

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 North Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Tel: (818) 230-7502
Fax: (818) 230-7259

Attorneys for Claimants

AMERICAN ARBITRATION ASSOCIATION

CHRIS GARNER and ANDREW
LINDEN, on behalf of themselves, and on
behalf of other members of the general
public similarly situated;

Claimants,

v.

INTER-STATE OIL COMPANY, a
California Corporation; and DOES 1
through 100, inclusive;

Respondents.

Case No.: 01-21-0003-6413

Arbitrator: Kenneth H. Yoon, Esq.

CLASS ACTION

**CLAIMANTS' NOTICE OF MOTION AND
UNOPPOSED 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: August 18, 2021

Hearing Time: 10:00 a.m.

Hearing Place: TBD

Filed: June 13, 2018

Arb Filed: April 28, 2021

Trial: None Set

1 **PLEASE TAKE NOTICE** that on August 18, 2021 and at 10:00 a.m. or as soon as the
2 matter may be heard before the Arbitrator Kenneth H. Yoon of the American Arbitration
3 Association, Claimants Chris Garner and Andrew Linden, (“Claimants”) will and hereby move
4 for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
8 **“EXHIBIT 2”** to the Declaration of Douglas Han, including, and not limited to,
9 the means of allocation and distribution of funds, and the allocations for penalties
10 under the California Labor Code Private Attorneys General Act of 2004
11 (“PAGA”), Attorney Fee Award, Cost Award, Class Representative Enhancement
12 Payments, and the Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Claimants as the Class Representatives;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as “Exhibit A” to the Settlement Agreement;
- 18 • Approving the Election Not To Participate or Exclusion Form (“Exclusion
19 Form”) attached as “Exhibit B” to the Settlement Agreement;
- 20 • Directing the mailing of the proposed Class Notice with a postage-paid return
21 envelope (hereinafter collectively referred to as the “Notice Packet”) to the
22 proposed Class;
- 23 • Approving the proposed deadlines for the notice and Settlement Administration
24 process;
- 25 • Approving Phoenix Class Action Administration Solutions as the Settlement
26 Administrator; and

27 ///

28 ///

- Scheduling a hearing to consider whether to grant Final Approval of the Settlement, at which time the Arbitrator will also consider whether to grant Final Approval of the requests for Attorney Fee Award, Cost Award, Class Representative Enhancement Payment, and approval of the allocation for PAGA penalties and the Administration Costs.

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

Dated: July 27, 2021

JUSTICE LAW CORPORATION

By: 
Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Claimants

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	INVESTIGATION/LITIGATION HISTORY	2
	a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	2
	b. The Parties Attended Mediation Which Led to the Settlement	4
	c. Terms of the Proposed Settlement	5
	i. Deductions from the Settlement	5
	ii. Calculation of Settlement Payments to Class Members	6
	iii. Notice to the Class	6
	iv. Distribution of Funds	7
	v. Release of Claims	7
IV.	ARGUMENT	8
	a. Conditional Certification of the Class is Appropriate	8
	b. The Settlement is Fair, Reasonable, and Adequate	9
	i. The Proposed Class is Ascertainable and Sufficiently Numerous	9
	ii. The Class Members Share a Well-Defined Community of Interest	10
	c. The Settlement was Reached as a Result of Arm's-Length Negotiations	11
	d. The Settlement is the Result of Thorough Investigation and Discovery	11
	e. Counsel for Both Parties are Experienced in Similar Litigation	12
	f. The Proposed Settlement is a Reasonable Compromise of Claims	12
	i. The Settlement is Fair and Reasonable	13
	ii. The Settlement Amount of \$3,000,000 is Reasonable	14
	g. Discount Analysis Justifies the Settlement	19
	h. Notice to Class Members Complies with California Rule of Court 3.769(f)	21
V.	CONCLUSION	22

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	14
<i>Bartold v. Flendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	9
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979)	11
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	10
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	18
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2 nd Cir. 1974)	21
<i>Dunbar v. Albertson's Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	14
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	9, 12
<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
169 Cal. App. 4 th 1524 (2008)	9, 10
<i>Harris v. Superior Court,</i>	
154 Cal. App. 4 th 164 (2007)	13
<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
89 Cal. App. 4 th 908 (2001)	9
<i>Hopson v. Hanesbrands Inc.,</i>	
2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	18
<i>Kullar v. Foot Locker Retail, Inc.,</i>	
168 Cal. App. 4 th 116 (2008)	12

1	<i>Linder v. Thrifty Oil Co.,</i>	
2	23 Cal. 4 th 429 (2000).....	10
3	<i>Linney v. Cellular Alaska Partnership,</i>	
4	151 F. 3d 1234 (9 th Cir. 1998).....	21
5	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
6	186 Cal. App. 4 th 399 (2010).....	12
7	<i>Nordstrom Com. Cases,</i>	
8	186 Cal. App. 4 th 576 (2010).....	18
9	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
10	34 Cal. 4 th 319 (2004).....	8, 10, 13
11	<i>In re Tableware Antitrust Litig.,</i>	
12	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	21
13	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
14	38 Cal. 3d 488 (1985).....	12, 13
15	<i>Walsh v. IKON Solutions, Inc.,</i>	
16	148 Cal. App. 4 th 1440 (2007).....	13
17	<u>Statutes</u>	
18	Code of Civil Procedure § 382	8
19	Code of Civil Procedure § 877.6	12
20	Business and Professions Code § 17200, <i>et seq.</i>	2
21	Labor Code § 203	21
22	Labor Code § 204	17
23	Labor Code § 226	13, 16, 17, 18, 20
24	Labor Code § 226.7	17, 18
25	Labor Code § 510	17, 18
26	Labor Code § 512	17, 18
27	Labor Code § 1174	17
28	Labor Code § 1194	17, 18

1	Labor Code § 1197	17
2	Labor Code § 1197.1	17
3	Labor Code § 1198	17, 18
4	Labor Code § 2699	17
5	Labor Code § 2699.5	17
6	Labor Code § 2802	16, 17, 18
7	Rule 3.769	21

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

I. INTRODUCTION

This motion seeks preliminary approval of a non-reversionary \$3,000,000 proposed wage and hour class action settlement by Claimants Chris Garner and Andrew Linden (“Claimants”) on behalf of themselves and all persons who or have been employed by Respondent Inter-State Oil Co. (“Inter-State” or “Respondent”) in the following Class: All hourly-paid or non-exempt employees who worked or have worked for Respondent in California at any time during the time period from June 14, 2014 through June 30, 2021.

