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

MILTON RAMON SANTA CRUZ,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiff,

v.

TECTONIC TRANSPORT, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: 30-2023-01320697-CU-OE-CXC

Assigned for All Purposes to:
Honorable Randall J. Sherman
Department CX-105

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 Settlement
Administrator (Lisa Mullins); and Declaration
of Nicholas Arellano filed concurrently
herewith]

Hearing Date: December 13, 2024
Hearing Time: 10:00 a.m.
Hearing Place: Department CX-105

Complaint Filed: April 21, 2023
FAC Filed: March 21, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on December 13, 2024 at a 10:00 a.m. or as soon as the
2 matter may be heard, before the Honorable Randall J. Sherman in Department CX-105 of the
3 Orange County Superior Court located at 751 West Santa Ana Boulevard, Santa Ana, California
4 92701, Plaintiff Milton Ramon Santa Cruz (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Joint Stipulation of Class Action and PAGA
7 Settlement (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as
8 **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds;
- 10 • Conditionally certifying the proposed Class for settlement purposes only;
- 11 • Appointing Plaintiff as the class representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
14 attached as **Exhibit A** to the [Proposed] Order Preliminarily Approving Class
15 Action Settlement and Settlement Agreement;
- 16 • Approving the proposed Request for Exclusion Form (“Exclusion Form”) attached
17 as **Exhibit B** to the [Proposed] Order Preliminarily Approving Class Action
18 Settlement and Settlement Agreement;
- 19 • Directing the mailing of the proposed Class Notice and Exclusion Form
20 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
21 to the proposed Class;
- 22 • Approving the proposed deadlines for the notice and settlement administration
23 process;
- 24 • Approving ILYM Group, Inc. as the Settlement Administrator; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for the Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, Administration Costs, and Private Attorneys General Act of 2004 (“PAGA”) Payment.

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

Dated: July 29, 2024

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a fixed total non-reversionary proposed wage-
3 and-hour class action settlement by Plaintiff on behalf of himself all current and former hourly-
4 paid or non-exempt employees of Defendant Tectonic Transport (“Defendant”) within the State
5 of California at any time during the period from April 21, 2019 through April 12, 2024 or the date
6 when the number of workweeks estimated at 21,157 increases by 10%, whichever date is earlier
7 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
8 Members confirmed by Defendant is estimated to be six hundred three (603). (Declaration of
9 Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement (“Han
10 Decl.”), ¶¶ 8, 9.)

11 **II. BACKGROUND**

12 On April 21, 2023, Plaintiff, a former employee of Defendant, filed a wage-and-hour class
13 action lawsuit in the Superior Court of California, County of Orange, alleging nine (9) causes of
14 action. (Han Decl., *supra*, at ¶ 10.)

15 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
16 mediation with the mediator Lisa Klerman on February 22, 2024, ultimately resulting in the
17 Parties reaching a tentative settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 11.)

18 In line with the settlement, on March 14, 2024, Plaintiff provided written notice to the
19 California Labor and Workforce Development Agency (“LWDA”) and Defendant. (Han Decl.,
20 *supra*, at ¶ 12; Exhibits 3, 4.)

21 On March 21, 2024, Plaintiff filed a First Amended Complaint that adjusted the “class”
22 definition and added a cause of action for violation of Labor Code section 2698 (PAGA). (Han
23 Decl., *supra*, at ¶ 13; Exhibit 5.)

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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 ¶ 15.) The Parties then met and
5 conferred and agreed to engage in an informal exchange of information and eventually remotely
6 attended mediation. (*Ibid.*)

7 Prior to mediation, Defendant produced several documents relating to its wage-and-hour
8 policies, practices, and procedures. (Han Decl., *supra*, at ¶ 16.) Plaintiff also reviewed time and
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 obtain 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 upon the information provided and interviews with putative class members,
14 Plaintiff contends – and Defendant denies – that Defendant: (1) failed to provide employees with
15 legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed
16 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 ¶¶ 18-24.)

