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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN**

ROBERTO FLORES, individually, and on
behalf of aggrieved employees pursuant to the
Private Attorneys General Act (“PAGA”);

Plaintiff,

v.

RIVERMAID TRADING COMPANY, a
California corporation; and DOES 1 through 10,
inclusive;

Defendants.

Case No. STK-CV-UOE-2020-0008623

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**

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

Honorable Jayne Lee
Department 10C

Hearing Date:

[Preferred Dates: January 4, 2022; January
5, 2022; January 6, 2022; January 11, 2022;
January 13, 2022]

Hearing Time: 9:00 a.m.
Hearing Place: Department 10C

Complaint Filed: October 13, 2020
FAC Filed: November 18, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on _____ at 9:00 a.m., or as soon as the
2 matter may be heard before the Honorable Jayne Lee of the San Joaquin County Superior Court –
3 Department 10C, located at 180 E Weber Avenue, Stockton, CA 95202, Plaintiff Roberto Flores
4 (“Plaintiff” or “Plaintiff Flores”) will and hereby moves for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Joint Stipulation of Class Action Settlement and
7 Release (“Agreement,” “Stipulation of Settlement” or “Settlement”), attached as
8 **“Exhibit 2”** to the Declaration of Douglas Han, including, and not limited to, the
9 means of allocation and distribution of funds, the allocations for penalties under the
10 California Labor Code Private Attorneys General Act of 2004 (“PAGA”), the
11 Attorneys’ Fees and Costs, the Class Representative Enhancement Payment, and
12 the Claims Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement attached as **“EXHIBIT**
17 **A”** to the Settlement Agreement;
- 18 • Approving the proposed Claim Form attached as **“EXHIBIT B”** to the Settlement
19 Agreement;
- 20 • Directing the mailing of the proposed Notice of Class Action Settlement and Claim
21 Form (collectively, the “Notice Packet”) with a postage-paid return envelope to the
22 proposed Class Members;
- 23 • Approving the proposed deadlines for the notice and claims administration process;
- 24 • Approving Simpluris, Inc. (“Simpluris”) as the Claims Administrator; and

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- 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 Attorneys' Fees and Costs, the Class Representative Enhancement Payment, and approval of the allocation for the PAGA Payment and the Claims Administration Costs.

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

Dated: November 30, 2021

JUSTICE LAW CORPORATION

By:



Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff seeks preliminary approval of the Settlement Agreement entered into by and
3 between Plaintiff, individually and on behalf of the proposed Class, and Defendant Rivermaid
4 Trading Company (“Defendant”). Subject to Court approval, Plaintiff and Defendant (the
5 “Parties”) have agreed to settle this lawsuit for a Maximum Settlement Amount of up to
6 \$850,000.00. A copy of the Settlement Agreement is attached as “**EXHIBIT 2**” to the Declaration
7 of Douglas Han (“Han Decl.”).

8 The Maximum Settlement Amount includes the following: (a) attorneys’ fees of up to
9 \$297,500.00 to Class Counsel; (b) reimbursement of litigation costs and expenses in an amount up
10 to \$20,000.00 to Class Counsel; (c) the Class Representative Enhancement Payment in a sum not
11 to exceed \$10,000.00 to Plaintiff; (d) the allocation of Claims Administration Costs in a sum
12 currently estimated at \$18,000.00 but not to exceed \$30,000.00 to Simpluris; and (e) the PAGA
13 Payment of \$50,000.00 for civil penalties pursuant to the Private Attorneys’ General Act of 2004
14 (“PAGA”), California Labor Code section 2698, *et seq.*, seventy-five percent (75%) of which
15 (\$37,500.00) will be paid to the Labor and Workforce Development Agency (“LWDA”) (“LWDA
16 Payment”) and the remaining twenty-five percent (25%) of which (\$12,500.00) will be part of the
17 Net Settlement Amount for distribution in conformity with the Settlement Agreement. (Exhibit 2,
18 *supra*, at ¶¶ 10, 14, 20, 26, 27, 30, 31, 50, 51, 53 and 55.)

19 Plaintiff seeks to certify the following Class for settlement purposes, consisting of
20 approximately three thousand six hundred seventy-five (3,675) Class Members, defined as:

21 all current and former non-exempt employees who worked for Defendant within the State
22 of California at any time during the period from July 17, 2016, to November 8, 2021
23 (“Class Members,” “Class,” and “Class Period”). (Exhibit 2, *supra*, at ¶¶ 17-18.)