At the time of this filing, Respondent estimates that there are approximately four hundred thirty-seven (437) individuals that would be included in this Settlement.

It is requested this Arbitrator grant Preliminary Approval, as, when analyzing the strengths and vulnerabilities of the class claims along-side Respondent’s potential liability exposure, this proposed settlement of \$3,000,000 —**with an average settlement share amount estimated at \$3,839.93¹**—is well within the “ballpark” of reasonableness.

As the following sections show, Class Counsel is convinced that the proposed Settlement is in the best interests of the Class based on the negotiations and detailed knowledge of the issues present in this action. The length and risks of trial and perils of litigation that affect the value of the claims were all carefully weighed. In addition, the defenses asserted by Respondent, particularly the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of establishing specific damages and various possible delays and appeals, were also carefully considered by Class Counsel in arriving at the proposed Settlement.

II. BACKGROUND

Respondent Inter-State Oil Co. is a large-scale fuel, lubricant, and cardlock fuel station distributor throughout all of California and Northern Nevada, with five branch locations in California, including its headquarters, and two branch locations in Nevada. (Declaration of Douglas Han (“Han Decl.”) ¶ 8.) This case involves all hourly-paid or non-exempt employees who worked or have worked for Respondent in California at any time during the time period from June 14, 2014 through June 30, 2021. (*Ibid.*)

¹ \$1,678,050 (Net Settlement Amount) / 437 (Class Members) = \$3,839.93

1 On June 13, 2018, Claimant Chris Garner (“Claimant Garner”) filed a class action
2 complaint in Sacramento County Superior Court against Inter-State alleging wage and hour
3 violations on behalf of all current and former hourly-paid or non-exempt employees who worked
4 for Inter-State in the four years preceding the complaint. (Han Decl. ¶ 9.) The complaint alleged
5 one cause of action under the California Business and Professions Code § 17200, alleging
6 multiple violations of the California Labor Code for unpaid overtime, unpaid meal period
7 premiums, unpaid rest period premiums, unpaid minimum wages and unreimbursed business
8 expenses. The matter was ultimately ordered to proceed as a class arbitration. (*Ibid.*)

9 On May 6, 2020, Claimant Andrew Linden filed a separate Complaint in the Superior
10 Court for the County of Sacramento on behalf of himself and on behalf of other members of the
11 general public similarly situated and on behalf of aggrieved employees under the Private
12 Attorneys General Act of 2004. (Han Decl. ¶ 10.)

13 The Parties agreed to attend a mediation of Claimants’ claims on March 31, 2021. (Han
14 Decl. ¶ 11.) Under the auspices of the mediator, the parties were able to reach an agreement on a
15 settlement of the Class action. (*Ibid.*)

16 Respondent denies the allegations of the class action in their entirety, denies any liability
17 or wrongdoing of any kind associated with the claims alleged in this action, and further denies
18 that, for any purpose other than settling this action, this matter is appropriate for class treatment.
19 (Han Decl. ¶ 12.) Respondent further contends that it has complied at all times with all
20 applicable California laws, the California Labor Code, the applicable California Wage Order(s),
21 and the Unfair Competition Law. Respondent finally contends that, if this matter were to be
22 litigated further, it would have strong defenses to class certification and on the merits. (*Ibid.*)

23 **III. INVESTIGATION/ LITIGATION HISTORY**

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

25 After Claimant Garner filed the original complaint Claimant Garner engaged in
26 discovery. Claimant Garner propounded one (1) set of form interrogatories, one (1) set of special
27 interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production
28 on Respondent. (Han Decl. ¶ 13.)

1 Once the parties agreed to mediate, the parties agreed to an informal exchange of
2 documents in advance of mediation. As the result of the informal discovery conducted by
3 Claimants, Respondent produced a large volume of documents including employee handbooks,
4 meal and rest period policies, Claimants' personnel files, payroll records, and time records. (Han
5 Decl. ¶ 14.)

6 Claimants Garner and Linden also were in constant communication with numerous
7 current and former non-exempt employees of Respondent. (Han Decl. ¶ 15.) These employees
8 apprised Claimants of their experiences working for Respondent and provided Claimants with
9 relevant documents, including their personnel files and documents they had obtained through
10 their employment. (*Ibid.*)

11 Based upon Respondent's formal and informal discovery responses, exchange of
12 information, and document production, as well as interviews Claimants' counsel had with non-
13 exempt employees, Claimants contend—and Respondent denies—that Respondent did not
14 maintain a code-compliant meal break or rest break policy during the entire class period. (Han
15 Decl. ¶ 16.) Moreover, Claimants contend that they and the Class Members were rarely afforded
16 timely, uninterrupted meal and rest breaks while working. (*Ibid.*) Claimants contend that
17 Respondent failed to pay premium wage compensation owed to non-exempt employees for the
18 non-compliant meal and rest periods. (*Ibid.*)

19 In addition, Claimants contend—and Respondent denies—that Respondent failed to
20 authorize overtime and limited their hours, which resulted in off-the-clock work, and Respondent
21 did not include non-discretionary bonuses and commissions in employees' regular rate of pay for
22 purposes of overtime compensation. (Han Decl. ¶ 17.) Claimants also contend – and Respondent
23 denies – that Respondent's time rounding practice served to deprive the Claimants and the Class
24 Members. Moreover, Claimants contend—and Respondent denies—that Respondent failed to
25 timely pay wages and failed to provide employees with accurate wage statements. (*Ibid.*)

