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

ROSALBA DIAZ-SANDOVAL, individually,
and on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

SOUTHERN MONO HEALTHCARE
DISTRICT, a California corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: 22UCM45

Assigned for All Purposes to:
Honorable Mark Magit
Courtroom 2

CLASS ACTION

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

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

Hearing Date: August 1, 2024
Hearing Time: 9:30 a.m.
Hearing Place: Courtroom 2

Complaint Filed: May 6, 2022
FAC Filed: July 14, 2022
SAC Filed: February 13, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on August 1, 2024 at 9:30 a.m.. or as soon as the matter
2 may be heard, before the Honorable Mark Magit in Courtroom 2 of the Mono County Superior
3 Court located at 100 Thompson Way, Mammoth Lakes, California 93546, Plaintiffs, Rosalba
4 Diaz-Sandoval and Steven Conde (“Plaintiffs,” “Plaintiff Diaz-Sandoval,” and “Plaintiff Conde”),
5 will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the class action settlement described herein and
7 as set forth in the Joint Stipulation and 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 Class¹ for settlement purposes only;
- 12 • Conditionally appointing Plaintiffs as the class representatives;
- 13 • Conditionally appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Notice of Class Action Settlement and Claim Form (“Notice
15 Packet”) attached as **Exhibit A** and **Exhibit B** to the Agreement, respectively;
- 16 • Directing the mailing of the Notice Packet with a postage-paid return envelope to
17 the Class;
- 18 • Approving the proposed deadlines for the claims administration process;
- 19 • Approving ILYM Group, Inc. as the Claims Administrator; and
- 20 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
21 Agreement, at which time the Court will also consider whether to grant Final
22 Approval of the requests for the Attorneys’ Fees and Costs, Class Representative
23 Enhancement Payments, Claims Administration Costs, and approval of the
24 allocation of the Private Attorney General Act of 2004 (“PAGA”) Payment.

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28 ¹ All defined terms, whether or not re-defined herein, have the same meaning as provided in
the Settlement Agreement.

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

5
6 Dated: April 30, 2024

JUSTICE LAW CORPORATION

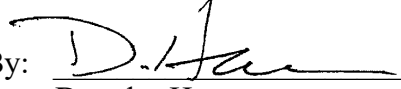
7 By: 
8 Douglas Han
9 *Attorneys for Plaintiffs*

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a reversionary proposed wage-and-hour class
3 action settlement by Plaintiffs on behalf of themselves and all current and former hourly-paid or
4 non-exempt employees of Defendant Southern Mono Healthcare District (“Defendant”) within the
5 State of California at any time during the period from May 6, 2019, through December 26, 2023
6 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
7 Members is estimated to be nine hundred (900), which was confirmed by Defendant. (Declaration
8 of Douglas Han In Support of Plaintiffs’ Motion for Preliminary Approval of Class Action
9 Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On May 6, 2022, Plaintiff Diaz-Sandoval filed a wage-and-hour class action lawsuit in the
12 Superior Court of California, County of Mono, alleging eight (8) causes of action. (Han Decl.,
13 *supra*, at ¶ 10.)

14 On July 14, 2022, Plaintiff Diaz-Sandoval filed a First Amended Complaint that removed
15 all causes of action except for violation of Labor Code sections 1194 and 1197 (unpaid minimum
16 wages). (Han Decl., *supra*, at ¶ 11.)

17 On June 6, 2023, Plaintiff Conde provided written notice to the California Labor and
18 Workforce Development Agency (“LWDA”). (Han Decl., *supra*, at ¶ 12; Exhibit 3.)

19 After engaging in formal and informal discovery, investigations, and negotiation, the
20 Parties remotely attended mediation with the mediator, Paul Grossman, on October 26, 2023,
21 ultimately resulting in the Parties reaching a tentative settlement via a mediator’s proposal. (Han
22 Decl., *supra*, at ¶ 13.)

23 In line with the settlement, on November 30, 2023, Plaintiff Conde provided an amended
24 written notice to the LWDA. (Han Decl., *supra*, at ¶ 14; Exhibit 4.)

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1 Plaintiff Diaz-Sandoval then filed a Second Amended Complaint that: (1) adjusted the
2 “class” definition; (2) added Plaintiff Conde as a named plaintiff; and (3) added six (6) causes of
3 action (bringing the total to 7 causes of action), including violation of Labor Code sections 2698,
4 *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)) and Fair Labor Standards Act, 29
5 U.S.C. section 201, *et seq.* (Han Decl., *supra*, at ¶ 15; Exhibit 5.)