24 As the following sections show, Class Counsel is convinced that the proposed Settlement
25 is in the best interests of the Class based on the negotiations and detailed knowledge of the issues
26 present in this action. The length and risks of trial and perils of litigation that affect the value of
27 the claims were all carefully weighed. In addition, the defenses asserted by Defendant, particularly
28 the uncertainty of class certification, the difficulties of complex litigation, the lengthy process of

1 establishing specific damages, and possibility of delays and appeals, were also carefully
2 considered by Class Counsel in arriving at the proposed Settlement.

3 **II. BACKGROUND**

4 With plant operations centralized in Lodi, California, Rivermaid Trading Company handles
5 all varieties of pears and cherries from the major growing regions of Central and Northern
6 California and Oregon. (Han Decl., *supra*, at ¶ 10.) Defendant owns and manages 7,600 acres and
7 operates 80,000 sq. ft. of packing facilities and 150,000 sq. ft. of racked cold storage. (*Ibid.*) This
8 case involves all current and former non-exempt employees who worked for Defendant within the
9 State of California at any time during the period from July 17, 2016, to November 8, 2021 (“Class
10 Members,” “Class,” and “Class Period”). (*Ibid.*) Plaintiff always alleges that employees worked
11 for Defendant on an hourly basis. (*Ibid.*)

12 On July 17, 2020, Roberto Flores, a former hourly-paid, non-exempt aggrieved employee
13 of Defendant, provided written notice to the LWDA and Defendant of the specific provisions of
14 the Labor Code he contends were violated, and the theories supporting his contentions. (Han Decl.,
15 *supra*, at ¶ 11.) Plaintiff believes that on or about September 20, 2020, the sixty-five (65) days’
16 notice period expired and the LWDA did not take any action to investigate or prosecute this matter.
17 (*Ibid.*) Therefore, Plaintiff exhausted the statutory time period to bring this action. (*Ibid.*)

18 On October 13, 2020, Plaintiff filed a representative PAGA action against Defendant in the
19 Superior Court for the State of California, County of San Joaquin, entitled *Flores v. Rivermaid*
20 *Trading Company*, Case No. STK-CV-UOE-2020-0008623, on behalf of aggrieved employees
21 employed by Defendant during the relevant period (the “Action”). (Han Decl., *supra*, at ¶ 12.)

22 On September 8, 2021, the Parties participated in mediation before Jeffrey A. Ross (the
23 “Mediator”), a respected mediator of wage-and-hour class actions. (Han Decl., *supra*, at ¶ 13.)
24 After a full day of negotiations and considering the Mediator’s proposal, the Parties agreed to settle
25 and stipulated to the material terms of the Stipulation of Settlement now before this Court. (*Ibid.*)

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Following mediation, as part of the settlement, on or about November, 2021, Plaintiff filed a First Amended Complaint, adding the following class allegations: (1) violation of California Labor Code sections section 510 and 1198 (unpaid overtime); (2) violation of California Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of California Labor Code section 226.7 (unpaid rest period premiums); (4) violation of California Labor Code sections 1194, 1197.1 and 1197 (unpaid minimum wages); (5) violation of California Labor Code sections 201, 202, and 203 (final wages not timely paid); (6) violation of California Labor Code section 226(a) (non-compliant wage statements); (7) violation of California Labor Code sections 2800 and 2802 (unreimbursed business expenses); (8) violation of California Labor Code sections 551 and 552 (failure to provide one day's rest in seven); (9) violation of California Code of Regulations Title 8 section 3395 (Cal/OSHA Heat Illness Prevention Standard); and (10) violation of California Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 14.)

Defendant denies the allegations of the class action in their entirety, denies any liability or wrongdoing of any kind associated with the claims alleged in this action, and further denies that, for any purpose other than settling this action, this matter is appropriate for class treatment. (Han Decl., *supra*, at ¶ 15.) Defendant further contends that it has always complied with all applicable California laws, the Labor Code, the applicable California Wage Order(s), and the Unfair Competition Law. (*Ibid.*) Defendant finally contends that, if this matter were to be litigated further, it would have strong defenses to class certification and on the merits. (*Ibid.*) Notwithstanding, in the interest of avoiding further litigation, Defendant desires to settle all actual or potential claims fully and finally by the Class. (*Ibid.*)