26 ///

27 ///

28 ///

Respondent denies Claimants’ contentions in their entirety. (Han Decl. ¶ 18.) Among other things, Respondent denies Claimants’ rest and meal break contentions because it provided rest and meal periods within compliant times and that non-exempt employees were given discretion as to when to take their rest and meal periods. (*Ibid.*) Respondent contends that whether non-exempt employees took meal and rest periods during compliant time frames and were relieved of all duties are questions that could only be resolved by resorting to individualized inquiries to each non-exempt employee and, therefore, class certification would not be appropriate. (*Ibid.*) And Respondent contends that it timely paid wages and provided accurate wage statements. (*Ibid.*)

As demonstrated above, the Parties took staunchly conflicting positions concerning Respondent’s policies and procedures and their effect on non-exempt employees.

b. The Parties Attended Mediation Which Led to the Settlement

19. The Parties agreed to go to mediation with an experienced wage and hour mediator, Jeffrey A. Ross (Han Decl. ¶ 19.) The mediation took place on March 31, 2020. (*Ibid.*) During the mediation, the parties discussed the risks of continued litigation, risks of certification, and on the merits of the claims versus the benefits of settlement. (*Ibid.*) The parties were able to reach an agreement on a settlement, the terms of which were memorialized in a “Joint Stipulation and Settlement Agreement” (referred to herein as the “Joint Stipulation” or “Settlement”) that the Parties seek preliminary approval of in the instant motion. (*Id.*; Ex. 1.)

///

///

///

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

2 **i. Deductions from the Settlement**

3 The Parties have agreed (subject to and contingent upon the Arbitrator’s approval) that
4 this action be settled and compromised for the non-reversionary total sum of \$3,000,000 (“Gross
5 Settlement Amount” or “GSA”) which includes, subject to Arbitrator approval: (a) Attorney Fee
6 Award of up to \$1,200,000 (40% of the GSA) to compensate Class Counsel for work already
7 performed and all work remaining to be performed in documenting the settlement, administering
8 the settlement and securing Arbitrator approval; (b) Cost Award for actual litigation costs not to
9 exceed \$30,000;² (c) Class Representative Enhancement Payment to the named Class
10 Representatives in a sum not to exceed \$10,000 for each of the Claimants in consideration for a
11 general release of claims, for initiating and prosecuting the class action and PAGA complaint,
12 serving as the Class Representatives, work performed, and risks undertaken for the payment of
13 attorneys’ fees and costs in the event they had been unsuccessful in the matter; (d)
14 Administration Costs and expenses to Phoenix Class Action Administration Solutions
15 (“Phoenix”), estimated at approximately \$6,950 but not to exceed \$20,000; (e) Respondent’s
16 portion of payroll taxes on the wage portion of the Class Members’ Individual Settlement
17 Payment; and (f) LWDA payment of \$75,000 (which is 75% of \$100,000 allocated to Claimants’
18 claims under PAGA). (Han Decl. ¶ 20.)

19 ///

20 ///

21 ///

22
23
24
25 ² The actual amount of litigation costs will be provided to the Arbitrator in conjunction with
26 Claimants’ motion for final approval. (Han Dec. ¶ 21.) At that time, Claimants will ask the Court
27 to approve the amount of these costs. (*Ibid.*) If Claimants’ actual costs exceed \$30,000,
28 Claimants will only seek reimbursement in the amount of \$30,000. (*Ibid.*) If Claimants’ actual
costs are lower than \$30,000, Claimants will seek reimbursement of their actual litigation costs
and the difference shall become part of the Net Settlement Amount and be available for
distribution to Participating Class Members. (*Ibid.*)

1 **ii. Calculation of the Settlement Payments to Class Members**

2 After all Arbitrator-approved deductions from the GSA, it is estimated that \$1,678,050
3 (“Net Settlement Amount” or “NSA”), less all applicable employee taxes on the wage portion of
4 the individual settlement share, will be distributed to Class Members—**with an average**
5 **settlement share estimated at \$3,839.93.** (Han Decl. ¶ 22.) Subject to the terms and conditions
6 of the Settlement, the Settlement Administrator will calculate and issue Individual Settlement
7 Shares based on the following formula:

8 Each Participating Class Member will receive a proportionate share of the Net
9 Settlement Amount that is equal to (i) the number of days he or she worked as a
10 Class Member during the respective Class Periods based on the Class data
11 provided by Respondent, divided by (ii) the total number of days worked by any
12 and all Class Members during the Class Period based on the same Class data,
13 which is then multiplied by the Net Settlement Amount. A partial shift worked in
a given day will be credited as a day for purposes of this calculation. Therefore,
the value of each Participating Class Member’s Individual Settlement Share ties
directly to the amount of days that he or she worked.

14 (*Ibid.*) The PAGA Payment will be distributed to the Eligible Aggrieved Employees pro-
15 rata based on pay periods he or she was employed during the PAGA Timeframe. (*Ibid.*)
16 The precise number of compensable weeks worked per Class Member will not be known
17 until Respondent has tabulated them, following preliminary approval. (*Ibid.*) Under no
18 circumstances will any portion of the \$3,000,000 settlement revert to Respondent. (*Ibid.*)

19 **iii. Notice to the Class**

20 Within thirty (30) calendar days after entry of the preliminary approval order,
21 Respondent shall deliver to the Settlement Administrator an electronic database for purposes of
22 mailing Class Notices to Participating Class members. (Han Decl. ¶ 23.) Within fourteen (14)
23 calendar days after receipt of the Class Member Database, Phoenix shall mail copies of the Class
24 Notice and Exclusion Form to all Class Members via regular First-Class U.S. Mail. (*Ibid.*) The
25 Notice advises the Class of their rights to participate in the settlement and how to and when to
26 object or request exclusion from the settlement. (Han Decl. ¶ 23.) Class Members are not
27 required to submit a claim form to receive payment. (*Ibid.*) The proposed Class Notice and
28 Exclusion Form are attached as Exhibits A and B to the Joint Stipulation (Exhibit 2 to the

Declaration of Douglas Han). (Han Decl. ¶ 23.)

iv. Distribution of Funds

No later than twenty-one (21) calendar days after the Effective Final Settlement Date, Respondent shall deposit the Gross Settlement Amount of Three Million Dollars (\$3,000,000) needed to pay the entire GSA by wiring the funds to Phoenix. (Han Decl. ¶ 24.)

