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

LUIS MIRANDA, individually, and on behalf
of other members of the general public
similarly situated;

Plaintiff,

v.

NEW PRIDE TIRE, INC., a Delaware
corporation; FLEXI-VAN LEASING, LLC, a
Delaware limited liability company; NPT
VENTURES, LLC, a California limited
liability company; and DOES 3 through 100,
inclusive;

Defendants.

Case No.: RG20063513 [Lead Case]
[Consolidated with Case No. RG20063371]

Assigned for All Purposes to:
Honorable Stephen Kaus
Department 19

CLASS ACTION

**PLAINTIFF'S 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**

[Reservation ID: 644956934709]

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed
Settlement Administrator (Eric Springer);
Declaration of Joan Graff; and [Proposed]
Order filed concurrently herewith]

Hearing Date: June 8, 2022
Hearing Time: 3:00 p.m.
Hearing Place: Department 19

Complaint Filed: May 11, 2020
FAC Filed: May 10, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on June 8, 2022 at 3:00 p.m., or as soon as the matter
2 may be heard, before the Honorable Stephen Kaus in Department 19 of the Alameda County
3 Superior Court (Administration Building), located at 1221 Oak Street Oakland, California 94612,
4 Plaintiff Luis Miranda (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Parties’ Joint Stipulation and Settlement Agreement
7 (“Agreement,” “Settlement Agreement,” or “Settlement”), attached as **Exhibit 2**
8 to the declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, the allocations for payments under the Private
10 Attorneys General Act of 2004 (“PAGA”), Attorney Fee Award, Cost Award,
11 Class Representative Enhancement Payment, and Administration Costs;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff as the Class Representative;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving the proposed Notice of Class and Representative Action Settlement
16 (“Class Notice”) attached as **Exhibit A** to the [Proposed] Order Preliminarily
17 Approving Class Action Settlement and Setting Hearing for Final Approval of
18 Settlement;
- 19 • Approving the Election Not To Participate In Class Action Settlement (“Opt-Out
20 Form”) (“Exclusion Form”) attached as **Exhibit B** to the [Proposed] Order
21 Preliminarily Approving Class Action Settlement and Setting Hearing for Final
22 Approval of Settlement;
- 23 • Directing the mailing of the proposed Class Notice and Exclusion Form
24 (collectively, known as the “Notice Packet”) with a postage-paid return envelope
25 to the proposed Class;
- 26 • Approving the proposed deadlines for the notice and settlement administration
27 process;
- 28 • Approving Simpluris, Inc. (“Simpluris”) as the Settlement Administrator; and

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

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

Dated: May 12, 2022

JUSTICE LAW CORPORATION

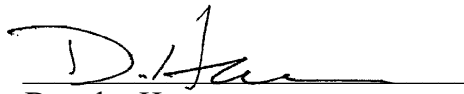
By: 
Douglas Han
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$300,000 wage-and-hour
3 class action and representative PAGA settlement by Plaintiff on behalf of himself and all current
4 or former hourly-paid, non-exempt workers, whether direct hires of Defendants New Pride Tire,
5 Inc., Flexi-Van Leasing, LLC, and NPT Ventures, LLC, including, but not limited to, all their
6 past or present officers, directors, shareholders, employees, agents, principals, heirs,
7 representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective
8 successors and predecessors in interest, subsidiaries, affiliates, and parent companies
9 (“Defendants”) or supplied through a staffing company and who are or were assigned to New
10 Pride Tire, Inc.’s and related entities’ Rancho Dominguez location located at 2757 East Del Amo
11 Blvd., Rancho Dominguez, California 90221 and/or Oakland location located at 8977 Railroad
12 Ave., Oakland, California 94621, from August 18, 2018, to the date of Preliminary Approval or
13 August 31, 2022, whichever date is earlier (“Class,” “Class Members,” and “Class Period”). At
14 the time of this filing, the number of Class Members confirmed by Defendants is estimated to be
15 three hundred (300). (Declaration of Douglas Han In Support of Plaintiff’s Motion For
16 Preliminary Approval of Class Action Settlement (“Han Dec.”), ¶¶ 8-9.)