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 the mediator. (Han Decl., *supra*, at ¶ 25.)
21 During the mediation, the Parties discussed Defendant’s current financial condition and the
22 financial hardships it has been experiencing in recent years. (*Ibid.*) Under the auspices of the
23 mediator, the Parties managed to negotiate a settlement via a mediator’s proposal, the terms of
24 which were memorialized in the Settlement Agreement. (*Id.* at ¶ 25; 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 28.) 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 believe in the merits of the case but also recognize the expense
7 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
8 29.) Plaintiff and Class Counsel have 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.*) Plaintiff and Class Counsel
12 believe the settlement set forth in the Agreement is a fair, adequate, and reasonable settlement
13 and is in the Class Members’ best interests. (*Ibid.*)

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

15 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
16 of the claims and defenses and engaged in sufficient investigation, research, and discovery. (Han
17 Decl., *supra*, at ¶ 30.) The Settlement Agreement was only possible following significant
18 investigation and evaluation of the relevant policies and procedures in place and the data
19 produced. (*Ibid.*) This information permitted Class Counsel to engage in a comprehensive
20 analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where the
21 Parties understand “the strength of the case; the reasonableness of the settlement in light of the
22 attendant risks of litigation, and in light of the best possible recovery” sufficient to support the
23 Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 30; *Boyd v. Bechtel*
24 *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 and contingent upon the Court’s approval) this case be
4 settled and compromised for a fixed total non-revisionary amount of \$275,000 (“Gross Settlement
5 Amount”), which includes: (1) Attorney Fee Award of up to \$91,666.67 (1/3 of the Gross
6 Settlement Amount); (2) Cost Award of up to \$20,000; (3) Class Representative Enhancement
7 Payment of up to \$7,500; (4) Administration Costs of up to \$15,000; and (5) PAGA Payment of
8 \$10,000. (Han Decl., *supra*, at ¶ 26.)

9 **ii. Calculation of the Individual Settlement Shares**

10 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
11 \$130,833.33 (“Net Settlement Amount”) will be distributed to all Class Members who do not
12 submit valid and timely requests to exclude themselves from the Settlement (“Participating Class
13 Members”), resulting in a gross *average* Individual Settlement Share of \$216.97. (Han Decl.,
14 *supra*, at ¶ 27; footnote 5.)

15 Individual Settlement Shares will be calculated using the formula set forth in the
16 Settlement Agreement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(H)(1).) Eligible
17 Aggrieved Employees’ portion of the PAGA Payment will be calculated using the formula set
18 forth in the Settlement Agreement. (*Id.* at § III(I)(7)(g).)

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

21 Individual Settlement Shares will be apportioned twenty percent (20%) as wages and
22 eighty percent (80%) as penalties and interest. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §
23 III(H)(2).)

24 The allocation of wages, penalties, and interest indicated above was based on the realistic
25 exposure that Plaintiff could expect to receive for meal and rest break premiums and unpaid
26 wages. (Han Decl., *supra*, at ¶ 48.) Plaintiff added the realistic exposure for rest break premiums
27 and meal break premiums (\$31,587.58 + \$10,173.37 = \$41,760.95). (*Ibid.*) Plaintiff then added
28 the \$41,760.95 to the low end realistic exposure for unpaid wages due to off-the-clock work

1 (\$41,760.95 + \$97,375.09 = \$139,136.04). (Han Decl., *supra*, at ¶ 48.) The realistic exposure of
2 \$139,136.04 that Plaintiff can expect to receive if he were to prevail at trial for meal and rest
3 break premiums and low end unpaid wages due to off-the-clock work represents about twenty
4 percent (20.52%) of the low end total realistic exposure and PAGA penalties (\$139,136.04 ÷
5 \$677,975.44 = 0.20522 x 100 = 20.52%). (*Ibid.*) Because this represents about twenty percent
6 (20%) of wages, the Settlement Agreement allocating the Individual Settlement Shares as twenty
7 percent (20%) as wages and eighty percent (80%) as penalties and interest is appropriate. (*Ibid.*)

8 **iv. Notice to the Class**

9 Within thirty (30) calendar days after entry of the Preliminary Approval Order, Defendant
10 shall deliver the Class Data to the Settlement Administrator. (Han Decl., *supra*, at ¶ 25; Exhibit
11 2, *supra*, at § III(L)(2)(a).) The Settlement Administrator will conduct a National Change of
12 Address Database search to obtain the most up-to-date address information. (*Ibid.*)

13 Within twenty-one (21) calendar days after receiving the Class Data, the Settlement
14 Administrator will mail the Notice Packet in English to all identified Class Members via first-
15 class regular U.S. Mail, using the most current mailing address information available. (Han Decl.,
16 *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(L)(2)(b).) Class Members are not required to submit a
17 claim form to receive their Individual Settlement Shares. (*Id.* at § I(W).)