Phoenix shall pay the Individual Settlement Shares, Class Representative Enhancement Payments, Attorney Fee Award, Cost Award, PAGA Payment, Respondent's portion of the payroll taxes on the wage portion of the Class Members' Individual Settlement Payment, and Administration Costs within fourteen (14) calendar days after the GSA has been fully funded. (Han Decl. ¶ 25.)

Any checks issued to Participating Class Members shall remain valid and negotiable for one hundred and twenty (120) days from the date of their issuance. (Han Decl. ¶ 26.) If any checks remain uncashed or not deposited within one hundred fifty (150) calendar days after the checks are mailed, Phoenix will pay the amount of the to the California State Controller's Unclaimed Property Division in accordance with California Unclaimed Property Law so that the Participating Class Member will have his or her Individual Settlement Share available to him or her per the applicable claim procedure to request that money from the State of California. (*Ibid.*)

v. Release of Claims

In exchange for a Settlement Payment, Class Members are informed that, by accepting the payment, the claims they are releasing in exchange for the consideration provided for by this Agreement include any and all claims under state, or local law, whether statutory or common law arising out of the claims expressly pleaded in the Complaint and all other claims, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law, that could have been pleaded based on the facts pleaded in the Complaint for: (1) failure to pay regular and overtime wages under state and federal law; (2) failing to maintain and provide accurate time records and wage statements; (3) failure to pay minimum wage; (4) failure to timely pay final wages; (5) waiting time penalties; (6) failure to provide or pay for meal breaks; (7) failure to provide or pay for rest periods; (8) failure to pay sick pay at the regular rate of pay;

(9) failure to provide or pay for split shift and reporting time pay; (10) failure to reimburse business expenses; (11) statutory penalties under PAGA; and (12) violation of California’s unfair competition law. The release only applies to periods of time when Class Members were members of the Class (i.e., excluding periods of time in an exempt position). (Han Decl. ¶ 27.)

The release will be as to the Released Parties, which shall include Respondent and its affiliated companies, parents, members, subsidiaries, related companies and business concerns, past and present, and each of them, as well as each of their insurers, partners, trustees, directors, shareholders, officers, agents, attorneys, servants and employees, past and present, and each of them and all working with or in concert with them or connected with them. (Han Decl. ¶ 28.)

IV. ARGUMENT

a. Conditional Certification of the Class is Appropriate.

For settlement purposes only, the requisites for establishing conditional class certification are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.’” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class and [2] a well-defined community of interest among class members.” (*Ibid.*)

Here, the proposed Classes are ascertainable and numerous as to make it impracticable to join all class members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl. ¶ 29.) Claimants’ claims are typical of the claims of the Class Members, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Further, prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, and a class action is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As discussed below, this case is amenable to class certification.

///

///

1 **b. The Settlement Is Fair, Reasonable, and Adequate**

2 In deciding whether to approve a proposed class action settlement under Code of Civil
3 Procedure § 382, the proposed settlement must be “fair, adequate and reasonable.” (*Dunk v. Ford*
4 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed
5 fair under the following circumstances: (1) the parties reached settlement after arms-length
6 negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act
7 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
8 is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th at p. 1802.) As the following analysis
9 shows, all three elements of Section 382 are present here. Thus, Claimants request that this
10 Arbitrator grant their motion for preliminary approval.

11 **i. The Proposed Class is Ascertainable and Sufficiently Numerous**

12 “Ascertainability is required in order to give notice to putative class members as to whom
13 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
14 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
15 by describing a set of common characteristics sufficient to allow a member of that group to
16 identify himself or herself as having a right to recover based on the description.” (*Bartold v.*
17 *Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be
18 sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

19 This action involves four hundred thirty-seven (437) Class Members. (Han Decl. ¶ 30.)
20 The Class is sufficiently numerous. (See *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169
21 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as many as 190 current and former
22 employees” is sufficiently numerous).) Further, all Class Members can and will be identified by
23 Respondent to the Settlement Administrator through a review of Respondent’s employment
24 records concerning non-exempt or hourly employees who worked for Respondent in the State of
25 California during the Class Period. (*Ibid.*)

26 ///

27 ///

28 ///

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

2 The community of interest requirement “embodies three factors: (1) predominant
3 common questions of law or fact; (2) class representatives with claims or defenses typical of the
4 class; and (3) class representatives who can adequately represent the class.” (*Sav-On Drugs*,
5 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*
6 *mandate that class members have uniform or identical claims.*” (*Capitol People First v.*
7 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).)
8 Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to
9 assess whether that common behavior toward similarly situated plaintiffs renders class
10 certification appropriate.” (*Capitol People First v. Department of Developmental Services*
11 (2007) 155 Cal.App.4th 676, 692 (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).)

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, supra*,
14 155 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).)
15 Furthermore, the commonality inquiry centers on the “reasonableness” of the Respondent’s labor
16 policies as applied to the potential class. (*Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.)