6 **III. INVESTIGATION/ LITIGATION HISTORY**

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

8 The Parties drafted and propounded form interrogatories, special interrogatories, and
9 requests for production of documents. (Han Decl., *supra*, at ¶ 17.) The Parties responded to the
10 formal discovery requests. (*Ibid.*) The Parties then met and conferred and agreed to engage in an
11 informal exchange of information and eventually remotely attended mediation. (*Ibid.*)

12 Defendant produced several documents relating to its policies, practices, and procedures.
13 (Han Decl., *supra*, at ¶ 18.) As part of Defendant’s production, Plaintiffs also reviewed time
14 records, pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative
15 Class Members were also located and interviewed to attain a better understanding of the extent
16 and frequency of the alleged day-to-day wage-and-hour violations. (*Ibid.*)

17 Based on the information provided and interviews with putative Class Members, Plaintiffs
18 contend – and Defendant denies – Defendant: (1) failed to provide employees with legally
19 mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to
20 factor non-discretionary bonuses into employees’ regular rate of pay; (4) issued noncompliant
21 wage statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 20-27.)

22 **b. The Parties Were Able to Reach a Settlement of the Action**

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

24 The Parties attended mediation with an experienced mediator. (Han Decl., *supra*, at ¶ 28.)
25 Under the auspices of the mediator, the Parties reached a settlement via a mediator’s proposal, the
26 terms were memorialized in the Agreement. (*Id.* at ¶ 28; Exhibits 2, 6.)

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

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

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

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

13 The Parties investigated and evaluated the strengths and weaknesses of the claims and
14 defenses before reaching the Settlement and engaged in research and discovery to support the
15 negotiations and ultimate Settlement. (Han Decl., *supra*, at ¶ 33.) The Settlement was only possible
16 following significant investigation and evaluation of the relevant policies and practices, permitting
17 Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*)
18 This case has reached the stage where the Parties understand “the strength of the case; the
19 reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best
20 possible recovery” sufficient to support the Settlement’s reasonableness, adequacy, and fairness.
21 (Han Decl., *supra*, at ¶ 33; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

23 **i. Deductions from the Settlement**

24 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
25 for the reversionary total sum of \$675,000 (“Maximum Settlement Amount”) that includes: (1)
26 attorneys’ fees not to exceed \$236,250 (35% of the Maximum Settlement Amount); (2) attorneys’
27 costs not to exceed \$30,000; (3) Class Representative Enhancement Payments totaling \$20,000;
28 (4) Claims Administration Costs not to exceed \$20,000; and (5) PAGA Payment not to exceed

\$67,500. (Han Decl., *supra*, at ¶ 29.)

ii. Calculating Settlement Payments

The Net Settlement Amount is estimated to be \$301,250. (Han Decl., *supra*, at ¶ 30.) The amount to be distributed to the Class Members who submit timely and valid Claim Forms for participation in the Class Action Settlement (“Claimants”) will equal at least fifty percent (50%) of the Net Settlement Amount. (*Ibid.*) Any unclaimed amounts above fifty percent (50%) of the Net Settlement Amount will be the exclusive property of Defendant. (*Ibid.*)

Claimants will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at ¶ 62.) If the total Individual Settlement Payments to the Claimants would equal less than fifty percent (50%) of the Net Settlement Amount, the Claims Administrator will proportionately increase the Individual Settlement Payment for each Claimant to ensure that total Individual Settlement Payments equal fifty percent (50%) of the Net Settlement Amount. (*Id.* at ¶¶ 31, 61, 62(d).) Individual Settlement Payments will be allocated forty percent (40%) as wages, forty percent (40%) as interest, and twenty percent (20%) as penalties. (*Id.* at ¶ 82.)

The portion of the PAGA Payment that is to be paid to each PAGA Aggrieved Employee shall be determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at ¶ 60.) PAGA Aggrieved Employees’ portion of the PAGA Payment will be allocated as one hundred percent (100%) penalties. (*Id.* at ¶ 60(c).)

iii. Notice to the Class

Within twenty-one (21) business days of Preliminary Approval, Defendant will provide the Class List(s) to the Claims Administrator. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at ¶ 65.) Within fifteen (15) business days of receiving the Class List(s), the Claims Administrator will mail a Notice Packet to all Class Members via regular First-Class U.S. Mail, using the most current, known mailing addresses available. (*Id.* at ¶ 66.)