18 **v. Distribution of Funds**

19 The Settlement will be funded and distributed in the manner and schedule set forth in the
20 Settlement Agreement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §§ III(I)(2), III(I)(3).)

21 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
22 their settlement checks within one hundred eighty (180) calendar days after the checks are mailed
23 to them. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(I)(5).) Uncashed settlement checks
24 will be paid to the California State Controller's Unclaimed Property Division. (*Ibid.*)

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1 **vi. Release of Claims**

2 As of the Effective Date and upon Defendant’s fulfillment of its payment obligations set
3 forth above, Participating Class Members shall fully and finally release and discharge the
4 Released Parties from the Released Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §§
5 I(II), III(M).)

6 As of the Effective Date and upon Defendant’s fulfillment of its payment obligations set
7 forth above, the LWDA and any other representative, proxy, or agent thereof, including, but not
8 limited to, Plaintiff and any and all Eligible Aggrieved Employees, shall fully and finally release
9 and discharge the Released Parties from the PAGA Released Claims. (Han Decl., *supra*, at ¶ 25;
10 Exhibit 2, *supra*, at §§ I(DD), III(N).)

11 As of the Effective Date and upon Defendant’s fulfillment of its payment obligations set
12 forth above and in exchange for the Class Representative Enhancement Payment to Plaintiff, in
13 recognition of the work and efforts in obtaining the benefits for the Class and undertaking the risk
14 of paying litigation costs if this matter had not successfully resolved, Plaintiff provides a general
15 release of claims for himself and any spouse, heirs, successors, and assigns (Han Decl., *supra*, at
16 ¶ 25; Exhibit 2, *supra*, at § III(O).) Plaintiff also stipulates and agrees that as of the Effective
17 Date, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent
18 permitted by law, the provisions, rights and benefits of Civil Code section 1542, or any other
19 similar provision under federal or state law. (*Ibid.*)

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

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

2 Counsel for both Parties are particularly experienced in wage-and-hour employment law
3 and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted
4 numerous cases on behalf of employees for Labor Code violations and are experienced and
5 qualified to evaluate the class claims, advantages, and disadvantages of settlement versus trial,
6 and viability of the defenses. (*Ibid.*) Class Counsel’s experience guided their determination to
7 endorse the Settlement.¹ (*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.²
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 a class
15 action, or as to a party, requires the approval of the court after hearing.
16 ...
17 (b) Any party to a settlement agreement may serve and file a written notice of motion
18 for preliminary approval of the settlement. The settlement agreement and proposed
19 notice to class members must be filed with the motion, and the proposed order
20 must be lodged with the motion.

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

25 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
26 number of objectors – is not determinable until the Notice Packet has been provided to the Class
27 Members, and they have had an opportunity to respond. This information will be provided to the
28 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

² The California Supreme Court 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 Federal Rule 23 and federal case law in addition to California law.

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

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

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

17 **i. The Settlement Amount of \$275,000 Is Fair and Reasonable**

18 The Settlement was only possible following significant investigation and evaluation of the
19 relevant policies and procedures and the data produced for the putative class, as referenced in
20 Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability
21 and potential damages. (Han Decl., *supra*, at ¶ 30.)

22 This investigation and evaluation informed the central theories of liability that are
23 predicated on the alleged: (1) failure to pay overtime wages; (2) failure to provide meal and rest
24 breaks and pay applicable premiums; (3) failure to pay minimum wages; (4) failure to timely pay
25 wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses;
26 (7) violation of PAGA; and (8) violation of Business & Professions Code sections 17200. (Han
27 Decl., *supra*, at ¶ 31.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 32.)

