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

JEREMY NIEUWENHUIJS, individually,
and on behalf of other members of the general
public similarly situated;

Plaintiff,

v.

GOOD EARTH NATURAL FOODS, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CV0000742

Assigned for All Purposes to:
Honorable Stephen P. Freccero
Courtroom A

CLASS ACTION

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

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

Hearing Date:
Hearing Time:
Hearing Place: Courtroom A

Complaint Filed: August 29, 2023
FAC Filed: January 5, 2024
SAC Filed: April 12, 2024
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on _____ at _____, or as soon as the matter may be
2 heard, before the Honorable Stephen P. Freccero in Courtroom A of the Marin County Superior
3 Court located at 3501 Civic Center Drive, San Rafael, California 94903, Plaintiffs Jeremy
4 Nieuwenhuijs and Seleny Barrios (“Plaintiffs,” “Plaintiff Nieuwenhuijs,” and “Plaintiff Barrios”)
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 Class Action and PAGA Settlement Agreement (“Settlement
8 Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to the
9 declaration of Douglas Han, including, and not limited to, the means of allocation
10 and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action Settlement and Hearing
15 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
16 Settlement Agreement;
- 17 • Directing the mailing of the Class Notice with a postage-paid return envelope to
18 the Class;
- 19 • Approving the proposed deadlines for the settlement administration process;
- 20 • Approving CPT Group, Inc. as the Administrator; and
- 21 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
22 Agreement, at which time the Court will also consider whether to grant Final
23 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
24 Litigation Expenses Payment, Class Representative Service Payment,
25 Administration Expenses Payment, and approval of the allocation of the Private
26 Attorney General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); [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: May 16, 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 non-reversionary proposed wage-and-hour
3 class action settlement by Plaintiffs on behalf of themselves and all persons employed by
4 Defendant Good Earth Natural Foods, Inc. (“Defendant”) as hourly-paid or non-exempt employees
5 in the State of California at any time during the period from August 29, 2019 to May 28, 2024 or
6 the date of preliminary approval of the settlement, whichever date is earlier (“Class,” “Class
7 Members,” and “Class Period”). The number of Class Members is estimated to be 1,313, which
8 was confirmed by Defendant. (Declaration of Douglas Han In Support of Plaintiffs’ Motion for
9 Preliminary Approval of Class Action Settlement (“Han Decl.”), ¶¶ 7, 8.)

10 **II. BACKGROUND**

11 On July 28, 2023, Plaintiff Nieuwenhuijs provided written notice to the California Labor
12 and Workforce Development Agency and Defendant. (Han Decl., *supra*, at ¶ 9; Exhibit 3.)

13 On August 29, 2023, Plaintiff Nieuwenhuijs filed a wage-and-hour class action lawsuit in
14 the Superior Court of California, County of Marin, alleging nine (9) causes of action. (Han Decl.,
15 *supra*, at ¶ 10; Exhibit 4.)

16 On January 5, 2024, Plaintiff Nieuwenhuijs filed a First Amended complaint pleading
17 exhaustion of the administrative remedies. (Han Decl., *supra*, at ¶ 11; Exhibit 5.)

18 After engaging in discovery, investigations, and negotiation, the Parties remotely attended
19 mediation with the mediator David Rotman on March 29, 2024, ultimately resulting in the Parties
20 reaching a tentative settlement. (Han Decl., *supra*, at ¶ 12.)

21 In line with the settlement, on April 12, 2024, Plaintiff Nieuwenhuijs filed a Second
22 Amended Complaint that updated the “class” definition, updated the “aggrieved employees”
23 definition, and added Plaintiff Barrios as a named plaintiff. (Han Decl., *supra*, at ¶ 13; Exhibit 6.)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

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

3 Plaintiffs propounded form interrogatories, special interrogatories, requests for admission,
4 and requests for production of documents. (Han Decl., *supra*, at ¶ 15.) 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 Prior to the mediation, Defendant produced several documents relating to its policies,
8 practices, and procedures. (Han Decl., *supra*, at ¶ 16.) As part of Defendant’s production, Plaintiffs
9 also reviewed time records, pay records, and information relating to the size and scope of the Class.
10 (*Ibid.*) Putative class members were also located and interviewed to attain a better understanding
11 of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

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

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 ¶ 26.) Under the auspices of the mediator, the Parties reached a settlement, the terms were
22 memorialized in the Settlement Agreement. (*Id.* at ¶ 26; Exhibits 2, 7.)

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

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

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

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

8 The Parties investigated and evaluated the strengths and weaknesses of the claims and
9 defenses before reaching the Settlement and engaged in research and discovery to support the
10 Settlement. (Han Decl., *supra*, at ¶ 31.) The Settlement was only possible following significant
11 investigation and evaluation of the relevant policies and practices, permitting Class Counsel to
12 engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has
13 reached the stage where the Parties understand “the strength of the case; the reasonableness of the
14 settlement in light of the attendant risks of litigation, and in light of the best possible recovery”
15 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*,
16 at ¶ 31; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

18 **i. Deductions from the Settlement**

19 The Parties agreed (subject to the Court’s approval) this action be settled and compromised
20 for the non-reversionary total sum of \$1,930,000 (“Gross Settlement Amount”) which includes:
21 (1) Class Counsel Fees Payment up to \$733,400 (38% of the Gross Settlement Amount); (2) Class
22 Counsel Litigation Expenses Payment up to \$30,000; (3) Class Representative Service Payment
23 totaling \$10,000; (4) Administration Expenses Payment up to \$20,000; and (5) PAGA Penalties
24 up to \$150,000. (Han Decl., *supra*, at ¶ 27.)