17 It is requested the Court grant Preliminary Approval because when analyzing the strengths
18 and vulnerabilities of the claims alongside Defendants’ potential liability exposure, the proposed
19 Settlement is well within the range of reasonableness. Plaintiff and Class Counsel are convinced
20 the proposed Settlement is in the best interests of the Class Members.

21 **II. BACKGROUND**

22 On February 7, 2020, Plaintiff provided written notice to the California Labor and
23 Workforce Development Agency (“LWDA”) and Defendant New Pride Tire, Inc. (Han Dec.,
24 *supra*, at ¶ 10; Exhibit 3.)

25 On May 11, 2020, Plaintiff filed a wage-and-hour class action lawsuit alleging eight (8)
26 causes of action. (“Class Action”). (Han Dec., *supra*, at ¶ 11.) On May 11, 2020, Plaintiff filed a
27 representative PAGA action asserting violations like the assertions in Plaintiff’s wage-and-hour
28 class action lawsuit (“PAGA Action”). (*Id.* at ¶ 12.)

1 On April 16, 2021 and April 19, 2021, Plaintiff filed an Amendment to Complaint
2 (Fictitious Name); [Proposed] Order for the Class Action and PAGA Action respectively. (Han
3 Dec., *supra*, at ¶ 13.)

4 On April 9, 2021, the Parties attended mediation for both actions with mediator, Debbie
5 Saxe, Esq., but did not reach a resolution. (Han Dec., *supra*, at ¶ 14.) On February 10, 2022, after
6 continued negotiations, the Parties reached a global resolution. (*Ibid.*)

7 In line with the settlement, the Court ordered the Class Action and PAGA Action be
8 consolidated with the Class Action designated as the lead case on March 14, 2022. (Han Dec.,
9 *supra*, at ¶ 15.) Moreover, Plaintiff filed a First Amended Complaint on May 10, 2022. (*Ibid.*)

10 **III. INVESTIGATION/ LITIGATION HISTORY**

11 **a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions**

12 After filing this case, the Parties engaged in discovery. (Han Dec., *supra*, at ¶ 17.) Plaintiff
13 propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set
14 of requests for admissions, and one (1) set of requests for production of documents for each case.
15 (*Ibid.*) The Parties met and conferred, agreed to engage in an informal exchange of information,
16 and attended mediation. (*Ibid.*)

17 Prior to mediation, Defendants produced hundreds of documents relating to their policies,
18 practices, and procedures. (Han Dec., *supra*, at ¶ 18.) Plaintiff also reviewed time records, pay
19 records, and information relating to the size and scope of the Class, as well as data permitting
20 Plaintiff to understand the number of workweeks. (*Ibid.*) Plaintiff also interviewed Class
21 Members and Eligible Aggrieved Employees who worked for Defendants. (*Ibid.*)

22 Based upon the information provided by Defendants and interviews with non-exempt
23 employees, Plaintiff contends – and Defendants deny – that Defendants: (a) failed to provide
24 employees with legally mandated meal and rest breaks and pay applicable premium wages; (b)
25 failed to pay employees for all hours worked; (c) failed to reimburse employees for necessary
26 business expenses; (d) issued noncompliant wage statements; and (e) are liable for waiting time
27 penalties. (Han Dec., *supra*, at ¶¶ 20-26.)

28 ///

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

2 **i. The Parties Attended Mediation Which Ultimately Led to the Joint**
3 **Stipulation and Settlement Agreement**

4 The Parties agreed to attend a mediation with experienced wage-and-hour mediator
5 Debbie Saxe, Esq., on April 9, 2021. (Han Dec., *supra*, at ¶ 27.) During the mediation, the Parties
6 discussed the risks of continued litigation, the likelihood of certification, and the merits of the
7 Parties’ claims and defenses versus the benefits of settlement. (*Ibid.*) Under the auspices of the
8 mediator, the Parties eventually reached a settlement on February 10, 2022, the terms of which
9 were memorialized in the Settlement Agreement the Parties now seek Preliminary Approval of.
10 (*Id.* at ¶ 27; Exhibits 2, 4.)