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1 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
2 to certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court
3 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
4 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores,*
5 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
6 These factors led to discounting the calculations of the potential damages.

7 **ii. The PAGA Payment of \$10,000 Is Reasonable**

8 The provisions of the Labor Code triggering PAGA penalties include, but are not limited
9 to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510,
10 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶
11 41.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA
12 penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintain it
13 had a strong argument it would be unjust to award maximum PAGA penalties given the law's
14 current unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 41; *Thurman v.*
15 *Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this
16 authority].) Furthermore, Defendant argued without stacking and limited to the initial violation,
17 the PAGA penalties would be limited to **\$19,900** (199 employees x \$100 penalty for initial
18 violation) on the low end and around **\$139,300** (199 employees x \$100 penalty for initial violation
19 x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 42-45.)

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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].)

Plaintiff 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 \$265,000 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 (Han Decl., *supra*, at ¶ 46.)

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 **\$2,986,132.66** on the low end and **\$3,180,988.63** on the high end. (Han Decl., *supra*, at ¶ 46.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$263,229.86	70%	60%	\$31,587.58
Meal Break Premiums	\$50,866.83	60%	50%	\$10,173.37
Overtime/Minimum Wage: Off-the-Clock Work	\$389,500.37 to \$584,356.34	50%	50%	\$97,375.09 to \$146,089.09
Unreimbursed Business Expenses	\$206,760	30%	70%	\$43,419.60
Wage Statement Penalty	\$268,650	70%	70%	\$54,178.50
Waiting Time Penalty	\$1,807,125.60	70%	70%	\$162,641.30
MAXIMUM TOTAL EXPOSURE	\$2,986,132.66 to \$3,180,988.63⁵			\$399,375.44 to \$448,089.44⁶

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”.)

⁵ (Han Decl., *supra*, at ¶¶ 34-40.)

⁶ (*Id.* at ¶¶ 49-54.)

1 Based on this analysis, the realistic recovery is **\$399,375.44** on the low end and
2 **\$448,089.44** on the high end. (Han Decl., *supra*, at ¶ 55.) The Gross Settlement Amount is about
3 eight percent (8.65%) of the maximum potential exposure and around sixty-one percent (61.37%)
4 of the maximum realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when
5 considering Defendant’s present financial condition and recent financial hardships. (Han Decl.,
6 *supra*, at ¶ 55.)

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

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

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

25 The Class is ascertainable and numerous as to make it impracticable to join all Class
26 Members, and there are common questions of law and fact that predominate over any questions
27 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 56.) Plaintiff contends, as a former
28 hourly-paid, non-exempt employee of Defendant, his claims are typical of the claims of the Class,

1 and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff
2 also asserts the prosecution of separate actions by individual Class Members would create the risk
3 of inconsistent or varying adjudications, and a class action is superior to other available means
4 for the fair and efficient adjudication of the case. (*Ibid.*)

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

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

13 This case involves about six hundred three (603) Class Members, meaning the Class is
14 sufficiently numerous. (Han Decl., *supra*, at ¶ 57.) All Class Members can and will be identified
15 by the Settlement Administrator through a review of employment records concerning all hourly-
16 paid, non-exempt California employees of Defendant during the Class Period. (*Ibid.*)

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

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

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

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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Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 60.) Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has spent time in meetings and conferences with Class Counsel to provide Class Counsel with a complete understanding of the work environment and requirements. (*Ibid.*) Plaintiff has no interest averse to the interests of the Class. (*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 numerous individual actions would necessitate. Because some Class Members may still be current employees, Plaintiff believes fear of retaliation further supports the superiority of class-wide relief as this fear often discourages current employees from seeking legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 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.

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PROOF OF SERVICE
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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, California 91103 and my electronic service address is eedens@justicelawcorp.com.

On July 29, 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: **Santa Cruz v. Tectonic Transport**
LWDA/Court Case No.: **LWDA Case No.: 1016599-24**
Court Case No.: 30-2023-01320697-CU-OE- CXC
Orange 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 29, 2024, at Pasadena, California.



Ethan Edens