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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA CLARA

ROBERT JOHN STEVENSON, SR.,

Plaintiff,

vs.

SJBH LLC, et al.,

Defendants.

Case No.: 18CV335053

**ORDER AFTER HEARING ON  
DECEMBER 20, 2019**

**Motion by Plaintiff Robert John  
Stevenson, Sr. for Preliminary  
Approval of Class Action Settlement**

The above-entitled matter came on for hearing on Friday, December 20, 2019 at 9:00 a.m. in Department 1 (Complex Civil Litigation), the Honorable Brian C. Walsh presiding. A tentative ruling was issued prior to the hearing. No party challenged the tentative. Having reviewed and considered the written submissions of all parties, and being fully advised, the Court adopts the tentative ruling as follows:

This is a putative class and Private Attorneys General Act ("PAGA") action on behalf of employees of defendant SJBH LLC, alleging improper calculation of overtime wages. Before the Court is plaintiff's motion for preliminary approval of a settlement, which is unopposed.

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1 I. Factual and Procedural Background

2 As alleged in the operative complaint, SJBH is a limited liability company operating  
3 healthcare facilities in California. (Class Action Complaint, ¶ 8.) Plaintiff worked for defendant  
4 as a non-exempt employee from February 20, 2017 through June 25, 2018. (*Id.* at ¶ 7.) He  
5 alleges that SJBH failed to include non-discretionary incentive pay in the regular rate of pay for  
6 purposes of calculating overtime, and consequently underpaid overtime hours and provided wage  
7 statements displaying inaccurate overtime rates. (*Id.* at ¶ 22.) Based on these allegations,  
8 plaintiff brings claims on behalf of a putative class of SJBH employees for (1) violation of Labor  
9 Code section 226, subdivision (a), (2) violation of Labor Code sections 510, 558, and 1194,  
10 (3) violation of PAGA, Labor Code section 2698, et seq., and (4) violation of Business &  
11 Professions Code section 17200.

12 The parties have reached a settlement. Plaintiff now moves for an order preliminarily  
13 approving the settlement, provisionally certifying the settlement class, approving the form and  
14 method for providing notice to the class, and scheduling a final fairness hearing.

15  
16 II. Legal Standards for Approving a Class Action/PAGA Settlement

17 Generally, “questions whether a settlement was fair and reasonable, whether notice to the  
18 class was adequate, whether certification of the class was proper, and whether the attorney fee  
19 award was proper are matters addressed to the trial court’s broad discretion.” (*Wershba v. Apple*  
20 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235, citing *Dunk v. Ford Motor Co.* (1996) 48  
21 Cal.App.4th 1794, disapproved of on other grounds by *Hernandez v. Restoration Hardware, Inc.*  
22 (2018) 4 Cal.5th 260.)

23 In determining whether a class settlement is fair, adequate and reasonable, the  
24 trial court should consider relevant factors, such as the strength of plaintiffs’ case,  
25 the risk, expense, complexity and likely duration of further litigation, the risk of  
26 maintaining class action status through trial, the amount offered in settlement, the  
27 extent of discovery completed and the stage of the proceedings, the experience  
28 and views of counsel, the presence of a governmental participant, and the reaction  
of the class members to the proposed settlement.

1 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at pp. 244-245, internal citations and  
2 quotations omitted.)

3 In general, the most important factor is the strength of plaintiffs' case on the merits,  
4 balanced against the amount offered in settlement. (See *Kullar v. Foot Locker Retail, Inc.* (2008)  
5 168 Cal.App.4th 116, 130.) Still, the list of factors is not exclusive and the court is free to  
6 engage in a balancing and weighing of factors depending on the circumstances of each case.  
7 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245.) The court must examine  
8 the "proposed settlement agreement to the extent necessary to reach a reasoned judgment that the  
9 agreement is not the product of fraud or overreaching by, or collusion between, the negotiating  
10 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
11 concerned." (*Ibid.*, quoting *Dunk v. Ford Motor Co., supra*, 48 Cal.App.4th at p. 1801, internal  
12 quotation marks omitted.)