17 Here, Claimants assert that common issues of fact and law predominate as to each of the
18 claims alleged by Claimants. All non-exempt employees who worked for Respondent during the
19 Class Period were subject to the same or similar employment practices, policies, and procedures.
20 (Han Decl. ¶¶ 16-17.) All of the claims surround Respondent’s common practice and scheme of
21 failing to properly account for all hours worked by non-exempt employees (i.e., off-the-clock
22 work and rounding) and failing to pay them, *inter alia*, for overtime work, and non-compliant
23 meal and rest periods, and associated inaccurate wage statements and waiting time penalties.
24 (*Ibid.*)

25 ///

26 ///

27 ///

1 Specifically, Claimants alleged that 41.6% of the shifts were underpaid due to rounding.
2 (Han Decl. ¶¶ 16-17.) Additionally, 96.5% of all shifts had at least one unique rest break
3 violation (either short, late, or missed), and \$314,829.62 were underpaid due to Respondent's
4 failure to properly calculate the regular rate of pay. (*Id.* at ¶¶ 38-39.) As a result, all of the Class
5 Members, including Claimants, were uniformly not paid for all of the hours they worked for
6 Respondent during the Class Period. Based on these facts, Claimants conclude that the proposed
7 Classes are readily certifiable in this case. Accordingly, the Arbitrator should provisionally
8 certify the Classes for settlement purposes only.

9 **c. The Settlement Was Reached as a Result of Arm's-Length Negotiations**

10 The Settlement was reached as a result of arms-length negotiations. (Han Decl. ¶ 31.)
11 Though cordial and professional, the settlement negotiations have been, at all times, adversarial
12 and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties conducted extensive
13 arm's length settlement negotiations until the parties could settle. (*Ibid.*) The terms of the
14 Settlement are memorialized in the Joint Stipulation. (Han Decl. ¶ 31; Ex. 1).

15 Claimants believe in the merits of their case, but also recognize the inherent risks of
16 litigation and understands the benefit of the Class receiving settlement funds immediately, as
17 opposed to risking continued litigation, the merits of the case before and after trial, damages
18 awarded, and an appeal that could take years to litigate. (Han Decl. ¶ 32.)

19 **d. The Settlement Is the Result of Thorough Investigation and Discovery**

20 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
21 before reaching the proposed settlement, and engaged in sufficient investigation, research and
22 discovery to support the settlement. (Han Decl. ¶¶ 13-15.) The settlement was only possible
23 following discovery and evaluation of Respondent's policies and procedures, as well as the data
24 produced for the putative class, which permitted Class Counsel to engage in a comprehensive
25 analysis of liability and potential damages. (Han Decl. ¶ 33.) The case is at the stage where "the
26 Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to
27 support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.)

28 ///

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

2 Both Claimants’ counsel and Respondent’s counsel are particularly experienced in wage
3 and hour employment law and class actions. The Claimants’ counsel has significant experience
4 in litigating unpaid wages, non-compliant meal periods, and non-compliant rest periods, and
5 unfair business practices class actions. (Han Decl. ¶¶ 4-7.)

6 Claimants’ counsel has prosecuted numerous cases on behalf of employees for California
7 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to
8 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
9 defenses. (*Id.*) This experience instructed the Claimants’ counsel on the risks and uncertainties of
10 further litigation and guided their determination to endorse the proposed settlement.³ (*Id.*)

11 **f. The Proposed Settlement is a Reasonable Compromise of Claims**

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

18 In weighing the strength of the Claimants’ case, *Kullar* instructs that the court is not to
19 “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for
20 that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not require
21 an explicit statement of the maximum amount the class could recover if the Claimants prevailed
22 on all his claims, provided there is a record that allows “an understanding of the amount that is in
23 controversy and the realistic range of outcomes of the litigation.” (*Munoz*, 186 Cal.App.4th at
24 409.) Put differently, “as the court does when it approves a settlement as in good faith under
25 Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is
26 within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at p. 133, citing *Tech-*

27 _____
28 ³The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice of Class Action
Settlement has been provided to the Class and they have had an opportunity to respond. This information will be
provided to the Arbitrator in conjunction with the Motion for Final Approval of Class Action Settlement.

1 *Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.)

2 As the following subsections show, the Parties' investigation and discovery revealed
3 numerous reasons to discount claims and agree to this settlement.

4 **i. The Settlement Is Fair and Reasonable**

5 The proposed settlement was only possible following significant discovery and
6 evaluation of Respondents' relevant policies and procedures, as well as the data they produced
7 for the putative Class as referenced in Section IV(c)(ii) above, which permitted Class Counsel to
8 engage in a comprehensive analysis of liability and potential damages. (Han Decl. ¶ 33.)

9 This discovery and informal exchange of information resulted in Claimants' central
10 theories of liability, which are predicated on Claimants' claims that Respondent employed
11 uniform policies of not providing compliant meal and rest periods, failing to authorize overtime
12 forcing thus forcing class members to work off-the-clock, and not including bonuses in
13 employees' regular rate of pay for purposes of overtime compensation. (Han Decl. ¶ 34.)

14 Respondent vehemently denies Claimants' theories of liability and contends, as stated
15 above, that all meal and rest periods were provided in compliance with California law, the
16 regular rate of pay complied with California law, all wages were timely paid to class members,
17 and that it provided wage statements in compliance with Labor Code § 226. (Han Decl. ¶ 35.)
18 Respondent argues that if litigation were to continue, it feels confident that it would prevail.
19 (*Ibid.*)

20 Although Claimants believe the case is suitable for certification on the claimed basis that
21 there are company-wide policies that Claimants contend violate California law and uniformly
22 affect the putative class members, uncertainties concerning certification are always present. (Han
23 Decl. ¶ 36.) As the California Supreme Court ruled in *Sav-On Drugs, supra*, 34 Cal.4th at p. 319,
24 class certification is always a matter of the trial court's sound discretion. Decisions following
25 *Sav-On* have reached different conclusions, concerning certification of wage and hour claims.⁴

26 ⁴ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of
27 class claiming misclassification and ordering summary adjudication in favor of employees),
28 *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes
only); *Walsh v. IKON Solutions, Inc.*, 148 Cal.App.4th 1440 (affirming decertification of class

1 Still remaining confident in the strengths of their claims, all of these factors led Claimants to
2 discount the following calculations of potential damage claims. (Han Decl. ¶ 36.)