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1 **iv. Distribution of Funds**

2 The Maximum Settlement Amount will be funded pursuant to the timeline and manner set
3 forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at ¶¶ 55, 56.)
4 Uncashed settlement checks will be transmitted to the California Controller’s Unclaimed Property
5 Fund in the name of the Claimant. (*Id.* at ¶ 79.)

6 **v. Release of Claims**

7 Upon the Effective Date and Defendant funding the settlement amount as described above,
8 Plaintiffs and all Settlement Class Members will be deemed to have fully, finally, and forever
9 released, settled, compromised, relinquished, and discharged with respect to all the Released
10 Parties any and all Released Claims for any period during the Released Claims Period. (Han Decl.,
11 *supra*, at ¶ 28; Exhibit 2, *supra*, at ¶¶ 43, 44, 87.)

12 As a condition of the Settlement, Plaintiffs separately provided a general release to the
13 Released Parties. (Han Decl., *supra*, at ¶ 28; Exhibit 2, *supra*, at ¶ 58(a).) Pursuant to the terms of
14 the Settlement, upon the Effective Date, Plaintiffs will be deemed to have fully, finally, and forever
15 released, settled, compromised, relinquished, and discharged all claims, including all known and
16 unknown claims, and expressly waived and relinquished any rights or benefits available to them
17 under the provisions of section 1542 of the Civil Code. (*Id. supra*, at ¶¶ 58(b), 88.)

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

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

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

8 **IV. ARGUMENT**

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

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

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

16 ...

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

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

23 ² The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
24 the Notice Packet has been provided to the Class, and they have had an opportunity to respond.
25 This information will be provided to the Court in conjunction with the Motion for Final Approval
 of Class Action Settlement.

26 ³ The California Supreme Court has also authorized California's trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
28 *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 **b. The Proposed Settlement Is a Reasonable Compromise of Claims**

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

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

18 **i. The Maximum Settlement Amount of \$675,000 Is Fair and Reasonable**

19 The Settlement Agreement was only possible following significant investigation and
20 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
21 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
22 potential damages. (Han Decl., *supra*, at ¶ 33.)

23 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
24 to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium
25 wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) violation
26 of PAGA; and (7) violation of the Fair Labor Standards Act. (Han Decl., *supra*, at ¶ 34.) Defendant
27 vehemently denies the theories of liability. (*Id.* at ¶ 35.)

28 ///

1 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
2 certification are always present. (Han Decl., *supra*, at ¶ 36.) 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.⁴
6 (*Ibid.*) Thus, the calculations for potential damages were discounted.

7 **ii. The PAGA Payment of \$67,500 Is Reasonable**

8 The provisions of the Labor Code potentially triggering PAGA penalties in this case
9 include Labor Code sections 226(a), 226.3, 246, 512(a), 512.1, 558, 1197, and 1197.1. (Han Decl.,
10 *supra*, at ¶ 45.) Defendant asserted, regardless of the results of the underlying causes of action,
11 PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also
12 maintained it had a strong argument it would be unjust to award maximum PAGA penalties given
13 the law's current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 45; *Thurman*
14 *v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
15 authority].) Defendant argued at mediation without stacking and limited to the initial violation
16 amount, the PAGA penalties would be limited to about **\$59,100** (591 employees x \$100 penalty
17 for initial violation), assuming no further reduction in the penalty amount, and if stacking was
18 allowed, which Defendant always maintained it was not, a maximum of **\$236,400** (591 employees
19 x \$100 penalty for initial violation x 4 theories of recovery). (Han Decl., *supra*, at ¶¶ 46-48.)

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25 ⁴ (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].)

Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 49.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$67,500 to PAGA civil penalties was reasonable given that Defendant is also paying an additional \$607,500 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.⁵ (Han Decl., *supra*, at ¶ 49.)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **\$13,073,555.71** on the low end and around **\$13,824,351.40** on the high end. (Han Decl., *supra*, at ¶ 50.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$2,107,889.58	75%	75%	\$131,743.10
Meal Break Premiums	\$3,010,615.76	65%	65%	\$368,800.43
Overtime/Minimum Wage: Off-the-Clock Work	\$1,501,591.39 to \$2,252,387.08	65%	65%	\$183,944.95 to \$275,917.42
Rounding	\$24,417.89	45%	55%	\$6,043.43
Regular Rate	\$582,018.29	45%	65%	\$144,049.53
Wage Statement Penalty	\$1,507,050	75%	75%	\$94,190.63
Waiting Time Penalty	\$4,339,972.80	75%	75%	\$271,248.30
MAXIMUM TOTAL EXPOSURE	\$13,073,555.71 to \$13,824,351.40⁶			\$1,200,020.37 to \$1,291,992.84⁷

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⁵ (*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.”)

