

DOUGLAS HAN (State Bar No. 232858)
SHUNT TATAVOS-GHARAJEH (State Bar No. 272164)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Ave, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiff

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

JOSE DUVAL, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

v.

MEL DAWSON, INC. DBA DAWSON OIL
COMPANY, a Delaware corporation; and
DOES 1 through 100, inclusive;

Defendants.

Case No. 34-2020-00276862

Honorable David I. Brown
Department 53

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

[Reservation ID: 2544564]

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

Hearing Date: January 21, 2021
Hearing Time: 1:30 p.m.
Hearing Place: Department 53

Complaint Filed: March 5, 2020
FAC Filed: December 11, 2020
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on January 21, 2021 and at 1:30 p.m., or as soon as the
2 matter may be heard before the Honorable David I Brown in Department 53 of the Sacramento
3 County Superior Court, located 720 9th Street, Sacramento, California 95814, Plaintiff Jose
4 Duval (“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 of Settlement and Release
7 (“Settlement,” “Agreement,” or “Settlement Agreement”), attached as
8 **“EXHIBIT A”** to the Declaration of Douglas Han, including, and not limited to,
9 the means of allocation and distribution of funds, the Fee Award, the Class
10 Representative Service Award, and the Settlement Administration Expenses,
11 subject only to the objections of the Class Members and final review by the Court;
- 12 • Conditionally certifying the proposed Class for settlement purposes only;
- 13 • Appointing Plaintiff Jose Duval as the Class Representative;
- 14 • Appointing Justice Law Corporation as Class Counsel;
- 15 • Approving, as to form and content, the proposed Claim Form attached as
16 **“Exhibit 1”** to the Settlement Agreement;
- 17 • Approving, as to form and content, the proposed direct-mail Notice of Class
18 Action Settlement (“Class Notice”) attached as **“Exhibit 2”** respectively to the
19 Settlement Agreement;
- 20 • Directing the mailing of the proposed Class Notice to the Non-Settling Class
21 Members in accordance with the Settlement Agreement;
- 22 • Directing the mailing of the proposed Class Notice and Claim Form, together
23 with a postage-paid return envelope to the Settling Class Members in accordance
24 with the Settlement Agreement;

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- Approving the proposed deadlines for the notice and claims administration process;
- Approving the third-party class action settlement claims administrator agreed to by the Parties and approved by the Court as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant final approval of the Settlement, at which time the Court will also consider whether to grant final approval of the requests for the Fee Award, the Class Representative Service Award, and the Settlement Administration Expenses

This motion is based upon the following memorandum of points and authorities, the Declarations of Proposed Class Counsel (Douglas Han), Declarations of the proposed Class Representative (Jose Duval) in support thereof, the [Proposed] Order lodged together with this Motion, as well as the 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.

Pursuant to Local Rule 1.06 (A), the court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative rulings for the department may be downloaded off the court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: December 18, 2020

JUSTICE LAW CORPORATION

By: 
Douglas Han
Attorneys for Plaintiff

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. SUMMARY OF MOTION**

3 Plaintiff seeks preliminary approval of the Settlement Agreement entered into by
4 Plaintiff, individually and on behalf of the proposed Class, and Mel Dawson, Inc. dba Dawson
5 Oil Company (“Defendant”). Subject to Court approval, Plaintiff and Defendant (“Parties”) have
6 agreed to settle this lawsuit for a Gross Settlement Amount of up to \$145,000.¹

7 The Gross Settlement Amount includes the following: (1) the Individual Settlement
8 Payments to Class Members; (2) the Fee Award to Justice Law Corporation (“Class Counsel”);
9 (3) the Settlement Administration Expenses; (4) the Class Representative Service Award to
10 Plaintiff; and (5) the Private Attorney General Act (“PAGA”) Payment.² Any of the employer’s
11 share of payroll taxes on any portion of each Individual Settlement Payment are to be paid
12 separate and apart from the Gross Settlement Amount.³

13 Plaintiff seeks to certify the following Class for settlement purposes, consisting of
14 approximately seventy-seven (77) Class Members⁴:

15 All hourly or non-exempt employees of Defendant who worked for Defendant
16 within the State of California, at any time between March 5, 2016 through
December 31, 2020 (“Class Period”).⁵

17 During the litigation, Defendant engaged in *Pick Up Stix* settlements with the Class
18 Members. All but five (5) Class Members, including Plaintiff, settled their claims. The
19 Settlement contemplates two types of distribution based on whether the Class Member
20 accepted the *Pick Up Stix* settlement (Settling Class Members) versus those Class Member
21 who did not accept the *Pick Up Stix* settlement (Non-Settling Class Members).

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26 ¹ A copy of the Settlement Agreement is attached as “**EXHIBIT A**” to the Declaration of Douglas Han (“Han Decl.”)

27 ² Settlement Agreement, ¶ 1.14

28 ³ *Id.*, ¶ 3.3(a)(i)

⁴ Han Decl., ¶ 9

⁵ Settlement Agreement, ¶¶ 1.3, 1.7

1 Non-Settling Class Members who do not timely submit valid Requests for Exclusion
2 to the Settlement Administrator will be issued a pro rata share of \$2,000, determined by
3 dividing the total number of complete workweeks that the Non-Settling Class Member
4 worked during the Class Period by the total number of complete workweeks worked by all
5 Non-Settling Class Members during the Class Period.⁶ Settling Class Members who timely
6 submit valid Claim Forms will be issued a pro rata share of the remaining Net Settlement
7 Fund (after \$2,000 is deducted for payments allocated to the Non-Settling Class Members
8 and \$30,000 is deducted to offset for the amount that Defendant has already paid to Settling
9 Class Members for the individual settlement agreements), determined by dividing the total
10 number of complete workweeks that each Settling Class Member worked during the Class
11 Period by the total number of complete workweeks worked by all Settling Class Members
12 during the Class Period.⁷ The number of workweeks worked by Settlement Class Members
13 shall be determined by the Settlement Administrator based on available and readily
14 accessible employment records to be provided to the Settlement Administrator
15 confidentially by Defendant.⁸ The Net Settlement Amount refers to the Gross Settlement
16 Amount, less the Court-approved Fee Award, the Court-approved Class Representative
17 Service Award, the PAGA Payment, and the Settlement Administration Expenses.⁹ This
18 proposed Settlement Agreement resolves all of Plaintiff's and the Class Members' Released
19 Claims against Defendant.

