551.....	17
8	Labor Code § 552.....	17
9	Labor Code § 558.....	17
10	Labor Code § 1174 (d).....	17
11	Labor Code § 1194.....	17
12	Labor Code § 1197.....	17
13	Labor Code § 1197.1.....	17
14	Labor Code § 1198.....	17
15	Labor Code § 2800.....	17
16	Labor Code § 2802.....	17

17
18
19
20
21
22
23
24
25
26
27
28

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 current and former hourly-paid
4 or non-exempt employees of Defendant SJ Logistics LLC (“Defendant”) within the State of
5 California at any time during the period from November 22, 2019, through July 24, 2023 (“Class,”
6 “Class Members,” and “Class Period”). At the time of this filing, the number of Class Members is
7 estimated to be five hundred ninety-one (591). (Declaration of Douglas Han In Support of
8 Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

9 **II. BACKGROUND**

10 On August 22, 2022, Plaintiff Gutierrez filed a wage-and-hour class action lawsuit against
11 Defendant in the Superior Court of California, County of Merced, alleging nine (9) causes of
12 action. (Han Decl., *supra*, at ¶ 10.)

13 On April 6, 2023, Plaintiff Billings provided written notice to the California Laboe and
14 Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 11; Exhibit 3.)

15 After engaging in discovery, investigations and negotiations, the Parties remotely attended
16 mediation with the mediator Paul Grossman on April 25, 2023, resulting in the settlement of this
17 matter via a mediator’s proposal. (Han Decl., *supra*, at ¶ 12.)

18 On May 9, 2023, Plaintiff Gutierrez then filed a First Amended Complaint that added
19 Plaintiff Billings as a named plaintiff and added the following cause of action: violation of Labor
20 Code section 2698, *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

21 **III. INVESTIGATION/ LITIGATION HISTORY**

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

23 Plaintiffs propounded form interrogatories, special interrogatories, requests for admission,
24 and requests for production of documents. (Han Decl., *supra*, at ¶ 15.) Defendant responded to
25 the formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in an
26 informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

27 ///

28 ///

1 Defendant produced several documents relating to its policies, practices, and procedures.
2 (Han Decl., *supra*, at ¶ 16.) As part of Defendant’s production, Plaintiffs also reviewed time
3 records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative
4 class members were also located and interviewed to attain a better understanding of the extent and
5 frequency of the alleged day-to-day violations. (*Ibid.*) The Parties also discussed Defendant’s
6 current financial condition and recent financial hardships it has been experiencing. (*Ibid.*)

7 Based on the information provided by Defendant and interviews with putative class
8 members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees
9 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
10 failed to include non-discretionary bonuses in employees’ regular rate of pay for purposes of
11 overtime compensation, sick leave pay, and premium wages; (4) failed to reimburse employees
12 for necessary business expenses; (5) issued noncompliant wage statements; and (6) is liable for
13 waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-25.)

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

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

16 The Parties attended mediation with an experienced mediator on April 25, 2023. (Han
17 Decl., *supra*, at ¶ 26.) During the mediation, the Parties discussed Defendant’s current financial
18 condition and financial hardships it has been experiencing in recent years. (*Ibid.*) Under the
19 auspices of the mediator, the Parties reached a settlement, the terms were memorialized in the
20 Settlement Agreement. (*Id.* at ¶ 26; Exhibits 2, 5.)

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

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

26 ///

27 ///

28 ///

1 Plaintiffs and Class Counsel recognize the expense and length of additional proceedings
2 necessary to continue the litigation through trial and any possible appeals. (Han Decl., *supra*, at ¶
3 29.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
4 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and
5 Class Counsel also considered Defendant’s present financial condition, financial hardships it has
6 been experiencing in recent years, and its ability to fund a settlement. (*Ibid.*) Based on the
7 foregoing, Plaintiffs and Class Counsel believe the Settlement is a fair, adequate, and reasonable
8 settlement and is in the best interests of Class Members. (*Ibid.*)

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

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

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

20 **i. Deductions from the Settlement**

21 The Parties agreed (subject to the Court’s approval) this case be settled and compromised
22 for the non-reversionary total sum of \$100,000 (“Gross Settlement Amount”) which includes: (1)
23 Class Counsel Fees Payment up to \$35,000 (35% of the Gross Settlement Amount); (2) Class
24 Counsel Litigation Expenses Payment up to \$20,000; (3) Class Representative Service Payments
25 totaling \$10,000; (4) Administration Expenses Payment up to \$13,000; and (5) PAGA Penalties
26 up to \$10,000. (Han Decl., *supra*, at ¶ 27.)

27 ///

28 ///

1 **ii. Calculating Settlement Payments**

2 Class Members who do not submit valid and timely Requests for Exclusion from the
3 Settlement (“Participating Class Members”) will receive a proportionate share of the Net
4 Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*,
5 at ¶ 26; Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent
6 (20%) to the settlement of wages claims and eighty percent (80%) to the settlement of claims for
7 interests and penalties. (*Id.* at § C(2)(d)(i).)