3 **ii. The Settlement Amount of \$3,000,000 is Reasonable**

4 In addition to being able to discover the strengths and vulnerabilities associated with
5 Claimants' claims, in preparing for mediation, Respondent provided Claimants with a sampling
6 of time and pay records and information regarding the estimated number of workweeks worked
7 by putative class members and the hourly rates for class members. (Han Decl. ¶ 37.) Respondent
8 represents that, as of March 31, 2021, the Class Periods includes approximately 69,259
9 workweeks. (*Ibid.*) Claimants determined the average hourly rate for class members was \$21.65.
10 (*Ibid.*)

11 Specifically, Claimants claim—and Respondent denies—that Respondent's employees
12 are not provided with compliant meal periods and rest breaks. (Han Decl. ¶ 38.) Claimants
13 contend that Respondent has not maintained any code-compliant uniform meal break practices
14 that provide for timely meal breaks or rest break practices that provide a duty-free break during
15 the entire class period. (*Ibid.*) Rather, Respondent maintained an informal policy of failing to
16 provide employees with meal and rest breaks during the entire class period. (*Ibid.*)

17 Regarding meal and rest breaks, Respondent has not paid a single premium during the
18 entire class period, a claim which Respondent denies. (*Ibid.*) Moreover, Claimants allege that,
19 due to heavy workloads, the pressure to work efficiently, and time-sensitive deadlines,
20 Respondent's meal and rest break practices forced employees to forego, interrupt, or postpone
21 taking their meal and rest breaks. (*Ibid.*)

22 ///

23 ///

24 ///

25
26
27 claiming misclassification); *Aguilar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121
28 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422
(affirming denial of certification).)

Utilizing the sampling time and pay data records for 231 Class Members and extrapolating that data to the entire Class of 437 Class Members, Claimants were able to establish that 96.5% of all shifts had at least one unique meal break violation. (Han Decl. ¶ 38.) 99.9% of shifts between 10 and 12 hours did not have a recorded second meal break, and importantly 99.9% of shifts greater than 12 hours, for which a meal break cannot be waived, did not have a recorded second meal break. (*Ibid.*) Accordingly, extrapolated to the total number of workweeks (69,259), using Claimants' calculated average of 4.5 shifts per workweek, Claimants calculates Respondent's maximum potential exposure for the meal period claim to be approximately \$4,487,126.12.⁵ (Han Decl. ¶ 38.)

Moreover, 45 % of all shifts had at least one unique rest break violation (Han Decl. ¶ 38). Thus, Claimants calculate Respondent's maximum potential exposure for the rest period claim to be approximately \$3,036,401.13.⁶ (*Ibid.*)

Furthermore, Claimants claim—and Respondent denies—that Respondent maintained a strict overtime policy, which deprived the Class Members of wages for all time worked. (Han Decl. ¶ 39.) Interviews with Class Member reveal that, on average, they are working 10 minutes of off-the-clock work. (*Ibid.*) Thus, Claimants calculate that Respondent's maximum potential exposure is approximately \$1,720,892.22.⁷ (*Ibid.*) Also, due to Respondent's rounding practice, there were 2,623.8 hours that were underpaid resulting in an exposure of \$85,221.02.

Additionally, Claimants claim—and Respondent denies—that Respondent failed to factor non-discretionary bonuses in employees' regular rate of pay for purposes of overtime. (Han Decl. ¶ 40.) Specifically, Respondent failed to factor in the commission and bonuses into the regular rate. (*Ibid.*) For the 64 employees and 1,734 pay periods analyzed, Claimants' expert calculated that Respondent failed to pay \$16,869 to employees under this theory of liability. (*Ibid.*) Thus, extrapolated to a Class Period of 32,362 pay periods, Claimants calculate

⁵**Maximum Potential Exposure for Meal Period Claim** = 69,259 workweeks x 4.5 shifts/workweek x .965 violations/shift x \$21.656/violation = \$ **4,487,126.12**

⁶**Maximum Potential Exposure for Rest Period Claim** = 69,259 workweeks x 4.5 shifts/workweek x .45 violations/shift x \$21.65/violation = \$ **3,036,401.13**

⁷**Maximum Potential Exposure for Off-the-Clock Claim** = 69,259 workweeks x 4.5 shifts/workweek x .17 (10-minutes unpaid) x \$32.48/overtime hr= \$ **1,720,892.22**

Respondent's maximum potential exposure for the unpaid overtime claim to be approximately \$ 314,829.62. (Han Decl. ¶ 40.)

Further, Claimants claims—and Respondent denies—that Respondent's off-the-clock work practice, regular rate calculation, and failure to pay meal break and rest break premiums resulted in Respondent issuing inaccurate wage statements in violation of *California Labor Code* section 226(a). (Han Decl. ¶ 41.) Claimants calculate Respondent's maximum potential exposure as to this claim to be approximately \$800,000⁸ (based on 200 employees within the one-year statute of limitations). (*Ibid.*)

If Claimants can prove Respondent's failure to pay all wages owed, Claimants are then entitled to waiting time penalties in the amount of 30 days' worth of wages. (Han Decl. ¶ 42.) Claimants calculate Respondent's maximum potential exposure as to this claim to be approximately \$1,408,116⁹ (based on 271 terminated employees within the three-year statute of limitations). (*Ibid.*)

Claimants claim – and Respondents deny – that employees were required to use their own cell phones to communicate and make business-related calls. Claimants allege that Respondent was required to reimburse employees for this expense, under Labor Code § 2802, but failed to do so. (Han Decl., ¶ 43.) Respondent claimed that use of personal cellular phones for business use was not allowed unless authorized and that in cases when necessary, phones were provided by Respondent (*Ibid.*) Respondent attributed no value to this claim. (*Ibid.*) However, Claimants argued that Respondent had to reimburse for a portion of the phone data service. (*Ibid.*) Based upon investigation with class members, Claimants estimate that on average, each employee attributed approximately five percent or \$4.00 per month on their cell phone plans for this data.¹⁰ Claimants calculate Respondent's maximum potential exposure as to this claim to be approximately \$63,568 (15,892 months x \$4 per month). (*Ibid.*)

⁸ **Maximum Potential Exposure for Wage Statement Violations** = (200 eligible Class Members x \$4,000 (63 avg. pay periods) = **\$800,000**

⁹ **Maximum Potential Exposure for Waiting Time Penalties** = (8 hours x \$21.65/average hourly rate x approximately 271 former non-exempt employees x 30 days) = **\$ 1,408,116**

¹⁰ Cell phone charges were based on the assumption of \$80 per month of cellular phone bill with 5% allocated to business purposes including calls and time keeping.