20 **II. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

21 Defendant is a distributor of petroleum products and offers bulk fuels, lubricants, oil, and
22 other petroleum products. Defendant is an employer whose employees engaged throughout the
23 State of California, including the County of Sacramento. Defendant employed Plaintiff as an
24 hourly-paid, non-exempt employee from January 2019 to August 2019 in the State of California.

26 ⁶ Settlement Agreement, ¶ 3.2(a)

27 ⁷ *Id.*, ¶ 3.2(b)

28 ⁸ *Id.*, ¶ 3.2(c)

⁹ *Id.*, ¶ 1.17

1 Plaintiff initially filed a class action lawsuit on March 5, 2020 on behalf of all hourly or
2 non-exempt employees of Defendant who worked for Defendant within the State of California, at
3 any time between March 5, 2016 through December 31, 2020.

4 Class Counsel later discovered that Defendant had been communicating with putative
5 Class Members in order to settle out their claims pursuant to *Chindarah v. Pick Up Stix, Inc.*
6 (2009) 171 Cal.App.4th 796. As the parties had not yet initiated the *Belair* opt-out procedure,
7 Class Counsel had no access to the putative Class Members. Although Class Counsel disputed
8 the appropriateness of how individual settlement releases were obtained, Class Counsel also
9 understood the inherent risks involved in challenging the validity and setting aside those
10 individual settlements. Defendant also argued that the individual settlement agreements were fair
11 and would stand up to any motion seeking to invalidate them. As such, within the class, there
12 are: (1) Settling Class Members who signed the individual settlement agreement from Defendant
13 and were collectively paid approximately \$30,000 and (2) Non-Settling Class Members who did
14 not sign the individual settlement agreements.¹⁰

15 On or about December 11, 2020, Plaintiff filed a First Amended Complaint (“FAC”).
16 The FAC added a claim for civil penalties under PAGA for the alleged violations of the Labor
17 Code in the Complaint.

18 Plaintiff’s allegation is that, since at least March 5, 2016, Defendant violated the
19 California Labor and California Business and Professions Codes by carrying out a uniform
20 practice and procedure of failing to compensate Plaintiff and putative class members by failing to
21 pay minimum wages and overtime wages, premium wages for missed meal and rest periods,
22 failing to pay timely wages, failing to provide accurate and itemized wage statements, and failing
23 to reimburse business expenses.

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28 ¹⁰ Han Decl., 11

1 Defendant has denied and continues to deny all allegations and claims, assertions, legal
2 theories made or alleged in or during the course of the lawsuit by Plaintiff. Defendant has
3 vigorously contested the claims alleged in this action and has contended that its employees have
4 been properly paid in accordance with the law.

5 The parties have actively litigated this case since the filing of the initial complaint on
6 March 5, 2020. Following formal and informal discovery and lengthy arms-length negotiations,
7 the parties agreed that this case was well-suited for settlement given the legal and factual issues
8 relating to Plaintiff's principal claims, the costs and risks to both sides that would attend further
9 litigation, as well as the individual releases signed by majority of the class members.¹¹

10 **III. SUMMARY OF THE SETTLEMENT TERMS**

11 Under the terms of the Settlement Agreement, Defendant will pay a Gross Settlement
12 Amount of up to \$145,000 to all Settling Class Members on a claims-made basis and who do not
13 opt out and on a common-fund basis for Non-Settling Class Members who do not opt out.¹²
14 Subject to Court approval, the Net Settlement Amount, which is the maximum amount that will
15 be made available to pay the Settling and Non-Settling Class Members, will be calculated by
16 deducting the following amounts from the Gross Settlement Amount: (1) attorneys' fees in an
17 amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (or up to
18 \$50,750) to Class Counsel; (2) reimbursement of Class Counsel's litigation costs and expenses in
19 an amount not to exceed \$5,000; (3) the Class Representative Service Award in an amount not to
20 exceed \$15,000 to Plaintiff; (4) payment for the Settlement Administration Expenses, which are
21 currently set not to exceed \$5,000; and (5) the PAGA Payment of \$4,000, seventy-five percent
22 (75%) of which (\$3,000) will be paid to the California Labor and Workforce Development
23 Agency ("LWDA").¹³ The Parties have agreed to retain Simpluris, Inc. ("Simpluris") approved
24 by the Court as the Settlement Administrator to handle the notice and claims administration.¹⁴

25
26 ¹¹ Han Decl., ¶ 15

27 ¹² Settlement Agreement, ¶ 1.14

28 ¹³ *Id.*, ¶¶ 1.13, 1.17, 1.19, 1.22, 1.24

¹⁴ *Id.*, ¶ 1.25, 4.1(a)

1 Each Non-Settling Class Member who does not opt out will receive a pro rata share of the
2 \$2,000, determined by dividing the total number of complete workweeks that the Non-Settling
3 Class Member worked during the Class Period by the total number of complete workweeks
4 worked by all Non-Settling Class Members during the Class Period.¹⁵ Each Settling Class
5 Member who does not opt out and submits a valid and timely Claim Form will receive a pro rata
6 share of the remaining Net Settlement Fund (after \$2,000 is deducted for payments to the Non-
7 Settling Class Members and \$30,000 is deducted to offset the individual settlement agreements),
8 determined by dividing the total number of complete workweeks that each Settling Class
9 Member worked during the Class Period by the total number of complete workweeks worked by
10 all Settling Class Members during the Class Period.¹⁶ Claim Forms must be signed by the
11 Settling Class Member and postmarked no later than sixty (60) calendar days from the date of
12 mailing in order to be considered valid and timely. Claim Forms must also be mailed to the
13 Settlement Administrator.¹⁷ Non-Settling Class Members are not required to submit Claim
14 Forms to receive compensation, but any Class Member may elect to opt out of the Settlement by
15 a written, signed statement to the Settlement Administrator that he or she is opting out of the
16 Settlement (“Request for Exclusion”).¹⁸

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26 ¹⁵ Settlement Agreement, ¶ 3.2(a)

27 ¹⁶ Settlement Agreement, ¶ 3.2(b)

28 ¹⁷ *Id.*, ¶ 4.3(h)

¹⁸ *Id.*, ¶ 4.4(a)

1 The gross amount of each Class Member's Individual Settlement Payment will be
2 calculated as follows and as described in Paragraph 3.2 of the Settlement Agreement:

3 (a) Each Non-Settling Class Member who does not opt out will receive a settlement
4 payment calculated as follows: each Non-Settling Class Member will receive a pro-rata
5 share of \$2,000, determined by dividing the total number of complete workweeks that the
6 Non-Settling Class Member worked during the Class Period by the total number of
7 complete workweeks worked by all Non-Settling Class Members during the Class Period.