III. INVESTIGATION/ LITIGATION HISTORY

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

After Plaintiff filed his complaint, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 16.) Specifically, Class Counsel propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production on Defendant. (*Ibid.*) Afterwards, the Parties met and conferred regarding discovery. (*Ibid.*) Pursuant to Plaintiff's discovery, Defendant produced a large volume of documents,

1 including employee handbooks, Plaintiff's personnel files, and a sampling of time and pay records.
2 (*Id.* at ¶ 17.) Plaintiff was also in constant communication with numerous current and former non-
3 exempt employees of Defendant, who apprised Plaintiff of their experiences working for
4 Defendant. (*Ibid.*)

5 Based upon the informal exchange of information, Defendant's document production, and
6 interviews Class Counsel had with non-exempt employees, Plaintiff contends – and Defendant
7 denies – that Defendant failed to provide employees with cool down periods or access to shade in
8 compliance with California Code of Regulations, Title 8 section 3395. (Han Decl., *supra*, at ¶ 18.)
9 Plaintiff asserts that Defendant rejected employees' requests for short rest breaks to cool down and
10 instead required employees to continue working and reprimanded those who were not. (*Ibid.*)
11 Plaintiff contends that, despite these violations, Defendant has never paid a single rest premium.
12 (*Ibid.*)

13 Moreover, Plaintiff alleges – and Defendant denies – that prior to April of 2020,
14 Defendant's meal break policy was not *Brinker*-compliant. (Han Decl., *supra*, at ¶ 19.) Further,
15 Plaintiff contends that, in practice, Defendant pressured employees to work through, postpone, and
16 delay their meal breaks. (*Ibid.*) Specifically, Plaintiff asserts that employees were regularly forced
17 to cut their meal breaks short – or risk disciplinary action for tardiness – to account for time spent
18 waiting in line to clock in and out, walking from their workstations to the breakrooms where most
19 of the timeclocks were located, and donning and doffing PPE. (*Ibid.*) However, Plaintiff contends
20 that Defendant failed to pay employees all premium wages owed for noncompliant meal breaks.
21 (*Ibid.*)

22 Additionally, Plaintiff asserts – and Defendant denies – that Defendant failed to
23 compensate employees for all hours worked. (Han Decl., *supra*, at ¶ 20.) Plaintiff contends that
24 Defendant maintained various policies, including its Attendance and Punctuality policy, that
25 effectively forced employees to arrive at work prior to the start of their scheduled shifts to complete
26 pre-shift preparatory tasks off-the-clock and without compensation so that they could meet
27 Defendant's expectations and avoid disciplinary action, up to and including termination. (*Ibid.*)

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1 Further, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse
2 employees for incurring business expenses. (Han Decl., *supra*, at ¶ 21.) Specifically, Defendant
3 required employees to wear PPE while working but did not provide all its employees with the
4 required PPE. (*Ibid.*) Thus, Plaintiff contends employees were required to purchase their own PPE
5 but were not reimbursed for these expenses. (*Ibid.*)

6 Plaintiff also alleges – and Defendant denies – that Defendant is liable for wage statement
7 penalties. (Han Decl., *supra*, at ¶ 22.) Specifically, Defendant issued wage statements in violation
8 of Labor Code section 226(a) because of the underlying violations discussed above. (*Ibid.*) Thus,
9 Defendant’s wage statements are necessarily inaccurate. (*Ibid.*) Even if Defendant asserts that its
10 violation of section 226(a) is trivial, the California courts have held that strict compliance of
11 section 226(a) is exactly what is intended. (*Ibid.*)

12 Finally, Plaintiff contends – and Defendant denies – that Defendant is liable for waiting
13 time penalties. (Han Decl., *supra*, at ¶ 23.) Defendant’s hourly-paid or non-exempt employees are
14 entitled to back underpaid overtime and compensation for time worked off-the-clock and missed
15 meal and rest breaks, thereby triggering waiting time penalties under Labor Code section 203.
16 (*Ibid.*) Therefore, Defendant owes compensation for underpaid work and missed meal and rest
17 breaks as a matter of fact and law. (*Ibid.*) Defendant intentionally failed or refused to perform an
18 act, which was required to be done, constituting “willful” conduct and justifying “waiting-time”
19 penalties under section 203 to former employees. (*Ibid.*)

20 Defendant denies Plaintiff’s contentions in their entirety. (Han Decl., *supra*, at ¶ 24.)
21 Specifically, Defendant argues that: (a) it provided employees with compliant meal and rest breaks,
22 including preventive cool-down periods; (b) it paid employees for all hours worked; (c) it
23 reimbursed all reasonable business expenses; and (d) it has not intentionally failed to comply with
24 California labor laws. (*Ibid.*)

25 **b. The Parties Attended Mediation Which Led to the Joint Stipulation**

26 Under the auspices of mediator Jeffrey A. Ross, the Parties were able to reach an agreement
27 on settlement, the terms of which were memorialized in the Settlement that the Parties seek
28 preliminary approval of in the instant motion. (Han Decl., *supra*, at ¶ 25; Exhibit 2.)