8 In addition, the portion of the PAGA Penalties that is to be paid to each Aggrieved
9 Employee shall be determined using the formula set forth in the Settlement Agreement. (Han
10 Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees’ portion of the PAGA
11 Penalties will be allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

12 **iii. Notice to the Class**

13 No later than thirty (30) calendar days after the Court grants Preliminary Approval of the
14 Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 26;
15 Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) days after receiving the Class Data, the
16 Administrator will send the Class Notice to all Class Members identified in the Class Data via
17 first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

18 **iv. Distribution of Funds**

19 The Gross Settlement Amount will be funded pursuant to the timeline and manner set forth
20 in the Settlement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ D(2), D(3).) The timeline to
21 fund the Gross Settlement Amount is critical for Defendant due to the financial hardships it has
22 been experiencing in recent years. (*Ibid.*) Uncashed settlement checks will be paid to the California
23 Controller’s Unclaimed Property Fund. (*Id.* at §§ D(3)(a), D(3)(c).)

24 **v. Release of Claims**

25 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
26 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
27 Participating Class Members, on behalf of themselves and their former and present representatives,
28 agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the

Released Class Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(2).)

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Non- Participating Class Members who are Aggrieved Employees are deemed to release, on behalf of themselves and their former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(3).)

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and Plaintiffs' former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns are deemed to release the Released Parties from Plaintiffs' Release. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(1).) Furthermore, Plaintiffs expressly waive and relinquish 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

The Parties' counsel are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; 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.*)

///

1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.¹
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

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

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

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

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

26 ///

27 ///

28 ¹ 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 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
2 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
3 *Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum
4 amount the class could recover if plaintiff prevailed on all his claims, provided there is a record
5 that allows “‘an understanding of the amount that is in controversy and the realistic range of
6 outcomes of the litigation.’” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186
7 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under
8 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
9 within the ‘ballpark’ of reasonableness.” (*Kullar*, at p. 133.)

10 **i. The Settlement Amount of \$100,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
13 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
14 potential damages. (Han Decl., *supra*, at ¶ 30.)

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

21 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court
23 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
24 always a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug*
25 *Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.²
26 (*Ibid.*) Thus, the calculations for potential damages were discounted accordingly.

27
28 ² (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
of class claiming misclassification and ordering summary adjudication in favor of employees],

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 46.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$10,000 to PAGA civil penalties was reasonable given that Defendant is also paying an additional \$90,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated 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.³ (*Ibid.*)

/ / /

³ (*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”.)

Considering Defendant’s defenses, supporting evidence, position that the case is not suitable for class treatment, and current financial condition and recent financial hardships, 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 **\$2,350,883.06** on the low end and around **\$2,403,066.63** on the high end. (Han Decl., *supra*, at ¶ 47.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$153,976.19	70%	60%	\$18,477.14
Meal Break Premiums	\$7,407.45	60%	60%	\$1,185.19
Overtime/Minimum Wage: Off-the-Clock Work	\$104,301.68 to \$156,485.25	60%	50%	\$20,860.34 to \$31,297.05
Regular Rate	\$6,475.34	40%	50%	\$1,942.60
Unreimbursed Business Expenses	\$214,100	30%	80%	\$29,974
Wage Statement Penalty	\$213,000	70%	70%	\$19,170
Waiting Time Penalty	\$1,651,622.40	70%	70%	\$148,646.02
MAXIMUM TOTAL EXPOSURE	\$2,350,883.06 to \$2,403,066.63⁴			\$240,255.29 to \$250,692⁵

The realistic recovery is about **\$240,255.29** on the low end and **\$250,692** on the high end. (Han Decl., *supra*, at ¶ 55.) The Gross Settlement Amount is about four percent (4.16%) of the maximum potential exposure and around forty percent (39.89%) of the maximum realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering Defendant’s financial condition and recent financial hardships. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact

⁴ (Han Decl., *supra*, at ¶¶ 34-41.)

⁵ (*Id.* at ¶¶ 48-54.)

1 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
2 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
3 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska*
4 *Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in
5 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
6 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
7 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
8 if Plaintiffs had prevailed at trial and provides a significant recovery for Class Members when
9 considering Defendant’s financial condition.

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

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

16 The Class is ascertainable and numerous as to make it impracticable to join all Class
17 Members, and there are common questions of law and fact that predominate over any questions
18 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 56.) Plaintiffs contend their claims
19 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
20 interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual
21 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

1 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
2 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

3 This case involves approximately five hundred ninety-one (591) Class Members, meaning
4 the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 57; *Ghazaryan v. Diva Limousine, Ltd.*
5 (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and
6 former employees” is sufficiently numerous].)

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

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

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

7 Plaintiffs are former employees of Defendant and allege they and Class Members were
8 employed by the same company and injured by the common policies and practices related to the
9 claims described above. (Han Decl., *supra*, at ¶ 59.) Plaintiffs seek relief for these claims and
10 derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment
11 practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

13 Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 60.)
14 Plaintiffs conducted themselves diligently and responsibly in representing the Class in this
15 litigation, understand the fiduciary obligations, and actively participated in the prosecution of this
16 case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them
17 with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs have no
18 interest averse to the interests of the other Class Members. (*Ibid.*)

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

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

28 ///

In deciding whether 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.

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.

V. CONCLUSION

Dated: January 29, 2024

By: D. Han
Douglas Han
Attorneys for Plaintiffs

**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 January 29, 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: **Gutierrez v. SJ Logistics LLC**
LWDA/Court Case No.: **LWDA Case No.: CM- 946992-23**
Court Case No.: 22CV-02682
Merced 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

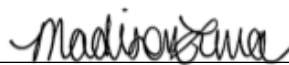
[X] BY ELECTRONIC SUBMISSION

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 January 29, 2024, at Pasadena, California.



Madison Luna