8 (b) Each Settling Class Member who does not opt out and who submits a valid and
9 timely Claim Form will receive a settlement payment calculated as follows: each Settling
10 Class Member will receive a pro rata share of the remaining Net Settlement Fund (after
11 \$2,000 is deducted for payments to the Non-Settling Class Members and \$30,000 is
12 deducted for the offset) determined by dividing the total number of complete workweeks
13 that each Settling Class Member worked during the Class Period by the total number of
14 complete workweeks worked by all Settling Class Members during the Class Period.

15 Defendant will pay a minimum of fifty percent (50%) of the remainder of the Net
16 Settlement Amount that will be paid to Settling Class Members (the remainder of the Net
17 Settlement Amount that will be paid to Settling Class Members is approximately \$34,250.00) to
18 Settling Class Members who have submitted valid and timely Claim Forms and have not opted
19 out.¹⁹ If the value of the valid and timely claims submitted by Settling Class Members does not
20 equal or exceed fifty percent (50%) of the Net Settlement Amount (after \$2,000 is deducted for
21 payments to the Non-Settling Class Members and \$30,000 is deducted for the offset), then the
22 difference will be distributed to Settling Class Members who have submitted valid and timely
23 Claim Forms on a proportional basis.²⁰

24 The Individual Settlement Payments will be allocated as follows: thirty-three and one-
25 third percent (33.3%) to interest, thirty-three and one-third percent (33.3%) to penalties, and
26 thirty-three and one-third (33.3%) to wages. The portion of the Individual Settlement payments
27 allocated to penalties and interest will be reported on an IRS Form 1099. The portion of the
28 Individual Settlement Payments allocated to wages will be reported on an IRS Form W-2. In
addition, any of the employer's share of payroll taxes on any portion of each Individual
Settlement Payment are to be paid separate and apart from the Gross Settlement Amount.²¹

¹⁹ Settlement Agreement, ¶ 1.17

²⁰ Settlement Agreement, ¶¶ 1.17, 3.2(b)

²¹ *Id.*, ¶ 3.6(a)(i)

1 Any Class Member may elect to opt out of the Settlement by submitting a Request for
2 Exclusion to the Settlement Administrator. The Request for Exclusion must contain the Class
3 Member's name, the last four digits of his/her Social Security Number or Tax ID Number,
4 address, and telephone number. It must also contain words that clearly describe the Class
5 Member's intention to opt out of the Settlement, such as: "I elect to exclude myself from the
6 settlement in the *Duval v. Dawson Oil* litigation" in order to be valid. To be timely and
7 effective, all exclusion requests must be postmarked no later than sixty (60) calendar days after
8 the initial mailing of the Notice by the Settlement Administrator or, if a Second Mailing is sent to
9 a Class Member, within forty-five (45) days of the date of the Second Mailing ("Claim Bar
10 Date").²² Any Class Member who elects to opt out of the Settlement in the manner and within the
11 time limits specified above and in the Class Notice: (i) shall not have any rights under the
12 Settlement Agreement; (ii) shall not be entitled to receive any compensation under the
13 Settlement Agreement; (iii) shall not have standing to submit any objection or appeal to the
14 Settlement Agreement; and (iv) shall not be bound by the Settlement Agreement, including all
15 orders issued pursuant thereto.²³ A Class Member who fails to comply with the opt-out
16 procedure set forth herein on or before the Claim Bar Date will not be excluded and will instead
17 by bound by all provisions of the Settlement Agreement and all orders issued pursuant thereto.²⁴

18 Any Class Member may object to certification of the proposed Class for settlement
19 purposes or to the proposed Settlement, or any portion thereof (including, but not limited to,
20 preliminary certification, the Class Representative Service Award, the Fee Award, etc.). The
21 Class Notice will provide notice that Class Members who wish to object to the Settlement must
22 file with the Court and send to the Settlement Administrator and counsel for the Parties, not later
23 than the Claim Bar Date, a written statement objecting to the Settlement, the proposed Class, or
24 any portion thereof, and setting forth the specific grounds for the objection. The statement also
25 must indicate whether the Class Member intends to appear and object to the Settlement at the
26

27 ²² Settlement Agreement, ¶ 4.4(a)

28 ²³ *Id.*, ¶ 4.4(b)

²⁴ Settlement Agreement, ¶ 4.4(a)

1 Final Approval Hearing, and failure to so indicate will constitute a waiver of the right to appear
2 at the hearing. A Class Member who does not serve an objection in the manner and by the
3 deadline specified above will be deemed to have waived all objections and will be foreclosed
4 from making any objections to the Settlement, whether by appeal or otherwise.²⁵

5 Within fourteen (14) calendar days after the Effective Date, Defendant will deposit
6 money into an account, through the Settlement Administrator, in an amount equal to the amount
7 awarded for the Fee Award, the Settlement Administration Expenses, the Class Representative
8 Service Award, the PAGA Payment, the total payments to Non-Settling Class Members, and the
9 total payments to Settling Class Members.²⁶

10 All checks issued shall indicate on their face that, consistent with standard bank
11 procedures, they are void if not negotiated within one hundred and twenty (120) days of their
12 issuance. The date of mailing of the settlement checks to the eligible Settlement Class Members
13 shall be conclusively determined according to the records of the Settlement Administrator.²⁷ To
14 the extent Settlement Class Members fail to cash their settlement checks within ninety (90) days
15 of their issuance, the unclaimed funds will be paid in accordance with California Code of Civil
16 Procedure section 384. Any Settlement Class Member who fails to cash a settlement check
17 within the one hundred and twenty (120) days provided herein shall waive his or her right to
18 receive the Individual Settlement Payment but will nonetheless remain a member of the Class
19 and shall be bound by the terms and conditions of this Settlement Agreement.²⁸

20 **A. Range of Individual Settlement Payments That Will Likely be Issued**
21 **to Class Members.**