13 The burden is on the proponent of the settlement to show that it is fair and  
14 reasonable. However "a presumption of fairness exists where: (1) the settlement  
15 is reached through arm's-length bargaining; (2) investigation and discovery are  
16 sufficient to allow counsel and the court to act intelligently; (3) counsel is  
17 experienced in similar litigation; and (4) the percentage of objectors is small."

18 (*Wershba v. Apple Computer, Inc., supra*, 91 Cal.App.4th at p. 245, citing *Dunk v. Ford Motor*  
19 *Co., supra*, 48 Cal.App.4th at p. 1802.) The presumption does not permit the Court to "give  
20 rubber-stamp approval" to a settlement; in all cases, it must "independently and objectively  
21 analyze the evidence and circumstances before it in order to determine whether the settlement is  
22 in the best interests of those whose claims will be extinguished," based on a sufficiently  
23 developed factual record. (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 130.)

24 Finally, Labor Code section 2699, subdivision (l) provides that "[t]he superior court shall  
25 review and approve any penalties sought as part of a proposed settlement agreement pursuant to"  
26 PAGA. Seventy-five percent of any penalties recovered under PAGA go to the Labor and  
27 Workforce Development Agency ("LWDA"), leaving the remaining twenty-five percent for the  
28 aggrieved employees. (*Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348,  
380.) "[T]here is no requirement that the Court certify a PAGA claim for representative

1 treatment” as in a class action. (*Villalobos v. Calandri Sunrise Farm LP* (C.D. Cal., July 22,  
2 2015, No. CV122615PSGJEMX) 2015 WL 12732709, at \*5.) “[W]hen a PAGA claim is settled,  
3 the relief provided ... [should] be genuine and meaningful, consistent with the underlying  
4 purpose of the statute to benefit the public ....” (*Id.* at \*13.) The settlement must be reasonable  
5 in light of the potential verdict value (see *O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)  
6 201 F.Supp.3d 1110, 1135 [rejecting settlement of less than one percent of the potential  
7 verdict]); however, it may be substantially discounted given that courts often exercise their  
8 discretion to award PAGA penalties below the statutory maximum even where a claim succeeds  
9 at trial (see *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, No. 15-CV-02198-EMC)  
10 2016 WL 5907869, at \*8-9).

### 11 12 III. Settlement Process

13 According to a declaration by plaintiff’s counsel, plaintiff hired an expert to perform a  
14 damages analysis and reviewed and analyzed payroll data provided by defendant covering the  
15 time SJBH began operations on January 1, 2016 through May of 2019. The data included all  
16 bonuses—including discretionary bonuses—paid in the same period as overtime and double-time  
17 wages, the applicable pay rates, the number of former employees and their final rates of pay and  
18 dates of separation, and the number of qualifying wage statements issued to employees.  
19 Plaintiff’s counsel and expert value the case at \$2.67 million based on this data, a valuation  
20 which is likely overstated because discretionary as well as nondiscretionary bonuses were  
21 included in the data.

22 The parties and their counsel participated in a mediation before Todd Smith on August 5,  
23 2019 and were able to settle the case after a full day of mediation.

### 24 25 IV. Provisions of the Settlement

26 The non-reversionary gross settlement amount is \$350,000. Attorney fees of up to  
27 \$116,655 (one-third of the gross settlement), litigation costs not to exceed \$20,000, and  
28 administration costs of approximately \$17,000 will be paid from the gross settlement. \$40,000

1 will be allocated to PAGA penalties, 75 percent of which will be paid to the LWDA. The named  
2 plaintiff will also seek an enhancement award of \$10,000.

3 The net settlement of approximately \$156,345 will be allocated half to the overtime  
4 claims and half to the wage statement claims and will be distributed to individual class members  
5 pro rata based on their eligible pay periods during the class period. The average settlement  
6 payment will be approximately \$504.34 to each of the 310 class members, and class members  
7 will not be required to submit a claim to receive their payments. Settlement awards will be  
8 allocated 95 percent to penalties and 5 percent to wages for the overtime claims and 100 percent  
9 to penalties for the wage statement claims. Funds associated with checks uncashed after 150  
10 days will be distributed first to any newly discovered class members and second pursuant to  
11 Code of Civil Procedure section 384.