1 The provisions of the Labor Code potentially triggering PAGA penalties, in this case,
2 include but are not limited to Labor Code sections 204, 226(a), 226.7, 510, 512(a), 1174(d),
3 1194, 1197, 1197.1, 1198 and 2802. (Han Decl. ¶ 44.) Respondent asserted that, regardless of the
4 results of the underlying causes of action, PAGA penalties are not mandatory but permissive and
5 discretionary. (*Ibid.*) Respondent maintained that, in addition to its strong arguments against the
6 underlying claims, it had a strong argument that it would be unjust to award maximum PAGA
7 penalties given the current unsettled state of law. (*Ibid.*)

8 Class Counsel calculated penalties under this cause of action by multiplying the number
9 of active Class Members (because of the shortened statutory period for this claim), by the civil
10 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
11 section 2699.5 that were applicable in this case. (Han Decl. ¶ 45.) Class Counsel then applied
12 discounts in light of the countervailing arguments concerning the other causes of action, as well
13 as the Court's power to award "a lesser amount than the maximum civil liability." Lab. Code §
14 2699(e)(2). (*Ibid.*)

15 Given the state of the law and the range of PAGA penalties requested and actually
16 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
17 for PAGA penalties. (Han Decl. ¶ 46.) However, if PAGA penalties are granted on any one of
18 the violations alleged in Claimants' operative complaint, the total penalties exposure could be
19 approximately \$0 to \$2,500,000 (200 employees x [(1 initial violation x \$100) + (62 subsequent
20 violations x \$200)]). (*Ibid.*) Claimants calculated Respondent's PAGA exposure using a 100%
21 violation rate based on the average number of pay periods (63) during the one-year statutory
22 period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations under the
23 PAGA theories of recovery (7) gives potential civil penalties of \$0 to \$17,500,000. (*Ibid.*)

24 ///

25 ///

26 ///

1 Claimants also recognized the risk that any PAGA award could be significantly reduced.
2 Many of the causes of action brought were duplicative of the statutory claims, such as violations
3 of California Labor Code §§ 226(e), 226.7, 510, 512(a), 1194, 1198 and 2802. (Han Decl. ¶ 47.)
4 Of these violations, section 226(e) is a derivative claim. (*Ibid.*) However, employees may have
5 waived meal breaks and rest breaks, and Respondent’s regular rate violations for underpayment
6 of overtime and sick pay did not occur for every employee for every pay period. (*Ibid.*) Thus, the
7 maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether
8 the Arbitrator would award the maximum penalties under the law. (*Ibid.*) Thus, allocating
9 \$100,000 to PAGA civil penalties, based on a rate of \$7.96 per pay period, was reasonable
10 (12,558 Pay Periods in PAGA Date Range x \$7.96 = \$100,000). (*Ibid.*) (See *Carrington v.*
11 *Starbucks Corp.*, 30 Cal.App.5th 504, 529 (affirming a rate of \$5 per violation and a total PAGA
12 penalty of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and a total
13 PAGA penalty of \$70,000,000).) (*Ibid.*) Where PAGA penalties are negotiated in good faith and
14 “there is no indication that [the] amount was the result of self-interest at the expense of other
15 Class Members,” such amounts are generally considered reasonable. (*Ibid.*) (*Hopson v.*
16 *Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3,
17 2009); *see, e.g., Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not
18 abuse its discretion in approving a settlement which does not allocate any damages to the PAGA
19 claims.”).) Also, negotiations were under the auspices of a well-respected mediator, Jeffrey A.
20 Ross, Esq. who regularly mediates wage and hour litigation involving PAGA claims. The
21 Claimants’ counsel gave deference to an experienced mediator’s proposal, which provided
22 approximately \$7.96 per pay period for this claim.

23 Accordingly, taking into consideration Respondent’s defenses, its supporting evidence,
24 and its position that the action is not suitable for class treatment, the settlement amount of
25 \$3,000,000—**with an average settlement share amount estimated at \$3,839.93**—is reasonable
26 and fair. (Han Decl. ¶ 22.)

27 ///

28 ///

g. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be entirely discretionary, for the reasons stated, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$11,916,154.11**. (Han Decl. ¶ 48.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Meal Premiums	\$ 4,487,126.12	50%	50%	\$1,121,781.53
Rest Premiums	\$ 3,036,401.13	75%	50%	\$ 379,550.14
Unpaid Overtime: Off-the-Clock	\$ 1,720,892.22	75%	50%	\$215,111.53
Unpaid Overtime: Rounding Theory	\$ 85,221.02	0%	50%	\$42,610.51
Regular Rate:	\$ 314,829.62	10%	25%	\$212,509.99
Paystub Penalty	\$ 800,000.00	50%	50%	\$200,000.00
Reimbursement	\$ 63,568.00	0%	75%	\$ 15,892.00
Waiting Time Penalty	\$ 1,408,116.00	50%	25%	\$ 528,043.50
MAXIMUM TOTAL EXPOSURE	\$11,916,154.11			\$2,715,449.20

Claimants apply a 50% certification risk discount for meal period exposure because the violations rates suggest a common practice not to provide code-compliant meal periods. (Han Decl. ¶ 49.) However, Respondent did have a written policy to provide meal breaks and class certification could depend heavily on witness statements which increases the risk for certification. Also, there is a 50% risk on the merits because Respondent may submit evidence and testimony that meal breaks were provided, but Class Members chose to take non-compliant breaks (late or short), and Class Members waived their meal breaks altogether. (*Ibid.*)