22 Non-Settling Class Members who do not opt out and Settling Class Members who submit
23 timely and valid claims to the Settlement Administrator will be issued payments based on the
24 total number of workweeks they worked as a member of the Class during the Class Period. As
25 discussed above, the Individual Settlement Payments to Non-Settling Class Members is

26 ²⁵ Settlement Agreement, ¶ 4.5

27 ²⁶ *Id.*, ¶ 4.9(b)

27 ²⁷ *Id.*, ¶ 4.10(a)

28 ²⁸ Settlement Agreement, ¶ 4.10(a)(i)

1 calculated as follows: each Non-Settling Class Member will receive a pro-rata share of \$2,000,
2 determined by dividing the total number of complete workweeks that the Non-Settling Class
3 Member worked during the Class Period by the total number of complete workweeks worked by
4 all Non-Settling Class Members during the Class Period.²⁹ Moreover, the Individual Settlement
5 Payment to Settling Class Members is calculated as follows: each Settling Class Member will
6 receive a pro rata share of the remaining Net Settlement Fund (after \$2,000 is deducted for
7 payments to the Non-Settling Class Members and \$30,000 is deducted for the offset), determined
8 by dividing the total number of complete workweeks that each Settling Class Member worked
9 during the Class Period by the total number of complete workweeks worked by all Settling Class
10 Members during the Class Period.³⁰

11 **IV. LEGAL STANDARD FOR PRELIMINARY APPROVAL OF CLASS ACTION**
12 **SETTLEMENTS**

13 The settlement of a class action requires court approval. *Dunk v. Ford Motor Co.* (1996)
14 48 Cal.App.4th 1794, 1800; Code Civ. Proc. § 1781(f). California courts look to federal
15 authority for guidance with class action settlements. *Dunk, supra*, 48 Cal.App.4th at p. 1801, n.7
16 (citing *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821). The decision to approve or reject a
17 proposed settlement is within the court’s discretion. *Wershba v. Apple Computer, Inc.* (2001) 91
18 Cal.App.4th 224, 234-35 (“In general, questions whether a settlement was fair and reasonable,
19 whether certification of the class was proper, and whether the attorney fee award was proper are
20 matters addressed to the trial court’s broad discretion.”). Accordingly, a court’s decision to
21 approve a class action settlement may be reversed only upon a strong showing of “clear abuse of
22 discretion.” *Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1026; *Class Plaintiffs v.*
23 *City of Seattle* (9th Cir. 1982) 955 F.2d 1268, 1276.

24 The approval process of any class action settlement is done in two steps: (1) an earlier
25 conditional review by the court; and (2) a later detailed review after the period during which
26 notice is distributed to class members for their comment or objections. Conte & Newberg,

27 ²⁹ Settlement Agreement, ¶ 3.2(a)

28 ³⁰ *Id.*, ¶ 3.2(b)

1 *Newberg on Class Actions* (4th ed. 2002) § 11.24. This procedure, which is commonly utilized
2 by both federal and state courts, assures class members of the protection of procedural due
3 process safeguards, and enables a court to fulfill its role as the guardian of the interests of the
4 settlement class.

5 Accordingly, preliminary approval does not require a court to make a final determination
6 that the settlement is fair, reasonable, and adequate. Rather, that decision is made only at the
7 final approval stage, after notice of the settlement has been given to the class members and they
8 have had an opportunity to voice their views of the settlement or to exclude themselves from the
9 settlement. See Cal. R. Ct. 3.769(g). In considering a potential class settlement, the court also
10 need not reach any ultimate conclusions on the issues of fact and law which underlie the merits
11 of the dispute, and need not engage in a trial on the merits. See *City of Detroit v. Grinnell*
12 *Corporation* (2d Cir. 1974) 495 F. 2d 448, 456; *Officers for Justice v. Civil Service Commission*
13 *of City and County of San Francisco* (9th Cir. 1982) 688 F. 2d 615, 625. Neither formal notice
14 nor a hearing is required for the trial court to grant provisional class certification and preliminary
15 approval; the court may grant such relief upon an informal application by the settling parties, and
16 may conduct any necessary hearing in court or in chambers, at the court's discretion. *Newberg*,
17 at § 11.25.

18 **V. PRELIMINARY APPROVAL OF THE PROPOSED SETTLEMENT IS APPROPRIATE**

19 To grant preliminary approval of a class action settlement, the trial court must
20 preliminarily determine whether the settlement is fundamentally fair, adequate, and reasonable.
21 *Dunk, supra*, 48 Cal.App.4th at p. 1800. The court has broad powers to determine whether a
22 proposed settlement is fair under the circumstances of the case. *Id.* at p. 1801. To make this
23 fairness determination, courts must consider several relevant factors, including “the strength of
24 the plaintiff's case, the risk, expense, complexity and likely duration of further litigation, the risk
25 of maintaining class action status through trial, the amount offered in settlement, the extent of
26 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
27 [.]” *Dunk, supra*, 48 Cal.App.4th at p. 1801. “The list of factors is not exclusive and the court is
28 free to engage in a balancing and weighing of the factors depending on the circumstances of each

case.” *Wershba, supra*, 91 Cal.App.4th at p. 245. Furthermore, courts give “proper deference to the private consensual decision of the parties[.]” *Hanlon, supra*, 150 F. 3d at p. 1027 (citation omitted).

The burden is on the proponent of the settlement to show that it is fair and reasonable. *Wershba, supra*, 91 Cal.App.4th at p. 245. However, a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Id.*; *Dunk, supra*, 48 Cal.App.4th at p. 1802; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.

A. The Proposed Settlement Agreement Resulted from Arm’s Length Negotiations Based Upon Extensive Investigation and Discovery.

The parties actively litigated this case since it was commenced on March 5, 2020. There have been ongoing investigations and formal and informal discovery, including, and not limited to, propounding multiple sets of written discovery requests, reviewing, and analyzing a volume of documents and data produced by Defendant or obtained through other sources. These documents and data included, and were not limited to, personnel records for Plaintiff, the class size, number of workweeks, number of pay periods, and Defendant’s operations and employment policies, procedures, and practices.³¹

During all settlement discussions, the parties conducted their negotiations at arm’s length in an adversarial position.³² Arriving at a settlement that was acceptable to both parties was not easy. Defendant and its counsel felt very strongly about its ability to prevail on the merits and at the certification stage, while Plaintiff and Class Counsel believed that they would have obtained class certification and prevailed at trial.³³ After over nine (9) months of intense investigation and litigation, the parties agree that this case was well-suited for settlement given the legal issues

³¹ Han Decl., ¶ 14.