12 Class members who do not opt out of the settlement will release all claims, causes of  
13 action, etc. “whether known or unknown, suspected or unsuspected that existed or came into  
14 existence between September 24, 2014 through the date of Preliminary Approval of this  
15 Agreement by the Court, inclusive, arising from or relating to the allegations that were or could  
16 have been pled in the Action.”

#### 17 18 V. Fairness of the Settlement

19 Plaintiff submits that the settlement, which represents approximately 13 percent of the  
20 maximum exposure in this case, is fair and reasonable to the class. The Court agrees with this  
21 assessment, particularly considering that the maximum value of the case was likely  
22 overestimated to include damages and penalties based on discretionary bonuses. The Court also  
23 finds that the PAGA allocation provided by the settlement is genuine and meaningful. Thus, the  
24 Court will grant preliminary approval.

25 The Court retains an independent right and responsibility to review the requested attorney  
26 fees and award only so much as it determines to be reasonable. (See *Garabedian v. Los Angeles*  
27 *Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-128.) While 1/3 of the common fund  
28 for attorney fees is generally considered reasonable, counsel shall submit lodestar information

1 prior to the final approval hearing in this matter so the Court can compare the lodestar  
2 information with the requested fees. (See *Laffitte v. Robert Half Intern. Inc.* (2016) 1 Cal.5th  
3 480, 504 [trial courts have discretion to double-check the reasonableness of a percentage fee  
4 through a lodestar calculation].)

5 In addition, the Court notes that the estimated litigation costs appear high and will be  
6 scrutinized at final approval. The parties must also select a cy pres recipient prior to final  
7 approval.

## 8 9 VI. Proposed Settlement Class

10 Plaintiff requests that the following settlement classes be provisionally certified:

11 The Overtime Class of “all current and former non-exempt employees of SJBH  
12 LLC in California who worked over 8 hours in a workday and/or 40 hours in a  
13 workweek and earned additional non-discretionary incentive pay covering the  
14 same time period at any time from September 24, 2014, through the date of  
15 Preliminary Approval.”

16 The Wage Statement Class of “all current and former non-exempt employees of  
17 SJBH LLC in California who received a wage statement containing record of  
18 payment of overtime or doubletime compensation from SJBH LLC at any time  
19 from September 24, 2017, through the date of Preliminary Approval.”

### 20 A. Legal Standard for Certifying a Class for Settlement Purposes

21 Rule 3.769(d) of the California Rules of Court states that “[t]he court may make an order  
22 approving or denying certification of a provisional settlement class after [a] preliminary  
23 settlement hearing.” California Code of Civil Procedure Section 382 authorizes certification of a  
24 class “when the question is one of a common or general interest, of many persons, or when the  
25 parties are numerous, and it is impracticable to bring them all before the court ....” As  
26 interpreted by the California Supreme Court, Section 382 requires the plaintiff to demonstrate by  
27 a preponderance of the evidence (1) an ascertainable class and (2) a well-defined community of  
28 interest among the class members. (*Sav-On Drug Stores, Inc. v. Superior Court (Rocher)* (2004)  
34 Cal.4th 319, 326, 332.)

1 The “community-of-interest” requirement encompasses three factors: (1) predominant  
2 questions of law or fact, (2) class representatives with claims or defenses typical of the class, and  
3 (3) class representatives who can adequately represent the class. (*Ibid.*) “Other relevant  
4 considerations include the probability that each class member will come forward ultimately to  
5 prove his or her separate claim to a portion of the total recovery and whether the class approach  
6 would actually serve to deter and redress alleged wrongdoing.” (*Linder v. Thrifty Oil Co.* (2000)  
7 23 Cal.4th 429, 435.) The plaintiff has the burden of establishing that class treatment will yield  
8 “substantial benefits” to both “the litigants and to the court.” (*Blue Chip Stamps v. Superior*  
9 *Court (Botney)* (1976) 18 Cal.3d 381, 385.)