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

12 At the mediation, the Parties’ counsel engaged in extensive arm’s-length settlement
13 negotiations until an agreement was reached. (Han Dec., *supra*, at ¶ 42.) Though cordial and
14 professional, the settlement negotiations have always been adversarial and non-collusive. (*Ibid.*)
15 Plaintiff and Class Counsel believe in the merits of the case but recognize the expense and
16 length of additional proceedings necessary to continue the litigation. (Han Dec., *supra*, at ¶ 43.)
17 Plaintiff and Class Counsel have considered the uncertainty and risk of further litigation, the
18 potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Based on the
19 foregoing, Plaintiff and Class Counsel believe the settlement set forth in the Agreement is fair,
20 adequate, and reasonable and is in the Class Members’ best interests. (*Ibid.*)

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

22 The Parties investigated and evaluated the factual strengths and weaknesses of Plaintiff’s
23 claims and Defendants’ defenses before reaching the proposed Settlement and engaged in
24 sufficient investigation, research, and discovery. (Han Dec., *supra*, at ¶ 44.) The information
25 produced by Defendants permitted Class Counsel to engage in a comprehensive analysis of
26 liability and potential damages. (*Ibid.*) This case has reached the stage where “the Parties
27 certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support
28 the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

2 **i. Deductions from the Settlement**

3 The Parties agreed this action be settled and compromised for the non-reversionary total
4 sum of \$300,000 (“Gross Settlement Amount”) which includes the: (a) Attorney Fee Award of
5 \$100,000; (b) Cost Award of up to \$15,000; (c) Class Representative Enhancement Payment of
6 \$10,000; (d) Administration Costs currently estimate at \$7,350 but not to exceed \$9,000; and (e)
7 PAGA Payment of \$20,000. (Han Dec., *supra*, at ¶ 28.)

8 **ii. Calculation of the Class Members’ Individual Settlement Shares**

9 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
10 \$146,000 (“Net Settlement Amount”) will be distributed to Participating Class Members,
11 resulting in an *average* Individual Settlement Share of \$486.67. (Han Dec., *supra*, at ¶ 29.)

12 The Settlement Administrator will calculate and disburse the Individual Settlement Shares
13 using the formula set forth in the Agreement. (Han Dec., *supra*, at ¶ 30.) The Settlement
14 Administrator shall also calculate and disburse Individual PAGA Payments using the formula set
15 forth in the Agreement. (*Id.* at ¶ 31.)

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

18 Each Individual Settlement Share will be apportioned as follows: twenty percent (20%)
19 in compromise of claims for alleged unpaid wages and eighty percent (80%) in compromise of
20 claims for alleged non-wage amounts including penalties and interest. (Han Dec., *supra*, at ¶ 29.)

21 This allocation of wages, penalties, interest, and reimbursement was based on the realistic
22 exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages
23 due to off-the-clock work if this case went to trial. (Han Dec., *supra*, at ¶ 69.) While unpaid
24 wages due to off-the-clock work qualify as wages, failure to pay premium wages for
25 noncompliant meal and rest breaks could be characterized as wages or penalties. (*Ibid.*) As a
26 result, the Parties added the realistic exposure for rest break premiums and meal break premiums
27 (\$18,176.94 + \$663.75 = \$18,840.69) and divided the sum in half to represent one-half for wages
28 and one-half for penalties (\$9,420.35). (*Ibid.*) The Parties then added the \$64,968.75 representing

wages to the high end realistic exposure for unpaid wages due to off-the-clock work (\$9,420.35 + \$64,968.75 = \$74,389.10). (Han Dec., *supra*, at ¶ 69.) The realistic exposure of \$74,389.10 that Plaintiff can expect to receive for the wage portion of meal and rest break premiums and high end unpaid wages due to off-the-clock work represents about nineteen percent (19.59%) of the high end realistic exposure of the maximum total exposure ($\$74,389.10 \div \$379,729.44 = 0.1959 \times 100 = 19.59\%$). (*Ibid.*) Because this represents almost twenty percent (20%) of wages, the Parties determined allocating twenty percent (20%) for the Wage Portion and eighty percent (80%) for the Non-Wage Portion pursuant to the Agreement was appropriate. (*Ibid.*)