³² *Id.*

³³ *Id.*, ¶¶ 11-12.

1 relating to Plaintiff's principal claims and the costs and risks to both sides that would attend
2 further litigation.³⁴

3 The proposed Settlement takes into account the strengths and weaknesses of each side's
4 position, the uncertainty of how the case might have concluded at certification and/or trial, and
5 the effect of the individual releases. Class Counsel conducted interviews with Plaintiff, reviewed
6 and analyzed a volume of documents and data produced by both Plaintiff and Defendant, and
7 performed significant research into the law concerning Defendant's defenses. The proposed
8 Settlement is based on this large volume of facts, evidence, and investigation.³⁵ Additionally,
9 Class Counsel have extensive experience in employment class actions, including significant
10 experience in California wage-and-hour litigation, and used that experience to assess the
11 potential value of the claims.³⁶

12 **B. The Settlement Agreement Is Fair, Reasonable, and Adequate.**

13 A Gross Settlement Amount of up to \$145,000 represents a fair, adequate, and reasonable
14 resolution of this case.³⁷ The proposed Settlement was calculated using information and data
15 uncovered through litigation, formal and informal discovery, and case investigation.³⁸ The
16 proposed Settlement takes into account the strengths and weaknesses of each side's position, the
17 uncertainty of how the case might have concluded at certification and/or trial, and the effect of
18 the individual releases.³⁹ Considering all of the facts in this case, the amount of the proposed
19 Settlement represents a substantial global recovery for all Class Members.

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25 ³⁴ Han Decl., ¶ 12

26 ³⁵ *Id.*, ¶¶ 13-14

27 ³⁶ *Id.*, ¶¶ 4-5

28 ³⁷ Han Decl., ¶ 38

³⁸ *Id.*, ¶ 14

³⁹ Han Decl., ¶ 12

1 Assuming that all of the requested payments, fees, and costs are approved and paid in the
2 full amounts requested, the Net Settlement Amount is currently estimated to be approximately
3 \$66,250.⁴⁰ From the Net Settlement Amount, \$2,000 will be allocated to Non-Settling Class
4 Members. After taking out the \$2,000 allocation to Non-Settling Class Members and the \$30,000
5 offset for the individual settlement agreements, no less than fifty percent (50%) of the \$34,250
6 difference will be paid out to the Settling Class Members.⁴¹ Each Individual Settlement Payment
7 will be calculated based upon the number of Workweeks attributable to the Settling Class
8 Members during the Class Period.⁴² There is no reason to doubt the fairness of the proposed plan
9 of allocation of the Settlement funds for purposes of preliminary approval. Even at the final
10 approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to warrant
11 approval], particularly if recommended by experienced and competent class counsel.” *In re*
12 *American Bank Note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
13 418, 429-30.

14 In light of the above considerations, Class Counsel believe that the proposed Settlement
15 as a whole is fair, reasonable, and adequate, and is in the best interest of the Class Members.⁴³
16 Although the recommendations of Class Counsel are not conclusive, the Court can properly take
17 the recommendations into account, particularly if Class Counsel appear to be competent, have
18 experience with this type of litigation, and significant discovery and investigation have been
19 completed. *Newberg* §11.47. Accordingly, the Court should grant preliminary approval of the
20 proposed Settlement.

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26 ⁴⁰ Han Decl., ¶ 7. The current estimate of the Net Settlement Amount is subject to the employee’s share of taxes on
the wage portion of each Class Member’s share of the Net Settlement Amount.

27 ⁴¹ Settlement Agreement, ¶ 1.17

28 ⁴² *Id.*, ¶ 3.2(a)-(b).

⁴³ Han Decl., ¶ 38

1 **C. Value of Settlement.**

2 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal. App. 4th 116, Plaintiff has
3 conducted a significant amount of discovery and investigation in order to evaluate the potential
4 value and merit of all of the claims. The discovery and information obtained in this case allowed
5 Plaintiff to complete an evaluation of the defenses that Defendant has asserted.⁴⁴ As outlined in
6 the Declaration of Douglas Han, Class Counsel performed an extensive analysis of each and
7 every claim pursuant to *Kullar* prior to entering into the proposed Settlement.⁴⁵

8 **VI. CONDITIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE**

9 For settlement purposes only, the requisites for establishing conditional class certification
10 are met.⁴⁶ Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is
11 one of a common or general interest, of many persons, or when the parties are numerous, and it
12 is impracticable to bring them all before the court.’” *Sav-On Drug Stores, Inc. v. Superior Court*
13 (2004) 34 Cal. 4th 319, 326. California courts certify class actions where the plaintiff identifies
14 “both [1] an ascertainable class and [2] a well-defined community of interest among class
15 members.” *Id.*

16 Here, the proposed Class is ascertainable and numerous as to make it impracticable to
17 join all class members, and there are common questions of law and fact that predominate over
18 any questions affecting any individual Class Member. Plaintiff’s claims are typical of the claims
19 of the Class Members, and Class Counsel will fairly and adequately protect the interests of the
20 Class. Further, prosecution of separate actions by individual Class Members would create the
21 risk of inconsistent or varying adjudications, and a class action is superior to other available
22 means for the fair and efficient adjudication of the case. As discussed below, this case is
23 amenable to class certification.

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27 ⁴⁴ Han Decl., ¶¶ 13-14

28 ⁴⁵ *Id.*, ¶¶ 16-48

⁴⁶ *Id.*, ¶ 11

1 **A. The Proposed Class is Ascertainable and Sufficiently Numerous.**

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

9 This action involves approximately seventy-seven (77) Class Members.⁴⁷ This Class is
10 sufficiently numerous. *See Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal. App. 4th 1524,
11 1531 n.5 (finding that a proposed class of “as many as 190 current and former employees” is
12 sufficiently numerous). Further, all Class Members can and will be identified by Defendant to
13 the Settlement Administrator through a review of Defendant’s employment records with respect
14 to hourly or non-exempt employees who worked for Defendant in the State of California during
15 the Class Period.

16 **B. The Class Members Share a Well-Defined Community of Interest.**

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

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28 ⁴⁷ Han Decl., ¶ 9

1 The “common issues” requirement, “involves analysis of whether the proponent’s ‘theory
2 of recovery’ is likely to prove compatible with class treatment.” *Capitol People, supra*, 155
3 Cal.App.4th at p. 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at p. 327).
4 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor
5 policies as applied to the potential class. *Ghazaryan, supra*, 169 Cal.App.4th at p. 1534.