25 **ii. Calculating Settlement Payments**

26 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
27 \$986,600 (“Net Settlement Amount”) will be paid to Participating Class Members – with a gross
28 *average* Individual Class Payment estimated at \$751.41. (Han Decl., *supra*, at ¶ 28.)

1 The Participating Class Members will receive a proportionate share of the Net Settlement
2 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 26;
3 Exhibit 2, *supra*, at § C(2)(d).) Individual Class Payments will be allocated twenty percent (20%)
4 to the settlement of wage claims, forty percent (40%) to the settlement of claims for penalties, and
5 forty percent (40%) to the settlement of claims for interest. (*Id.* at § C(2)(d)(i).)

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

10 **iii. Notice to the Class**

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

16 **iv. Distribution of Funds**

17 The Gross Settlement Amount will be funded and distributed pursuant to the timeline and
18 manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ D(2), D(3).)
19 Uncashed settlement checks will be canceled and transmitted to the *cy pres* recipient The Fairfax-
20 San Anselmo Children's Center ("FSACC"). (*Id.* at §§ D(3)(a), D(3)(c).)

21 FSACC satisfies the policy of California "to ensure that the unpaid cash residue and
22 unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
23 possible, in a manner designed either to further the purposes of the underlying class action or
24 causes of action, or to promote justice for all Californians." (Code Civ. Proc., § 384(a).) The Code
25 of Civil Procedure further states:
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1 [T]he court shall amend the judgment to direct the defendant to pay the sum of the
2 unpaid residue or unclaimed or abandoned class member funds, plus any interest
3 that has accrued thereon, to nonprofit organizations or foundations to support
4 projects that will benefit the class or similarly situated persons, or that promote the
5 law consistent with the objectives and purposes of the underlying cause of action,
6 to child advocacy programs, or to nonprofit organizations providing civil legal
7 services to the indigent.

8 (Code Civ. Proc., § 384 (b).)

9 FSACC directly satisfies the legislature's purpose and goal under Code of Civil Procedure
10 section 384. FSACC provides high quality early care and education to children, supporting a
11 diverse population of families and community. FSACC's goal is to support and increase children's
12 school readiness skills while providing a safe and healthy learning environment to enhance family
13 well-being and foster parent leadership. FSACC's core values include supporting the needs of
14 working parents, creating a safe environment, developing meaningful relationships with children,
15 and ensuring the families' well-being. There can be no doubt FSACC is the type of non-profit
16 organization the legislature had in mind when drafting and amending section 384. The Parties do
17 not have a connection to or relationship with FSACC that would create the appearance of
18 impropriety.

19 **v. Release of Claims**

20 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
21 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
22 Participating Class Members, on behalf of themselves and their former and present representatives,
23 agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from
24 the Released Class Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(2).)

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

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiffs and their former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge the Released Parties from the Plaintiffs' Release. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § E(1).) Plaintiffs also expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Id.* at § E(1)(a).)

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

d. Counsel for Both Parties Are Experienced in Similar Litigation

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

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

1 **IV. ARGUMENT**

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

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

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

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

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

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

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

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

10 **i. The Settlement Amount of \$1,930,000 Is Fair and Reasonable**

11 The Settlement Agreement was only possible following significant investigation and
12 evaluation of the relevant policies and procedures, as well as the data produced, as referenced in
13 Section III above, permitting Class Counsel to engage in a comprehensive analysis of liability and
14 potential damages. (Han Decl., *supra*, at ¶ 31.)

15 The claims are predicated on the purported: (1) failure to properly calculate and pay
16 overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and
17 consistently and properly pay applicable premium wages; (4) failure to timely pay wages; (5)
18 failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation
19 of PAGA; and (8) violation of Business & Professions Code section 17200. (Han Decl., *supra*, at
20 ¶ 32.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 33.)

21 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
22 certification are always present. (Han Decl., *supra*, at ¶ 34.) As the California Supreme Court ruled
23 in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always
24 a matter of the trial court’s sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.*
25 have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*)
26 Thus, the calculations for potential damages were discounted.

27
28 ³ (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
of class claiming misclassification and ordering summary adjudication in favor of employees],

1 **ii. The PAGA Penalties of \$150,000 Is Reasonable**

2 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
3 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510, 512(a),
4 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 43.)
5 Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties
6 are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained it had a
7 strong argument it would be unjust to award maximum PAGA penalties given the law’s current
8 unsettled state concerning PAGA penalties. (Han Decl., *supra*, at ¶ 43; *Thurman v. Bayshore*
9 *Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
10 Furthermore, Defendant argued without stacking and limited to the initial violation, the PAGA
11 penalties would be limited to about **\$80,000** (800 employees x \$100 penalty for initial violation)
12 on the low end and **\$480,000** (800 employees x \$100 penalty for initial violation x 6 theories of
13 recovery) on the high end. (Han Decl., *supra*, at ¶¶ 44-46.)