iv. Notice to the Class

Within fifteen (15) business days after entry of the Preliminary Approval, Defendants shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 32.) Within fourteen (14) business days after Defendants' deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packet to all identified Class Members via first-class U.S. Mail. (*Ibid.*)

v. Distribution of Funds

No later than fourteen (14) business days after the Effective Final Settlement Date, Defendants shall provide any tax information the Settlement Administrator may need to calculate Individual Settlement Shares. (Han Dec., *supra*, at ¶ 33.) No later than twenty-one (21) business days after the Effective Final Settlement Date, Defendants shall deposit the entire Gross Settlement Amount by wiring the funds to the Settlement Administrator as well as any additional sums necessary to account for the employers' share of payroll taxes. (*Ibid.*) Within fourteen (14) calendar days after the deadline to fund of the Settlement, the Settlement Administrator shall calculate and disburse all payments due under the Settlement. (*Ibid.*)

Participating Class Members and Eligible Aggrieved Employees must cash or deposit their Individual Settlement Share and Individual PAGA Payment checks within one hundred eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 34.) Any uncashed settlement check will be canceled and mailed to the *cypres* recipient Legal Aid At Work ("LAAW"). (*Ibid.*)

1 **vi. The *Cy Pres* Recipient is Appropriate**

2 LAAW satisfies the policy of the State of California “to ensure that the unpaid cash residue
3 and unclaimed or abandoned funds in class action litigation are distributed, to the fullest extent
4 possible, in a manner designed either to further the purposes of the underlying class action or
5 causes of action, or to promote justice for all Californians.” (Code Civ. Proc., § 384(a).) (Han
6 Dec., *supra*, at ¶ 35.) The Code of Civil Procedure further states:

7 [T]he court shall amend the judgment to direct the defendant to pay the sum of the unpaid
8 residue or unclaimed or abandoned class member funds, plus any interest that has accrued
9 thereon, to nonprofit organizations or foundations to support projects that will benefit the
10 class or similarly situated persons, or that promote the law consistent with the objectives
11 and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit
12 organizations providing civil legal services to the indigent.

13 (Code Civ. Proc., § 384 (b).) (Han Dec., *supra*, at ¶ 35.)

14 LAAW directly satisfies the legislature’s purpose and goal under Code of Civil Procedure
15 section 384. (Han Dec., *supra*, at ¶ 36.) There can be no doubt LAAW is the type of non-profit
16 organization the legislature had in mind when drafting and amending Code of Civil Procedure
17 section 384. (*Ibid.*) The Parties are not affiliated with and do not have any financial interest in
18 LAAW. (*Ibid.*)

19 **vii. Release of Claims**

20 As of the Effective Final Settlement Date, except as to such rights or claims as may be
21 created by the Agreement, in exchange for the consideration set forth in the Agreement, Plaintiff
22 and the Participating Class Members, on their own behalf, and on behalf of their respective
23 current, former, and future heirs, spouses, executors, administrators, agents, and attorneys, release
24 the Released Parties from the Released Claims for the Class Period (“Released Claims”). (Han
25 Dec., *supra*, at ¶ 37; Exhibit 2, *supra*, at §§ I.NN., III.J.)

26 As of the Effective Final Settlement Date, all Eligible Aggrieved Employees and the State
27 of California, including the LWDA, on their own behalf, and on behalf of their respective current,
28 former, and future heirs, spouses, executors, administrators, agents, and attorneys, fully, finally,
and forever be barred from seeking any claims for penalties pursuant to PAGA for the PAGA

Released Claims during the PAGA Period against PAGA Released Parties (“PAGA Released Claims”). (Han Dec., *supra*, at ¶ 38; Exhibit 2, *supra*, at §§ I.HH., III.K.)