6 Here, Plaintiff asserts that common issues of fact and law predominate as to each of the
7 claims alleged by Plaintiff. All hourly or non-exempt employees who worked for Defendant
8 within the State of California during the Class Period were subject to the same or similar
9 employment practices, policies, and procedures.⁴⁸ All of their claims surround Defendant’s
10 common practice and scheme of failing to properly account for all hours worked by non-exempt
11 hourly employees and failing to pay them, *inter alia*, for unpaid minimum and overtime wages,
12 non-compliant meal and rest periods, associated waiting time penalties, non-compliant wage
13 statements, and business expenses. As a result, all of the Class Members, including Plaintiff,
14 were uniformly not paid for all of the hours they worked for Defendant or underpaid wages
15 during the Class Period.⁴⁹ Based on these facts, Plaintiff concludes that the proposed Class is
16 readily certifiable in this case. Accordingly, the Court should provisionally certify the Class for
17 settlement purposes only.

18 **VII. REQUEST FOR CLASS COUNSEL’S FEE AWARD**

19 Class Counsel have actively investigated and litigated this case for over nine (9) months
20 and were actively preparing for class certification. The ongoing work has been extensive,
21 demanding, and ultimately successful in achieving a substantial settlement resolution. Class
22 Counsel conducted formal and informal investigations and discovery into the facts of the case,
23 including interviewing Plaintiff and other putative class members and reviewing and analyzing a
24 volume of documents and data produced by Defendant and obtained through other sources.
25 These documents and data included, and were not limited to, personnel records for Plaintiff, the
26 class size, number of workweeks, number of pay periods, and Defendant’s operations and

27 ⁴⁸ Han Decl., ¶ 11

28 ⁴⁹ *Id.*, ¶ 13

1 employment policies, procedures, and practices. Class Counsel also prepared multiple forms of
2 written discovery requests and met and conferred with defense counsel on numerous occasions
3 regarding issues relating to the pleadings, discovery, proper jurisdiction and venue, among other
4 issues.⁵⁰ Class Counsel will provide evidence as to the time worked, litigation efforts, and further
5 argument at the time of filing their memorandum in connection with the final fairness hearing
6 and in support of their request for their Fee Award.

7 The proposed Settlement establishes a Gross Settlement Amount of up to \$145,000. The
8 proposed Settlement provides for Class Counsel to apply to the Court for an award of attorneys'
9 fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (or
10 \$50,750) and litigation costs and expenses in an amount not to exceed \$5,000. The requested
11 attorneys' fee award is commensurate with (1) the risk the Class Counsel took in bringing and
12 litigating this case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill
13 and determination they have shown, (4) the results they have achieved throughout the litigation,
14 (5) the value of the Settlement they have achieved for Class Members, and (6) the other cases
15 they turned down in order to devote their time and efforts to this matter. The proposed Class
16 Notice will provide the Class Members with information as to the amounts allocated toward the
17 Fee Award under the Settlement Agreement and that Class Counsel will apply for the Fee
18 Award, as provided for by the Settlement.

19 Trial courts have "wide latitude" in assessing the value of attorneys' fees and their
20 decisions will "not be disturbed on appeal absent a manifest abuse of discretion." *Lealao v.*
21 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41. Indeed, it is long settled that the "experienced
22 trial judge is the best judge of the value of professional services rendered in his court[.]"
23 *Ketchum v. Moses* (2001) 24 Cal. 4th 1122, 1132. California law provides that attorney fee
24 awards should be equivalent to fees paid in the legal marketplace to compensate for the result
25 achieved and risk incurred. *See Lealao, supra*, 82 Cal.App.4th at p. 47. In *Lealao*, the court held
26 that when an action leads to a recovery that can be "monetized" with a reasonable degree of
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28 ⁵⁰ Han Decl., ¶ 14

1 certainty, the trial court should “ensure that the fee awarded is within the range of fees freely
2 negotiated in the legal marketplace in comparable litigation.” *See Lealao, supra*, 82 Cal.App.4th
3 at p. 50. In cases where class members present claims against a maximum settlement fund and
4 the settlement agreement provides that the defendant agrees to paying the attorneys a percentage
5 of the same, use of the percentage method is appropriate. *Id.* at p. 32.

6 Class Counsel’s application for attorneys’ fees in light of the facts and circumstances
7 surrounding the case is well within the range of reasonableness. Historically, courts have
8 awarded fees as high as fifty percent (50%) of the settlement fund, depending on the
9 circumstances of the case. *Newberg* § 14.03; *see also In re Ampicillin Antitrust Litigation* (D.
10 D.C. 1981) 526 F. Supp. 494 (awarding attorneys’ fees in the amount of 45% of the \$7.3 million
11 settlement fund); *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480
12 F. Supp. 1195 (awarding approximately 53% of the settlement fund as attorney fees). California
13 Courts routinely approve attorneys’ fees “averag[ing] around one-third of the recovery.” *Chavez*
14 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of
15 contingency fee in marketplace was appropriate in class actions); *see also Estrada v. Dr.*
16 *Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage
17 and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage
18 and hour).

19 In the present case, Class Counsel have borne all the risks and costs of litigation and will
20 not receive any compensation until recovery is obtained.⁵¹ Class Counsel are well experienced
21 in wage-and-hour class action litigation and used that experience to obtain a great result for the
22 proposed Class.⁵² Considering the amount of the fees requested, the work performed, and the
23 risks incurred, the requested fees and costs are reasonable and should be awarded.

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27 ⁵¹ Han Decl., ¶ 51

28 ⁵² *Id.*, ¶¶ 4-5 & 42-44

1 **VIII. THE PROPOSED NOTICE IS ADEQUATE**

2 California statutory and case law vests the court with broad discretion in fashioning
3 appropriate class notice. See Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50
4 Cal.App.3d 960, 973-74. A class notice is adequate if it “present[s] a fair recital of the subject
5 matter and proposed terms” of the Settlement. *Mendoza v. United States* (9th Cir. 1980) 623
6 F.2d 1338, 1351 (quoting *Marshall v. Holiday Magic* (9th Cir. 1977) 550 F.2d 1173, 1177).