⁶ (Han Decl., *supra*, at ¶¶ 37-44.)

⁷ (*Id.* at ¶¶ 51-57.)

1 The realistic recovery for this case is about **\$1,200,020.37** on the low end and
2 **\$1,291,992.84** on the high end. (Han Decl., *supra*, at ¶ 58.) The Maximum Settlement Amount is
3 about five percent (4.88%) of the maximum potential exposure and around fifty-two percent
4 (52.24%) of the maximum realistic exposure at trial, which is a reasonable 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) 594
7 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D. Cal. 2007) 240 F.R.D. 564, 575.) “The fact
8 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and
9 of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.”
10 (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska*
11 *P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation
12 and avoidance of wasteful and expensive litigation that induce consensual settlements. The
13 proposed settlement is not to be judged against a hypothetical or speculative measure of what
14 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
15 if Plaintiffs prevailed at trial and provides a significant recovery for Class Members.

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

17 Code of Civil Procedure section 382 “authorizes class actions ‘when the question is one of
18 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 plaintiff identifies “both [1]
21 an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

22 The Class is ascertainable and numerous as to make it impracticable to join all Class
23 Members, and there are common questions of law and fact that predominate over any questions
24 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 59.) Plaintiffs contend their claims
25 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
26 interests of the Class. (*Ibid.*) Plaintiffs also assert the prosecution of separate actions by individual
27 Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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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 plaintiffs
5 by describing a set of common characteristics sufficient to allow a member of that group to identify
6 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
7 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
8 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

9 This case involves approximately nine hundred (900) Class Members, meaning the Class
10 is sufficiently numerous. (Han Decl., *supra*, at ¶ 60; *Ghazaryan v. Diva Limousine, Ltd.* (2008)
11 169 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. 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 representatives with claims or defenses typical of the class; and
16 (3) class representatives 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 (emphasis
20 in original).) Rather, courts focus on the defendant’s internal policies and “pattern and practice . .
21 . in order to assess whether that common behavior toward similarly situated plaintiffs renders class
22 certification appropriate.” (*Ibid.*) The application of each of these factors is discussed below.

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Plaintiffs assert common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 61.) Plaintiffs contend all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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.)

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Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 63.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand the fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs also have no interest averse to the interests of the other Class Members. (*Ibid.*)

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. Plaintiffs contend 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, Plaintiffs believe 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 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.) Elements (1)-(3) are present herein, and although element (4) is yet to be determined, the Parties do not anticipate any significant number of objectors, if any.

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

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

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

8 The Notice Packet meets all these requirements. The Notice Packet will provide: (1)
9 information regarding the nature of the lawsuit; (2) a summary of the Settlement's principal terms;
10 (3) the Class definition; (4) the total number of Workweeks each respective Class Member worked
11 for Defendant during the Class Period; (5) each Class Member's estimated Individual Settlement
12 Payment and the formula for calculating Individual Settlement Payments; (6) the dates which
13 comprise the Class Period; (7) instructions on how to submit valid Claim Forms, Requests for
14 Exclusion, Notices of Objection, or written disputes regarding Workweeks; (8) the requirements
15 relating to, and deadlines by which the Class Member must submit Claim Forms, Requests for
16 Exclusions, Notices of Objection, and written disputes regarding Workweeks; (9) the claims to be
17 released, as set forth herein; and (10) the date and time of the Fairness/Final Approval Hearing.
18 (Han Decl., *supra*, at ¶ 68.) The Notice Packet will include the Claim Form, which will provide
19 pertinent employment information, including each respective Class Member's dates of
20 employment that were used to calculate their Individual Settlement Payment. (*Id.* at ¶ 69.)

21 **V. CONCLUSION**

22 Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class
23 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
24 should be conditionally certified for settlement purposes, and Notice Packet should be approved.

25 Dated: April 30, 2024

26 **JUSTICE LAW CORPORATION**

27 By: 

28 Douglas Han

 Attorneys for Plaintiffs

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