10 In the settlement context, “the court’s evaluation of the certification issues is somewhat  
11 different from its consideration of certification issues when the class action has not yet settled.”  
12 (*Luckey v. Superior Court (Cotton On USA, Inc.)* (2014) 228 Cal.App.4th 81, 93.) As no trial is  
13 anticipated in the settlement-only context, the case management issues inherent in the  
14 ascertainable class determination need not be confronted, and the court’s review is more lenient  
15 in this respect. (*Id.* at pp. 93-94.) However, considerations designed to protect absentees by  
16 blocking unwarranted or overbroad class definitions require heightened scrutiny in the  
17 settlement-only class context, since the court will lack the usual opportunity to adjust the class as  
18 proceedings unfold. (*Id.* at p. 94.)

#### 19 B. Ascertainable Class

20 “The trial court must determine whether the class is ascertainable by examining (1) the  
21 class definition, (2) the size of the class and (3) the means of identifying class members.”  
22 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.) “Class members are ‘ascertainable’ where  
23 they may be readily identified without unreasonable expense or time by reference to official  
24 records.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.)

25 Here, the estimated 310 class members have already been identified based on defendant’s  
26 records, and the two settlement classes are clearly defined. The Court finds the class is  
27 numerous, ascertainable, and appropriately defined.

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1           C. Community of Interest

2           With respect to the first community of interest factor, “[i]n order to determine whether  
3 common questions of fact predominate the trial court must examine the issues framed by the  
4 pleadings and the law applicable to the causes of action alleged.” (*Hicks v. Kaufman & Broad*  
5 *Home Corp.* (2001) 89 Cal.App.4th 908, 916.) The court must also give due weight to any  
6 evidence of a conflict of interest among the proposed class members. (See *J.P. Morgan & Co.,*  
7 *Inc. v. Superior Court (Heliotrope General, Inc.)* (2003) 113 Cal.App.4th 195, 215.) The  
8 ultimate question is whether the issues which may be jointly tried, when compared with those  
9 requiring separate adjudication, are so numerous or substantial that the maintenance of a class  
10 action would be advantageous to the judicial process and to the litigants. (*Lockheed Martin*  
11 *Corp. v. Superior Court, supra*, 29 Cal.4th at pp. 1104-1105.) “As a general rule if the  
12 defendant’s liability can be determined by facts common to all members of the class, a class will  
13 be certified even if the members must individually prove their damages.” (*Hicks v. Kaufman &*  
14 *Broad Home Corp., supra*, 89 Cal.App.4th at p. 916.)

15           Here, common legal and factual issues predominate. Plaintiff’s claims all arise from  
16 defendant’s overtime and wage statement practices applied to the similarly-situated class  
17 members.

18           As to the second factor,

19           The typicality requirement is meant to ensure that the class representative is able  
20 to adequately represent the class and focus on common issues. It is only when a  
21 defense unique to the class representative will be a major focus of the litigation,  
22 or when the class representative’s interests are antagonistic to or in conflict with  
23 the objectives of those she purports to represent that denial of class certification is  
24 appropriate. But even then, the court should determine if it would be feasible to  
25 divide the class into subclasses to eliminate the conflict and allow the class action  
26 to be maintained.

27 (*Medraza v. Honda of North Hollywood* (2008) 166 Cal. App. 4th 89, 99, internal citations,  
28 brackets, and quotation marks omitted.)

          Like other members of the class, plaintiff was employed by defendant as a nonexempt  
employee and alleges that he experienced the overtime and wage statement violations at issue.



1 The anticipated defenses are not unique to plaintiff, and there is no indication that plaintiff's  
2 interests are otherwise in conflict with those of the class.

3 Finally, adequacy of representation "depends on whether the plaintiff's attorney is  
4 qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the  
5 interests of the class." (*McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450.) The class  
6 representative does not necessarily have to incur all of the damages suffered by each different  
7 class member in order to provide adequate representation to the class. (*Wershba v. Apple*  
8 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.) "Differences in individual class members'  
9 proof of damages [are] not fatal to class certification. Only a conflict that goes to the very  
10 subject matter of the litigation will defeat a party's claim of representative status." (*Ibid.*,  
11 internal citations and quotation marks omitted.)

12 Plaintiff has the same interest in maintaining this action as any class member would  
13 have. Further, he has hired experienced counsel. Plaintiff has sufficiently demonstrated  
14 adequacy of representation.