7 The proposed Class Notice⁵³ provide information on the meaning and nature of the Class;
8 the terms and provisions of the proposed Settlement, including the Class Members’ release of
9 claims if they do not opt out; the relief the proposed Settlement Agreement will provide to the
10 Class Members; and the requests for the Fee Award, the Class Representative Service Award, the
11 Settlement Administration Expenses, and the PAGA Payment. The proposed Class Notice also
12 sets forth the date, time, and place of the Final Approval/Settlement Fairness Hearing and the
13 procedures and deadlines for submitting a Claim Form, Request for Exclusion, and objection to
14 the proposed Settlement Agreement.

15 The proposed Class Notice will be mailed to the respective Class Members, together with
16 the proposed Claim Form⁵⁴, which will provide pertinent employment information for each Class
17 Member, including the number of his or her workweeks. The proposed Claim Form will state
18 the estimated gross amount of each Class Member’s Individual Settlement Payment and provide
19 detailed instructions on how to properly complete the Claim Form and timely submit it to the
20 Settlement Administrator, as well as the procedure and deadline for challenging the number of
21 workweeks provided on the Claim Form.

22 The proposed notice procedure provided by the proposed Settlement fulfills the
23 requirement of neutrality in class notices. *Newberg*, at § 8.39. “Sufficient information about the
24 case should be provided to enable class members to make an informed decision about their
25 participation.” *Manual for Complex Litigation* (4th ed. 2004) § 21.311. The proposed Class
26 Notice summarizes the proceedings to date and the terms and conditions of the proposed

27 ⁵³ Settlement Agreement, Exh. 2

28 ⁵⁴ *Id.*, Exh. 1

1 Settlement in an informative and coherent manner. The proposed Class Notice recognizes that
2 the Court has not yet granted final approval and appries the Class Members of how to object to
3 the proposed Settlement. The proposed Class Notice and Claim Form satisfies all due process
4 requirements and complies with the standards of fairness, completeness, and neutrality. Fed. R.
5 Civ. P. 23(c)(2) and 23(e); *Newberg*, at §§ 8.21, 8.39; *Manual*, at §§ 21.311, 21.312; *See Cartt*,
6 *supra*, 50 Cal. App. 3d at 960. Accordingly, the Court should approve the proposed Class Notice
7 and Claim Form.

8 **IX. APPOINTMENT OF THIRD-PARTY CLASS ACTION SETTLEMENT CLAIMS**
9 **ADMINISTRATOR AS THE SETTLEMENT ADMINISTRATOR**

10 The parties have agreed to select Simpluris as the Settlement Administrator to administer
11 the proposed Settlement.⁵⁵ The Settlement Administrator shall perform the following notice and
12 other claims administration functions: (i) prepare, print and disseminate the Class Notice to all
13 Class Members (and the Claim Form to all Settling Class Members), including taking
14 appropriate steps to trace and locate any Class Members whose address or contact information as
15 provided to the Settlement Administrator is inaccurate or outdated; (ii) track the Class Notice and
16 Claim Form mailing and any exclusion requests or objections; (iii) receive, independently
17 review, and resolve any challenges from Class Members (in consultation with Class Counsel and
18 Defendant's counsel), including any associated documentation regarding the number of pay
19 periods in which they performed work for Defendant; (iv) promptly furnish to Class Counsel and
20 counsel for Defendant copies of all written objections, requests for exclusion, and any rescission
21 statements received; (v) establish the necessary bank accounts and obtain the necessary tax
22 identification number to administer the Settlement; (vi) administer the Settlement, including
23 determining each putative Class Member's status as a member of the Class and their Individual
24 Settlement Payments; (vii) distribute the Individual Settlement Payments to Non-Settling Class
25 Members and Settling Class Members who have submitted valid and timely Claim Forms,
26 payments of the court-approved Class Representative Service Award to the Class Representative
27

28 ⁵⁵ Settlement Agreement, ¶¶ 1.25, 4.1(a)

1 and the court-approved Fee Award to Class Counsel; (viii) file any necessary tax forms; and (ix)
2 pay any residual funds from uncashed checks to the *cy pres* beneficiary.⁵⁶

3 The Settlement Administration Expenses are set not to exceed \$5,000, which will be paid
4 out of the Gross Settlement Amount in accordance with the payment schedule provided for by
5 the Settlement Agreement.⁵⁷ Considering the number of Class Members, the estimated costs are
6 reasonable.⁵⁸ Accordingly, the Court should appoint the Simpluris as the Settlement
7 Administrator and direct the mailing of the Class Notice and Claim Form to the Class Members
8 in the manner requested and based on the proposed deadlines as set forth in the Settlement
9 Agreement and described in Paragraph 4, *infra*.

10 **X. PROPOSED DEADLINES FOR THE NOTICE PROCESS**

11 At this preliminary approval stage, Plaintiff also seeks approval of the proposed deadlines
12 for the notice and claims administration process. *Newberg*, at § 11.26. The notice process
13 entails mailing of the Class Notice and Claim Form to all known and reasonably ascertainable
14 Class Members based on Defendant's payroll records. Within fourteen (14) calendar days of the
15 date of the Order Granting Preliminary Approval or court approval of the Class Notice and
16 Claim Form, whichever is later, Defendant will provide the Settlement Administrator with a list
17 in excel format, with the following information: the names, last known addresses, last known
18 telephone numbers and social security numbers of each Class Member; the dates of employment
19 worked by each Class Member for Defendant during the Relevant Period, and whether the Class
20 Member previously signed a settlement agreement with Defendant ("Class List").⁵⁹

21 Within fourteen (14) calendar days after receiving the Class List, the Settlement
22 Administrator shall mail the Class Notice and Claim Forms (to Settling Class Members) by bulk
23 first class mail, forwarding requested, to the Class Members at the addresses identified using the
24 National Change of Address ("NCOA") Database.⁶⁰ As to any Class Notices/Claim Forms that

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26 ⁵⁶ Settlement Agreement, ¶ 4.1(b)

27 ⁵⁷ Settlement Agreement, ¶ 3.4

28 ⁵⁸ Han Decl., ¶ 59

⁵⁹ Settlement Agreement, ¶ 4.3

⁶⁰ *Id.*, ¶ 4.3(d)