Upon the Effective Final Settlement Date, Plaintiff shall forever release, discharge and agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts and expenses (including attorney fees and costs), known or unknown, at law or in equity, which he had or may now have against Defendants arising out of or in any way connected with his employment with Defendants, including, the Released Claims, claims that were asserted or could have been asserted in the Complaint, and any and all transactions, occurrences, or matters between the Parties. (Han Dec., *supra*, at ¶ 39; Exhibit 2, *supra*, at § III.J.3.)

With regard 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 scopes of the releases in this case are acceptable because they are limited to the scope of the allegations in the Complaint. 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

Counsel for both Parties are particularly experienced in wage-and-hour, employment law and class actions. (Han Dec., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (Ibid.) Thus, Class Counsel are experienced and qualified to evaluate the class claims, the advantages and disadvantages of settlement versus trial, and the viability of the defenses. (Ibid.) Class Counsel’s experience guided their determination to endorse the proposed Settlement.¹ (Ibid.)

¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the number of objectors – is not determinable until the Class Notice has been provided to the Class

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
hearing.

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

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

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

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

24 _____
25 Members, 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.

26 ² The California Supreme Court has also authorized California’s trial courts to use Federal
27 Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior*
28 *Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where
appropriate, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

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

11 **i. The Gross Settlement Amount of \$300,000 Is Fair and Reasonable**

12 The proposed Settlement was only possible following significant investigation and
13 evaluation of Defendants' relevant policies and procedures and the data Defendants produced for
14 the putative class, as referenced in Section III(b)(iii) above, permitting Class Counsel to engage
15 in a comprehensive analysis of liability and potential damages. (Han Dec., *supra*, at ¶ 44.)

16 This investigation and evaluation informed Plaintiff's central theories of liability.
17 Plaintiff's claims are predicated on Defendants' alleged: (1) failure to properly calculate and pay
18 overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3)
19 failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant
20 wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections
21 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.*
22 (Han Dec., *supra*, at ¶ 45.) Defendants continue to deny Plaintiff's theories. (*Id.* at ¶ 46.)

23 Although Plaintiff believes the case is suitable for certification, uncertainties with respect
24 to certification are always present. (Han Dec., *supra*, at ¶ 47.) As the California Supreme Court
25 ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is
26 a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores*,

1 *Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (Han
2 Dec., *supra*, at ¶ 47.) These factors led Plaintiff to discount the calculations of potential damages.

3 **ii. The PAGA Payment of \$20,000 Is Reasonable**

4 The provisions of the Labor Code potentially triggering PAGA penalties in this case
5 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
6 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Dec., *supra*,
7 at ¶ 55.) Defendants asserted that, regardless of the results of the underlying causes of action,
8 PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendants
9 maintained that, in addition to their strong arguments against the underlying claims, they had a
10 strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled
11 state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
12 penalties by 30% under this authority].) Defendants argued that without stacking and limited to
13 the initial violation, the PAGA penalties would be limited to **\$24,000** (240 employees x \$100
14 initial violations) on the low end and **\$144,000** (240 employees x \$100 x 6 theories of recovery)
15 on the high end. (*Id.* at ¶¶ 56-59.)

16 Plaintiff also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
17 at ¶ 60.) Many of the causes of action brought were duplicative of the statutory claims, such as
18 Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*)
19 The maximum penalties for each pay period are likely not justified, and it was arguable the Court
20 would award the maximum penalties. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties
21 was reasonable based on a rate of **\$6.20** per pay period [$\$20,000 \div 3,226$ pay periods in PAGA
22 date range = **\$6.20**], given the fact that Defendants are paying an additional 280,000 in the class
23

24
25 ³ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification
26 of class claiming misclassification and ordering summary adjudication in favor of employees],
27 review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for
28 illustrative purposes only]; *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming
decertification of class claiming misclassification]; *Aguilar v. Cintas Corp. No. 2* (2006) 144
Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141
Cal.App.4th 1422 [affirming denial of certification].)