1 **c. Terms of Proposed Settlement**

2 **i. Deductions from the Settlement**

3 Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement
4 Amount of up to \$850,000.00 to all Class Members on a claims-made basis. (Han Decl., *supra*, at
5 ¶ 26.) Subject to Court approval, the Net Settlement Amount, which is the maximum amount that
6 will be made available to pay the Class Members, will be calculated by deducting the following
7 amounts from the Maximum Settlement Amount: (a) attorneys’ fees of up to \$297,500.00 to Class
8 Counsel; (b) reimbursement of litigation costs and expenses in amount not to exceed \$20,000.00
9 to Class Counsel;¹ (c) the Class Representative Enhancement Payment in a sum of \$10,000.00 to
10 Plaintiff; (d) the allocation of Claims Administration Costs, currently estimated at \$18,000.00 but
11 not to exceed \$30,000.00, to Simpluris, the Claims Administrator; and (e) the PAGA Payment in
12 a sum of \$50,000.00, seventy-five percent (75%) of which (\$37,500.00) will be paid to the LWDA
13 (“LWDA Payment”) and twenty-five percent (25%) of which (\$12,500.00) will be distributed, pro
14 rata, based on weeks worked to all PAGA Aggrieved Employees. (*Ibid.*)

15 **ii. Calculation of the Individual Settlement Payments to Class Members**

16 To receive Individual Settlement Payments, all Class Members will be required to submit
17 a timely and valid Claim Form within forty-five (45) calendar days of the initial mailing of the
18 Notice of Class Action Settlement and Claim Form (collectively, the “Notice Packet”) by the
19 Claims Administrator (“Response Deadline”). (Han Decl., *supra*, at ¶ 28.) All Claim Forms must
20 be signed and returned to the Claims Administrator via first class mail or fax and postmarked or
21 faxed by the Response Deadline. (Han Decl., *supra*, at ¶ 28.)

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25 ¹ The actual amount of litigation costs will be provided to the Court in conjunction with
26 Plaintiff’s motion for final approval. (Han Decl., *supra*, at ¶ 27.) At that time, Plaintiff will ask the
27 Court to approve the amount of these costs. (*Ibid.*) If Plaintiff’s actual costs exceed \$20,000.00,
28 Plaintiff will only seek reimbursement in the amount of \$20,000.00. (*Ibid.*) To the extent that the
Court approves less than the amount of attorneys’ fees and/or costs Class Counsel requests, the
difference between the requested and awarded amounts will be reallocated to the Net Settlement
Amount. (*Ibid.*)

1 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
2 Amount based on the number of Workweeks a Class Member worked during the Class Period.
3 (Han Decl., *supra*, at ¶ 29.) Specific calculations of Individual Settlement Payments will be made
4 as follows and as described in paragraph 57 of the Settlement Agreement:

5 (a) The Claims Administrator will calculate the total number of Workweeks worked by
6 each individual Class Member (“Individual Workweeks”) to determine the total
7 number of Workweeks worked by all Class Members (“Class Workweeks”) during the
8 Class Period. Defendant shall provide the Claims Administrator such information as is
9 necessary to calculate the Individual Workweeks and Class Workweeks. (*Id.* at ¶ 29(a).)

10 (b) To determine each Class Member’s estimated Individual Settlement Payment, the
11 Claims Administrator will use the following formula: Estimated Individual Settlement
12 Payment = (Net Settlement Amount ÷ Class Workweeks) x Individual Workweeks for
13 each individual Class Member. (*Id.* at ¶ 29(b).)

14 (c) If the total Individual Settlement Payments actually claimed by Claimants equals less
15 than fifty percent (50%) of the Net Settlement Amount, the Individual Settlement
16 Payments will proportionately increase for each Claimant submitting a Claim Form
17 such that the total Individual Settlement Payments equal not less than fifty percent
18 (50%) of the Net Settlement Amount. (*Id.* at ¶ 29(c).)