1 are returned by the Post Office as undeliverable, the Settlement Administrator will perform one
2 (1) skip trace procedure within ten (10) calendar days after receiving notice that a Class
3 Notice/Claim Form is undeliverable. If this procedure reveals a new address, the Settlement
4 Administrator will within ten (10) calendar days thereafter re-mail the Notice to the new address
5 (“Second Mailing”).⁶¹

6 Class Members will have sixty (60) calendar days from the initial mailing of the Class
7 Notice and Claim Form to submit their Claim Forms (for Settling Class Members) or Requests
8 for Exclusion to the Settlement Administrator, as measured by the postmark date or facsimile-
9 stamped date.⁶² If a Class Notice and Claim Form is re-mailed, the Class Member will have
10 forty-five (45) calendar days from the second mailing.⁶³ Class Members must submit their
11 objections to the Settlement no later than the Claim Bar Date.⁶⁴

12 Within fourteen (14) calendar days after the Effective Date, Defendant will deposit
13 money into an account, through the Settlement Administrator, in an amount equal to the amount
14 awarded for the Fee Award, the Settlement Administration Expenses, the Class Representative
15 Service Award, the PAGA Payment, the total payments to Non-Settling Class Members, and the
16 total payments to Settling Class Members.⁶⁵

17 All checks issued shall indicate on their face that, consistent with standard bank
18 procedures, they are void if not negotiated within one hundred and twenty (120) days of their
19 issuance. The date of mailing of the settlement checks to the eligible Settlement Class Members
20 shall be conclusively determined according to the records of the Settlement Administrator.⁶⁶ To
21 the extent Settlement Class Members fail to cash their settlement checks within ninety (90) days
22 of their issuance, the unclaimed funds will be paid in accordance with California Code of Civil
23 Procedure section 384. Any Settlement Class Member who fails to cash a settlement check
24 within the one hundred and twenty (120) days provided herein shall waive his or her right to

25 ⁶¹ Settlement Agreement, ¶ 4.3(e)

26 ⁶² *Id.*, ¶¶ 4.3(h), 4.4(a)

27 ⁶³ *Id.*, ¶ 4.4(a)

28 ⁶⁴ *Id.*, ¶ 4.5

⁶⁵ *Id.*, ¶ 4.9(b)

⁶⁶ *Id.*, ¶ 4.10(a)

1 receive the Individual Settlement Payment but will nonetheless remain a member of the Class
2 and shall be bound by the terms and conditions of this Settlement Agreement.⁶⁷

3 **XI. APPOINTMENT OF THE CLASS REPRESENTATIVE AND APPROVAL OF THE CLASS**
4 **REPRESENTATIVE SERVICE AWARD**

5 A named plaintiff is eligible for payment that reasonably compensates him for
6 undertaking and fulfilling a fiduciary duty to represent absent class members. *Cellphone*
7 *Termination Fee Cases, supra*, 186 Cal.App.4th at p. 1393; *Bell v. Farmers Ins. Exchange*
8 (2004) 115 Cal.App.4th 715, 726 (upholding “service payments” to named plaintiffs for their
9 efforts in bringing the case); *Stevens v. Safeway, Inc.* (C.D. Cal. Feb. 25, 2008) Case No. 05-
10 01988, 2008 U.S. Dist. LEXIS 17119 (\$20,000 and \$10,000 to two class representatives); *In Re*
11 *Janney Montgomery Scott LLC Financial Consultant Litig.* (E.D. Pa. July 16, 2009) Case No.
12 06-3202, 2009 U.S. Dist. LEXIS 60790 (\$20,000 each to three class representatives).

13 Plaintiff spent a substantial amount of time and effort in producing relevant documents
14 and employment records and provided the facts and evidence necessary to prove the
15 allegations.⁶⁸ Plaintiff was available whenever Class Counsel needed him and actively tried to
16 obtain information that would benefit the Class.⁶⁹ Plaintiff has exhibited courage in vindicating
17 the rights of the Class.⁷⁰ Class Counsel believe that no action would likely have been taken by
18 Class Members individually, and that Plaintiff’s services on behalf of the Class have advanced
19 California’s public policy goal of enforcing wage-and-hour laws. See *Sav-On, supra*, 34 Cal.4th
20 319, 340 (2004).

21 The requested Class Representative Service Award is fair and reasonable compensation
22 for Plaintiff’s efforts in bringing the action, assisting counsel with the investigation, litigation,
23 and settlement, regularly conferring with Class Counsel on the status of the case and the
24 strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its
25 terms are fair and that it provides adequate relief to the proposed Class. Moreover, Plaintiff will

26 ⁶⁷ Settlement Agreement, ¶ 4.10(a)(i)

27 ⁶⁸ Han Decl., ¶ 53; Declaration of Jose Duval (“Duval Decl.”), ¶¶ 3-5.

28 ⁶⁹ *Id.*, ¶ 55; *Id.*, ¶¶ 3-6.

⁷⁰ Han Decl., ¶ 54.

1 be providing a general release which no other Class Member will be required to give.⁷¹
2 Providing the general release is significant as he is potentially foregoing any known and
3 unknown claims including giving up his potential wrongful termination claim which he had to
4 forego to resolve this matter to benefit the Class. Accordingly, it is appropriate and just for the
5 Class Representative to receive a reasonable Class Representative Service Award, in addition to
6 his share of the Net Settlement Amount, for his services on behalf of the Class Members.

7 **XII. CONCLUSION**

8 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
9 approval of the proposed Settlement; certify the proposed Class; appoint Justice Law
10 Corporation as Class Counsel; preliminarily approve the request for an award of the Fee Award;
11 appoint Plaintiff as the Class Representative; preliminarily approve the request for the Class
12 Representative Service Award; approve the PAGA Payment; appoint a third party administrator
13 as the Settlement Administrator; approve and direct the Settlement Administrator to mail the
14 Class Notice and Claim Form to the proposed Class; and schedule a Final Approval/Settlement
15 Fairness Hearing for a date to be determined by the Court.

16
17 Dated: December 18, 2020

JUSTICE LAW CORPORATION

18
19 By: 

Douglas Han

Attorneys for Plaintiff

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28 ⁷¹ Settlement Agreement, ¶ 5.2

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 18, 20, I served the foregoing document described as

**PLAINTIFFS' PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**

for the following case: **Duval v. Mel Dawson, Inc. dba Dawson Oil Company**
LWDA/Court Case No.: **LWDA-CM-776622-20**
34-2020-00276862
Sacramento County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 18, 2020, at Pasadena, California.



Allana Rivera