1 settlement.⁴ (Han Decl., *supra*, at ¶ 60.) When PAGA penalties are negotiated in good faith and
2 “there is no indication that [the] amount was the result of self-interest at the expense of other
3 Class Members,” such amounts are generally considered reasonable.⁵ (*Ibid.*)

4 Considering Defendants’ defenses, its supporting evidence, and its position that the case
5 is not suitable for class treatment, the settlement of \$300,000 is reasonable, adequate, and fair.

6 **c. Discount Analysis Justifies the Settlement**

7 Plaintiff calculated the maximum potential total exposure and maximum realistic total
8 exposure to be significantly higher than the agreed-upon Gross Settlement Amount. (Han Dec.,
9 *supra*, at ¶¶ 48-54, 61.) This was after considering the strengths and weaknesses of Plaintiff’s
10 claims and Defendants’ defenses and applying the necessary discounts. (*Id.* at ¶¶ 62-68.)

11 The only question at preliminary approval is whether the settlement is within the range of
12 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
13 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
14 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
15 disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also
16 *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very
17 uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce
18 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
19 speculative measure of what might have been achieved by the negotiators”.) Nevertheless, the
20 Settlement is in line with the realistic exposure had Plaintiff prevailed at trial and provides
21 significant recovery for the Class Members.

22 ///

23 ///

24 ⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5
25 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25 to
26 \$75 per violation and a total PAGA penalty of \$70,000,000].)

27 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
28 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”).)

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

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

8 The Class is ascertainable and numerous as to make it impracticable to join all Class
9 Members, and there are common questions of law and fact amongst the Class. (Han Dec., *supra*,
10 at ¶ 70.) Plaintiff contends, as a former hourly-paid, non-exempt employee of Defendants, his
11 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
12 the interests of the Class. (*Ibid.*) Also, Plaintiff asserts the prosecution of separate actions by
13 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

22 This case involves about three hundred (300) Class Members, meaning the Class is
23 sufficiently numerous. (Han Dec., *supra*, at ¶ 71.) Class Members will be identified by Defendants
24 to the Settlement Administrator through a review of Defendants’ employment records. (*Ibid.*)

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1 **ii. The 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
8 (emphasis in original).) Rather, courts focus on the defendant’s internal policies and “pattern and
9 practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs
10 renders class certification appropriate.” (*Ibid.*)

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 (emphasis added).)
15 Courts determine whether the elements necessary to establish liability are susceptible to common
16 proof, even if the class members must individually prove their damages. (*Brinker Restaurant*
17 *Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly
18 granted class certification when the plaintiff can present evidence of common policies. (See, e.g.,
19 *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012
20 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi*
21 *South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS
22 [court certified class of dancers on state law claims].)

23 Plaintiff asserts that common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 72.) Plaintiff contends all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

f. Notice to Class Members 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.

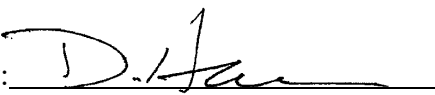
The Notice Packet meets all these requirements. The proposed Notice Packet advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

V. CONCLUSION

Plaintiff submits that the proposed Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class should be conditionally certified for purposes of settlement only, and the Notice Packet should be approved.

Dated: May 12, 2022

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff



Superior Court of Alameda County Public Portal

Make a Reservation

Miranda VS New Pride Tire, Inc.

Case Number: RG20063513 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2020-05-11 Location: Rene C. Davidson Courthouse - Department 19

Reservation

Case Name: Miranda VS New Pride Tire, Inc.	Case Number: RG20063513
Type: Motion re: (Motion for Preliminary Approval of Class Action Settlement)	Status: RESERVED
Filing Party: Luis Miranda (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 19
Date/Time: 06/08/2022 3:00 PM	Number of Motions: 1
Reservation ID: 644956934709	Confirmation Code: CR-PR7KFKXELG2ZGEEMK

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX7323	Authorization: 02898G
Payment Date: 1969-12-31	

[Print Receipt](#)

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 12, 2022, I served the foregoing document described as

**PLAINTIFF'S 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: **Miranda v. New Pride Tire, Inc.**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-771390-20**
Court Case No.: RG20063513
Alameda 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 12, 2022, at Pasadena, California.



Mariah Anderson