19 (d) The Individual Settlement Payment will be reduced by any required deductions for each
20 Claimant as set forth in the Settlement Agreement, including employee-side tax and
21 withholdings with respect to the wage portion of each Individual Settlement Payment.
22 (*Id.* at ¶ 29(d).)

23 The Claims Administrator will also calculate the total number of Workweeks worked by
24 each individual PAGA Aggrieved Employee to determine the total number of Workweeks worked
25 by all PAGA Aggrieved Employees (“Total PAGA Workweeks”) between July 17, 2019, and
26 November 8, 2021. (Han Decl., *supra*, at ¶ 30.) Defendant shall provide the Claims Administrator
27 such information as is necessary to calculate the individual PAGA Aggrieved Employee’s
28 Workweeks and Total PAGA Workweeks. (*Ibid.*) To determine each PAGA Aggrieved

Employee's estimated PAGA Payment, the Claims Administrator will use the following formula:
Estimated individual PAGA Payment = (\$12,500.00 ÷ Total PAGA Workweeks) x individual
Workweeks for each individual PAGA Aggrieved Employee. (*Ibid.*)

All Individual Settlement Payments will be allocated as follows: twenty percent (20%) of
each Individual Settlement Payment will be allocated as wages, and the remaining eighty percent
(80%) will be allocated as penalties and interest. (Han Decl., *supra*, at ¶ 32.) The amounts paid as
wages shall be subject to all tax withholdings customarily made from an employee's wages and
all other authorized and required withholdings and shall be reported by W-2 forms. (*Ibid.*) The
amounts paid as penalties and interest shall be subject to all authorized and required withholdings
other than the tax withholdings customarily made from employees' wages and shall be reported
by IRS 1099 forms. (*Ibid.*) The Claims Administrator will be responsible for issuing to Plaintiff,
Claimants, and Class Counsel any W-2, 1099, or other tax forms as may be required by law for all
amounts paid pursuant to the Settlement Agreement. (*Ibid.*) The Claims Administrator will also be
responsible for forwarding all payroll taxes and penalties to the appropriate government
authorities. (*Ibid.*)

Any Class Member wishing to opt-out from the Settlement must sign and postmark a
written Request for Exclusion to the Claims Administrator within the Response Deadline. (Han
Decl., *supra*, at ¶ 33.) The Request for Exclusion must: (a) be signed by the Class Member; (b)
contain the name, address, telephone number, and the last four digits of the Social Security Number
of the Class Member requesting exclusion; (c) clearly state the name of this case, the case number,
and that the Class Member does not wish to be included in the Settlement; (d) be returned by mail
to the Claims Administrator at the specified address and/or facsimile number; and (e) be
postmarked on or before the Response Deadline. (*Ibid.*) PAGA Aggrieved Employees will not be
able to exclude themselves from the PAGA portion of the settlement. (Han Decl., *supra*, at ¶ 33.)

To object to the Settlement, a Class Member must file a valid Notice of Objection with the
Court and serve copies of the Notice of Objection on the Parties before the Response Deadline.
(Han Decl., *supra*, at ¶ 34.) For the Notice of Objection to be valid, it must include: (a) the
objector's full name, signature, address, and telephone number, (b) a written statement of all

1 grounds for the objection accompanied by any legal support for such objection, (c) a clear reference
2 to the title of this case and case number, and (d) copies of any papers, briefs, or other documents
3 upon which the objection is based. (*Ibid.*)

4 **iii. Release of Claims**

5 The Released Claims as it pertains to the Class Members include all claims, demands,
6 rights liabilities, causes of action, injuries, grievances, obligations, losses, damages, penalties,
7 interest, fines, debts, liens, liabilities, attorneys' fees, consultant's fees, expert's fees, accountant's
8 fees, costs and any other form of relief or remedy in law or equity, of every nature and description
9 whatsoever, known or unknown, foreseen or unforeseen, anticipated or unanticipated, suspected
10 or unsuspected, asserted or that could have been asserted against the Released Parties based on the
11 factual allegations in the Complaint filed in the Action, whether arising under state or other
12 applicable law, including, but not limited to, California Labor Code and any applicable IWC Wage
13 Orders, expressly including, for the duration of the Class Period, those which arise out of, relate
14 to, or are in connection with, including but not limited to claims for non-compliant meal and rest
15 periods; meal and rest period premiums; unpaid wages, including minimum wages, regular wages,
16 overtime and double time wages; wage statement violations and penalties; failure to timely pay
17 during employment; failure to timely pay at separation, waiting time penalties; failure to reimburse
18 business expenses; work on seven (7) consecutive days in the workweek without a waiver,
19 violation of heat illness prevention requirements, all derivative and/or associated penalties,
20 including PAGA penalties, and unfair business practices premised on the above claims. (Exhibit
21 2, *supra*, at ¶ 36.)