14 Plaintiffs recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*,
15 at ¶ 47.) Many of the causes of action brought were also duplicative of the statutory claims. (*Ibid.*)
16 Allocating \$150,000 to PAGA civil penalties was reasonable given that Defendant is also paying
17 an additional \$1,780,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in
18 good faith and “there is no indication that [the] amount was the result of self-interest at the expense
19 of other Class Members,” such amounts are reasonable.⁴ (*Ibid.*)

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

22
23 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
24 illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440
25 [affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006)
26 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson’s Inc.* (2006) 141
27 Cal.App.4th 1422 [affirming denial of certification].)

28 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”.)

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 **\$17,907,987.33** on the low end and around **\$19,369,994.63** on the high end. (Han Decl., *supra*, at ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$3,496,375.75	75%	65%	\$305,932.88
Meal Break Premiums	\$4,955,403.44	65%	65%	\$607,036.92
Overtime/Minimum Wage: Off-the-Clock Work	\$2,924,014.60 to \$4,386,021.90	65%	55%	\$460,532.30 to \$690,798.45
Regular Rate	\$75,200.14	45%	55%	\$18,612.03
Unreimbursed Business Expenses	\$678,675	35%	75%	\$110,284.69
Wage Statement Penalty	\$2,200,000	65%	65%	\$269,500
Waiting Time Penalty	\$3,578,318.40	65%	65%	\$438,344
MAXIMUM TOTAL EXPOSURE	\$17,907,987.33 to \$19,369,994.63⁵			\$2,210,242.82 to \$2,440,508.97⁶

The realistic recovery for this case is about **\$2,210,242.82** on the low end and **\$2,440,508.97** on the high end. (Han Decl., *supra*, at ¶ 56.) The Gross Settlement Amount is about ten percent (9.96%) of the maximum potential exposure and around seventy-nine percent (79.08%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*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

⁵ (Han Decl., *supra*, at ¶¶ 35-42.)

⁶ (*Id.* at ¶¶ 49-55.)

1 proposed settlement is not to be judged against a hypothetical or speculative measure of what
2 might have been achieved by the negotiators”). This settlement is in line with the realistic exposure
3 if Plaintiffs prevailed at trial and provides a significant recovery for the Class Members.

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

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

10 The Class is ascertainable and numerous as to make it impracticable to join all Class
11 Members, and there are common questions of law and fact that predominate over any questions
12 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 57.) Plaintiffs contend their claims
13 are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the
14 interests of the Class. (*Ibid.*) Plaintiffs assert the prosecution of separate actions by individual Class
15 Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

24 This case involves approximately 1,313 Class Members, meaning the Class is sufficiently
25 numerous. (Han Decl., *supra*, at ¶ 58; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
26 1524, 1531, n.5 [finding a proposed class of “as many as 190 current and former employees” is
27 sufficiently numerous].)

28 ///

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 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 59.) Plaintiffs contend all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

26 **2. Plaintiffs’ Claims Are Typical of the Class Claims**

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

1 Plaintiffs are former employees of Defendant and allege they and the Class Members were
2 employed by the same company and injured by the common policies and practices related to the
3 claims described above. (Han Decl., *supra*, at ¶ 60.) Plaintiffs seek relief for these claims and
4 derivative claims on behalf of the Class. (*Ibid.*) Thus, the claims arise from the same employment
5 practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

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

7 Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 61.)
8 Plaintiffs conducted themselves diligently and responsibly in representing the Class in this
9 litigation, understand the fiduciary obligations, and actively participated in the prosecution of this
10 case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them
11 with a complete understanding of the work experience and environment. (*Ibid.*) Plaintiffs also have
12 no interest averse to the interests of the other Class Members. (*Ibid.*)

13 **4. Class Action Is Superior for the Fair and Efficient Adjudication** 14 **of this Controversy**

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

22 **e. The Settlement Is Fair, Reasonable, and Adequate**

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

objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) All these elements are present here.

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

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

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

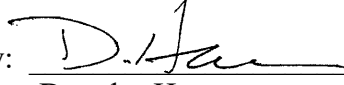
The Class Notice meets all these requirements. The Class Notice advises the Class Members of their right to participate in the Settlement, how and when to object to or request exclusion from the Settlement, and date, time, and location of the Final Approval Hearing.

V. CONCLUSION

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

Dated: May 16, 2024

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiffs

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is mluna@justicelawcorp.com

On May 16, 2024, I served the foregoing document described as

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

for the following case: **Nieuwenhuijs v. Good Earth Natural Foods, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-971470-23**
Court Case No.: CV0000742
Marin 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 May 16, 2024, at Pasadena, California.



Madison Luna