

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
HAIG HOGDANIAN (SBN 334699)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

DANTE HILL, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

NORCAL LASTMILE LLC, a California
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 22CV00805

Assigned for All Purposes to:
Honorable Ann Moorman
Department E

CLASS ACTION

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

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

Hearing Date: October 4, 2024
Hearing Time: 9:30 a.m.
Hearing Place: Department E

Complaint Filed: September 19, 2022
FAC Filed: April 4, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 4, 2024 at 9:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Ann Moorman in Department E of the Mendocino County
3 Superior Court located at 100 North State Street, Ukiah, California 95482, Plaintiff Dante Hill
4 (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the class action settlement described herein and
6 as set forth in the Class Action and PAGA Settlement Agreement (“Settlement
7 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
8 Declaration of Douglas Han, including, and not limited to, the means of allocation
9 and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Court Approved Notice of Class Action Settlement and Hearing
14 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
15 Settlement Agreement;
- 16 • Directing the mailing of the Class Notice with a postage-paid return envelope to
17 the Class;
- 18 • Approving the proposed deadlines for the settlement administration process;
- 19 • Approving Apex Class Action Administration as the 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 Class Counsel Fees Payment, Class Counsel
23 Litigation Expenses Payment, Class Representative Service Payment,
24 Administration Expenses Payment, and approval of the allocation of the Private
25 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 Jim Gay; [Proposed] Order
3 filed concurrently with this motion; pleadings and other records on file with the Court in this
4 matter; and such documentary evidence and oral argument as may be presented at the hearing.
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6 Dated: July 22, 2024

JUSTICE LAW CORPORATION

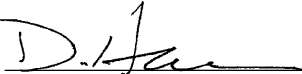
7 By: 
8 Douglas Han
9 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiff on behalf of himself and all current and former hourly-paid or
4 non-exempt employees of Defendant NorCal LastMile LLC (“Defendant”) within the State of
5 California at any time during the period from September 19, 2018, through May 10, 2024 or the
6 date the estimated number of workweeks of 28,081 increases by 10% (*i.e.*, 30,889 workweeks),
7 whichever date is earlier (“Class,” “Class Members,” and “Class Period”). At the time of this filing,
8 the number of Class Members is estimated to be 1,058, which was confirmed by Defendant.
9 (Declaration of Douglas Han In Support of Motion for Preliminary Approval of Class Action
10 Settlement (“Han Decl.”), ¶¶ 7, 8.)

11 **II. BACKGROUND**

12 On September 19, 2022, Plaintiff, a former employee of Defendant, filed a wage-and-hour
13 class action lawsuit in the Superior Court of California, County of Mendocino, alleging nine (9)
14 causes of action. (Han Decl., *supra*, at ¶ 9.)

15 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
16 mediation with the mediator Lisa Klerman on March 21, 2024, ultimately resulting in the Parties
17 reaching a tentative settlement. (Han Decl., *supra*, at ¶ 10.)

18 In line with the settlement, on March 27, 2024, Plaintiff provided written notice to the
19 California Labor and Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 11;
20 Exhibit 3.)

21 On April 4, 2024, Plaintiff filed a First Amended Complaint that updated the “class”
22 definition and added the following cause of action: violation of Labor Code section 2698 (PAGA).
23 (Han Decl., *supra*, at ¶ 12; Exhibit 4.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Plaintiff propounded form interrogatories, special interrogatories, requests for admission,
4 and requests for production of documents. (Han Decl., *supra*, at ¶ 14.) Defendant responded to the
5 formal discovery requests. (*Ibid.*) The Parties met and conferred and agreed to engage in an
6 informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

7 Defendant produced several documents relating to its policies, practices, and procedures.
8 (Han Decl., *supra*, at ¶ 15.) As part of Defendant’s production, Plaintiff also reviewed time records,
9 pay records, and information relating to the size and scope of the Class. (*Ibid.*) Putative class
10 members were also located and interviewed to attain a better understanding of the extent and
11 frequency of the alleged day-to-day violations. (*Ibid.*) The Parties discussed Defendant’s current
12 financial condition and the recent financial hardships it has been experiencing. (*Ibid.*)

13 Based on the information provided by Defendant and interviews with putative class
14 members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees
15 with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
16 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
17 statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 17-23.)

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

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

20 The Parties remotely attended mediation with an experienced mediator. (Han Decl., *supra*,
21 at ¶ 24.) During the mediation, the Parties discussed Defendant’s current financial condition and
22 the financial hardships it has been experiencing in recent years. (*Ibid.*) Under the auspices of the
23 mediator, the Parties reached a settlement, the terms were memorialized in the Settlement
24 Agreement. (*Id.* at ¶ 24; Exhibits 2, 5.)