#### 15 D. Substantial Benefits of Class Certification

16 "[A] class action should not be certified unless substantial benefits accrue both to  
17 litigants and the courts. . . ." (*Basurco v. 21st Century Ins.* (2003) 108 Cal.App.4th 110, 120,  
18 internal quotation marks omitted.) The question is whether a class action would be superior to  
19 individual lawsuits. (*Ibid.*) "Thus, even if questions of law or fact predominate, the lack of  
20 superiority provides an alternative ground to deny class certification." (*Ibid.*) Generally, "a  
21 class action is proper where it provides small claimants with a method of obtaining redress and  
22 when numerous parties suffer injury of insufficient size to warrant individual action." (*Id.* at pp.  
23 120-121, internal quotation marks omitted.)

24 Here, there are an estimated 310 members of the proposed class. It would be inefficient  
25 for the Court to hear and decide the same issues separately and repeatedly for each class  
26 member. Further, it would be cost prohibitive for each class member to file suit individually, as  
27 each member would have the potential for little to no monetary recovery. It is clear that a class  
28 action provides substantial benefits to both the litigants and the Court in this case.

1 VII. Notice

2 The content of a class notice is subject to court approval. (Cal. Rules of Court, rule  
3 3.769(f).) “The notice must contain an explanation of the proposed settlement and procedures  
4 for class members to follow in filing written objections to it and in arranging to appear at the  
5 settlement hearing and state any objections to the proposed settlement.” (*Ibid.*) In determining  
6 the manner of the notice, the court must consider: “(1) The interests of the class; (2) The type of  
7 relief requested; (3) The stake of the individual class members; (4) The cost of notifying class  
8 members; (5) The resources of the parties; (6) The possible prejudice to class members who do  
9 not receive notice; and (7) The res judicata effect on class members.” (Cal. Rules of Court, rule  
10 3.766(e).)

11 Here, the notice describes the lawsuit, explains the settlement, and instructs class  
12 members that they may opt out of the settlement or object. The gross settlement amount and  
13 estimated deductions are provided, along with each class member’s estimated payment. Class  
14 members are informed of their qualifying pay periods as reflected in defendant’s records and are  
15 given 45 days to request exclusion from the class or submit any written objections. The notice  
16 will be issued in English only.

17 The notice is generally adequate, but must be modified to instruct class members that  
18 they may appear at the final fairness hearing and make an oral objection even if they do not  
19 submit a written objection. The notice must also be modified to instruct class members how to  
20 dispute their qualifying pay periods. With these modifications, the notice is approved.

21 Turning to the notice procedure, the parties have selected Heffler Claims Group as the  
22 settlement administrator. The administrator will mail the notice packet within 60 calendar days  
23 of preliminary approval, after updating addresses as necessary. Any notice packets returned as  
24 undeliverable will be re-mailed to any forwarding address provided or located through skip  
25 tracing and follow-up searching in the National Change of Address database. These notice  
26 procedures are appropriate and are approved.

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1 VIII. Conclusion and Order

2 Subject to the above modifications to the form of notice, plaintiff's motion for  
3 preliminary approval is GRANTED. The final approval hearing shall take place on May 1, 2020  
4 at 9:00 a.m. in Dept. 1.

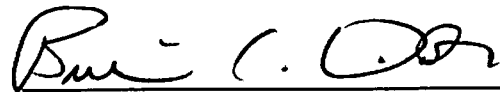
5 The following classes are provisionally certified for settlement purposes:

6 The Overtime Class of "all current and former non-exempt employees of SJBH  
7 LLC in California who worked over 8 hours in a workday and/or 40 hours in a  
8 workweek and earned additional non-discretionary incentive pay covering the  
9 same time period at any time from September 24, 2014, through the date of  
Preliminary Approval."

10 The Wage Statement Class of "all current and former non-exempt employees of  
11 SJBH LLC in California who received a wage statement containing record of  
12 payment of overtime or doubletime compensation from SJBH LLC at any time  
from September 24, 2017, through the date of Preliminary Approval."

13 IT IS SO ORDERED.

14 Dated: 12-23-19

15   
16 Honorable Brian C. Walsh  
17 Judge of the Superior Court  
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