Claimants apply a 75% certification risk for rest period claims based the difficulty of certifying these cases. (Han Decl. ¶ 50.) Moreover, Claimants apply a 50% merits risk because Respondent may submit evidence that rest breaks were provided and that Class members waived their rest breaks. (*Ibid.*) Furthermore, this area of the law is not settled and may be subject to summary judgment. (*Ibid.*)

///

1 For unpaid overtime claims based on off-the-clock, Claimants discount the potential
2 exposure by 75% as off-the-clock theories are difficult to certify and would need to seek support
3 from vast number of class members to certify this theory (Han Decl. ¶ 51.) However, if and once
4 certified, there is a 50% risk on the merits because Respondent will certainly argue they
5 prohibited off-the-clock work and establish that a large number of Class Members recorded and
6 were paid overtime. (*Ibid.*) For the unpaid overtime claim based on the rounding theory,
7 Claimants do not discount for certification risk but will discount for the merits of the claim.

8 For underpaid overtime claims based on the regular rate, Claimants discount the potential
9 exposure by only 10% for certification risk because regular rate cases are generally certified as
10 Class Actions. (Han Decl. ¶ 52.) However, if and once certified, there is a 25% merits risk
11 because Respondent will undoubtedly argue that the bonuses are discretionary and not related to
12 the performance of work. (*Ibid.*) However, it would be difficult for Respondent to argue that
13 commissions were discretionary. (*Ibid.*) Thus, only 25% risk is justified of the merits.

14 Respondent's potential exposure for inaccurate wage statement claims has a 50%
15 certification risk because it is not certain that all wage statements were inaccurate, and many of
16 the alleged inaccuracies in the wage statements are derivative of claims for missed meal and rest
17 breaks. (Han Decl. ¶ 53.) Moreover, there is a 50% merits risk because Respondent may argue
18 that its failure to provide accurate wage statements was not "knowing and intentional" under
19 Labor Code § 226. (*Ibid.*) Respondent may also argue that meal and rest premium payments are
20 not wages, so failure to make these payments to employees does not constitute a violation under
21 Labor Code § 226. (*Ibid.*) Additionally, Respondent may argue that, as to unpaid overtime claims
22 (failure to factor bonuses into regular rate), Respondent's wage statements were accurate because
23 the wage statements accurately reflected the "applicable hourly rates during the pay period" for
24 overtime. Labor Code § 226(a). (*Ibid.*) Although the overtime rate may not have been calculated
25 using the regular rate, including bonuses, the overtime rate listed on the wage statements was
26 identical to the overtime rate that Respondent used to compensate employees for overtime work.
27 (*Ibid.*) Thus, a 50% merits risk is justified. (*Ibid.*)

28 ///

1 Finally, Claimants apply a 50% certification risk discount for waiting time penalty
2 exposure because it is not certain that Respondent paid all 271 terminated employees in an
3 untimely manner. (Han Decl. ¶ 54.) In fact, Respondent may bring evidence showing that it paid
4 a portion of employees in a timely manner. (*Ibid.*) And there is a 25% merits risk because
5 Respondent may argue that any failure to timely pay employees was not “willful” under Labor
6 Code § 203. (*Ibid.*)

7 As for the reimbursement claim, the certification is fairly certain, justifying no discount.
8 (Han Decl., ¶ 55.) However, not all class members used their cell phones, and Claimants may not
9 be able to prove up the full extent of damages. Thus, a 75% discount was justified. (*Ibid.*)

10 Based on this analysis, the realistic recovery for this case is \$2,715,449.20. (Han Decl. ¶
11 56.) The Gross Settlement Amount of \$3,000,000 is approximately 25% of the maximum
12 potential exposure and approximately 110% of the realistic exposure at trial, which is an
13 excellent settlement. (*Ibid.*)

14 The only question at preliminary approval is whether the settlement is within the range of
15 possible approval. (*In re Tableware Antitrust Litig.*, 484 F.Supp.2d 1078, 1079 (N.D. Cal.
16 2007).) “The fact that a proposed settlement may only amount to a fraction of the potential
17 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
18 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
19 455, see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234,1242 (“[I]t is
20 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
21 that induce consensual settlements. The proposed settlement is not to be judged against a
22 hypothetical or speculative measure of what might have been achieved by the negotiators.”).)

23 **h. Notice to Class Members Complies with California Rule of Court 3.769(f)**

24 California Rule of Court, No. 3.769(f), provides:

25 If the court has certified the action as a class action, notice of the final approval
26 hearing must be given to class members in the manner specified by the court. The
27 notice must contain an explanation of the proposed settlement and procedures for
28 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.

1 The proposed Class Notice meets all of these requirements. The proposed Class Notice
2 advises the Class Members of their right to participate in the Settlement, how and when to object
3 to or request exclusion from the Settlement, and the date, time, and location of the final approval
4 hearing. (See Han Decl.; Ex. A to Ex 2.)

5 **V. CONCLUSION**

6 Claimants respectfully submit that the proposed settlement is in the best interests of the
7 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
8 guidelines, the proposed settlement should be preliminarily approved by the Arbitrator, the
9 Classes should be conditionally certified for purposes of settlement only, and the Notice of Class
10 Action Settlement should be approved.

11
12 Dated: July 27, 2021

JUSTICE LAW CORPORATION

13
14 

Douglas Han
Shunt Tatavos-Gharajeh
Talía Lux
Attorneys for Claimants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 arivera@justicelawcorp.com

On July 27, 2021, I served the foregoing document described as

**CLAIMANTS' NOTICE OF MOTION AND UNOPPOSED 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: **Garner v. Inter-state Oil Co.**
LWDA/Court Case No.: **LWDA Case No.: CM-772677-20**
Arbitration Case No.: 01-21-0003-6413
American Arbitration Association

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 27, 2021, at Pasadena, California.



Allana Rivera