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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 26.) 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 Plaintiff 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 27.) Plaintiff and Class Counsel also considered the uncertainty and risk of further litigation,
9 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class
10 Counsel also considered Defendant’s present financial condition, financial hardships it has been
11 experiencing in recent years, and its ability to fund a settlement. (*Ibid.*) Based on the foregoing,
12 Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and reasonable settlement
13 and is in the best interests of the Class Members. (*Ibid.*)

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

15 The Parties investigated and evaluated the strengths and weaknesses of the claims and
16 defenses before reaching the Settlement and engaged in research and discovery to support the
17 Settlement. (Han Decl., *supra*, at ¶ 28.) The Settlement was only possible following significant
18 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
19 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
20 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
21 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
22 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
23 at ¶ 28; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2 **i. Deductions from the Settlement**

3 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
4 for the non-reversionary total sum of \$290,000 (“Gross Settlement Amount”) which includes: (1)
5 Class Counsel Fees Payment up to \$101,500 (35% of the Gross Settlement Amount); (2) Class
6 Counsel Litigation Expenses Payment up to \$30,000; (3) Class Representative Service Payment
7 up to \$7,500; (4) Administration Expenses Payment up to \$15,000; and (5) PAGA Penalties up to
8 \$15,000. (Han Decl., *supra*, at ¶ 25.)

9 **ii. Calculating Settlement Payments**

10 The Participating Class Members will receive a proportionate share of the Net Settlement
11 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
12 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
13 to the settlement of wage claims and eighty percent (80%) to the settlement of claims for interests
14 and penalties. (*Id.* at § C(2)(d)(i).)

15 The portion of the PAGA Penalties that is to be paid to each Aggrieved Employee shall be
16 determined using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 24;
17 Exhibit 2, *supra*, at § C(2)(e)(i).) Aggrieved Employees’ portion of the PAGA Penalties will be
18 allocated as one hundred percent (100%) penalties. (*Id.* at § C(2)(e)(ii).)

19 **iii. Notice to the Class**

20 No later than thirty (30) calendar days after the Court grants Preliminary Approval of the
21 Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 24;
22 Exhibit 2, *supra*, at § G(4)(a).) No later than fourteen (14) calendar days after receiving the Class
23 Data, the Administrator will send the Class Notice to all Class Members identified in the Class
24 Data via first-class United States Postal Service mail. (*Id.* at § G(4)(c).)

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1 **iv. Distribution of Funds**

2 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
3 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at §§ D(2), D(3).)
4 Uncashed settlement checks will be canceled and transmitted to the California Controller's
5 Unclaimed Property Fund in the name of the Class Member. (*Id.* at §§ D(3)(a), D(3)(c).)

6 **v. Release of Claims**

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

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

18 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
19 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, in
20 addition to the claims released under Sections E(2) and E(3) of the Agreement, Plaintiff and his
21 former and present spouses, representatives, agents, attorneys, heirs, administrators, successors,
22 and assigns agree to a general release of any and all claims, transactions, primary rights, or
23 occurrences against Released Parties. (Han Decl., *supra*, at ¶ 24; Exhibit 2, *supra*, at § E(1).)
24 Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any, of
25 section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

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

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

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

16 **IV. ARGUMENT**

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

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

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

28 ² The California Supreme Court has authorized California’s trial courts to use Federal Rule
23 and cases applying it for guidance in considering class issues. (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 (a) A settlement or compromise of an entire class action, or a cause of action in
2 a class action, or as to a party, requires the approval of the court after
3 hearing.

4 ...

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

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

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

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

21 *Kullar* instructs the court is not to “decide the merits of the case or to substitute its
22 evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar v. Foot Locker*
23 *Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not require a statement of the maximum
24 amount the class could recover if plaintiff prevailed on all his claims, provided there is a record
25 that allows “an understanding of the amount that is in controversy and the realistic range of
26 outcomes of the litigation.” (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles, supra*, 186
27 Cal.App.4th at p. 409.) “[A]s the court does when it approves a settlement as in good faith under
28 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.)

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1 **i. The Settlement Amount of \$290,000 Is Fair and Reasonable**

2 The Settlement Agreement was only possible following significant investigation and
3 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
4 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
5 potential damages. (Han Decl., *supra*, at ¶ 28.)

6 The claims are predicated on the purported: (1) failure to pay overtime wages; (2) failure
7 to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium
8 wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure
9 to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business &
10 Professions Code section 17200. (Han Decl., *supra*, at ¶ 29.) Defendant vehemently denies the
11 theories of liability. (*Id.* at ¶ 30.)

12 While Plaintiff believes the case is suitable for certification, uncertainties with respect to
13 certification are always present. (Han Decl., *supra*, at ¶ 31.) As the California Supreme Court ruled
14 in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always
15 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*
16 have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
17 Thus, the calculations for potential damages were discounted.

18 **ii. The PAGA Penalties of \$15,000 Is Reasonable**

19 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
20 Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510, 512(a), 558,
21 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 39.) Defendant
22 asserted, regardless of the results of the underlying causes of action, PAGA penalties are not
23 mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it had a strong

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].)

argument it would be unjust to award maximum PAGA penalties given the law’s current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 39; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Furthermore, Defendant argued without stacking and limited to the initial violation, the PAGA penalties would be limited to about **\$39,100** (391 employees x \$100 penalty for initial violation) on the low end and **\$273,700** (391 employees x \$100 penalty for initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 40-42.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 43.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*) Allocating \$15,000 to PAGA civil penalties was reasonable given that Defendant is also paying an additional \$275,000 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.⁴ (*Ibid.*)

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 **\$8,859,570.05** on the low end and around **\$9,009,803.40** on the high end. (Han Decl., *supra*, at ¶ 44.)

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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”.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,201,305.18	75%	75%	\$75,081.57
Meal Break Premiums	\$1,801,957.77	65%	65%	\$220,739.83
Overtime/Minimum Wage: Off-the-Clock Work	\$300,326.30 to \$450,559.65	65%	65%	\$36,789.97 to \$55,193.56
Unreimbursed Business Expenses	\$420,550	35%	85%	\$41,003.63
Wage Statement Penalty	\$371,450	75%	75%	\$23,215.63
Waiting Time Penalty	\$4,763,980.80	75%	75%	\$297,748.80
MAXIMUM TOTAL EXPOSURE	\$8,859,570.05 to \$9,009,803.40⁵			\$694,579.43 to \$712,983.02⁶

The realistic recovery for this case is about **\$694,579.43** on the low end and **\$712,983.02** on the high end. (Han Decl., *supra*, at ¶ 51.) The Gross Settlement Amount is about three percent (3.22%) of the maximum potential exposure and around forty percent (40.67%) of the maximum realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering Defendant’s present 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 that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska P’ship* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the

⁵ (Han Decl., *supra*, at ¶¶ 32-38.)

⁶ (*Id.* at ¶¶ 45-50.)

1 realistic exposure if Plaintiff prevailed at trial and provides a significant recovery for Class
2 Members when considering Defendant's financial condition.

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

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

9 The Class is ascertainable and numerous as to make it impracticable to join all Class
10 Members, and there are common questions of law and fact that predominate over any questions
11 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 52.) Plaintiff contends his claims
12 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
13 interests of the Class. (*Ibid.*) Plaintiff asserts the prosecution of separate actions by individual Class
14 Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

16 "Ascertainability is required in order to give notice to putative class members as to whom
17 the judgment in the action will be res judicata." (*Hicks v. Kaufman & Broad Home Corp.* (2001)
18 89 Cal.App.4th 908, 914.) "A class is ascertainable if it identifies a group of unnamed plaintiffs
19 by describing a set of common characteristics sufficient to allow a member of that group to identify
20 himself or herself as having a right to recover based on the description." (*Bartold v. Glendale*
21 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
22 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

23 This case involves approximately 1,058 Class Members, meaning the Class is sufficiently
24 numerous. (Han Decl., *supra*, at ¶ 53; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
25 1524, 1531, n.5 [finding a proposed class of "as many as 190 current and former employees" is
26 sufficiently numerous].)

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

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

11 **1. Common Issues Predominate**

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

23 Plaintiff asserts common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 54.) Plaintiff contends all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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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 the 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 ¶ 55.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 56.) 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. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiff also has 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. 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 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

1 settlement is presumed fair under the following circumstances: (1) parties reached settlement after
2 arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the
3 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
4 objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) All these elements
5 are present here.

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

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

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

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

15 **V. CONCLUSION**

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

19
20 Dated: July 22, 2024

JUSTICE LAW CORPORATION

21 By: 
22 Douglas Han
23 Attorneys for Plaintiff
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**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 July 22, 2024, I served the foregoing document described as

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

for the following case: **Hill v. NorCal LastMile LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-1019023-24**
Court Case No.: 22CV00805
Mendocino 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 July 22, 2024, at Pasadena, California.



Madison Luna