22 Upon the Effective Date, Plaintiff and all Class Members who have not submitted valid
23 and timely Requests for Exclusion, will be deemed to have fully, finally, and forever released,
24 settled, compromised, relinquished, and discharged with respect to all of the Released Parties any
25 and all Released Claims for any period during the Released Claims Period. (Han Decl., *supra*, at
26 ¶ 37; Exhibit 2, *supra*, at ¶¶ 36-38.)

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1 The Released Parties means Rivermaid Trading Company and each of its past, present and
2 future subsidiaries, dbas, parents, divisions, related entities, joint venturers, as well as each of their
3 respective owners, co-employers, joint employers, agents, officers, directors, stockholders,
4 shareholders, members, principles, subsidiaries, affiliates, partners, predecessors and successors
5 in interest, insurers, reinsurers, employees, attorneys, assigns, heirs, spouses, associates,
6 representatives, administrators, fiduciaries, trustees, accountants, auditors, company-sponsored
7 employee benefit plans of any nature, and all other legal entities affiliated with the foregoing,
8 including, but not limited to: All State Packers, Inc., California Fruit Exchange, LLC, Kay Dix,
9 Inc., Riverside LTD, Riverside Transport, LLC, Steamboat Partners and Wilson & McCall, Inc.
10 (Han Decl., *supra*, at ¶ 38.)

11 Furthermore, pursuant to the terms of the Settlement, and solely with respect to the
12 Released Claims, Plaintiff expressly waives and relinquishes any rights or benefits available to
13 him under the provisions of section 1542 of the California Civil Code. (Han Decl., *supra*, at ¶ 39;
14 see Exhibit 2, *supra*, at ¶ 84.)

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

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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 a class
8 action, or as to a party, requires the approval of the court after hearing.
9 . . .
10 (c) Any party to a settlement agreement may serve and file a written notice of motion
11 for preliminary approval of the settlement. The settlement agreement and proposed
12 notice to class members must be filed with the motion, and the proposed order must
13 be lodged with the motion.

14 Courts act within their discretion in approving settlements that are fair, not collusive, and
15 consider “all the normal perils of litigation as well as the additional uncertainties inherent in
16 complex class actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179,
17 cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S.
18 905.)

19 The approval process of any class action settlement is done in two steps: (1) an earlier
20 conditional review by the court; and (2) a later detailed review after the period during which notice
21 is distributed to class members for their comment or objections. (Conte & Newberg, Newberg on
22 Class Actions (4th ed. 2002 supp.) § 11.24.) This procedure, which is commonly utilized by both
23 federal and state courts, assures class members of the protection of procedural due process
24 safeguards and enables a court to fulfill its role as the guardian of the interests of the settlement
25 class.

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

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

14 **b. Preliminary Approval of the Proposed Settlement Is Appropriate**

15 To grant preliminary approval of a class action settlement, the trial court must preliminarily
16 determine whether the settlement is fundamentally fair, adequate, and reasonable. (*Dunk v. Ford*
17 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court has broad powers to determine whether
18 a proposed settlement is fair under the circumstances of the case. (*Id.* at p. 1801.) To make this
19 fairness determination, courts must consider several relevant factors, including “the strength of the
20 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
21 maintaining class action status through trial, the amount offered in settlement, the extent of
22 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
23 [.]” (*Ibid.*) “The list of factors is not exclusive and the court is free to engage in a balancing and
24 weighing of the factors depending on the circumstances of each case.” (*Wershba v. Apple*
25 *Computer, Inc.* (2001) 91 Cal.App.4th 224, 245.) Furthermore, courts give “proper deference to
26 the private consensual decision of the parties[.]” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150
27 F.3d 1011, 1027 (citation omitted).)

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

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

9 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at ¶
10 41.) Though cordial and professional, the settlement negotiations have always been adversarial
11 and non-collusive in nature. (*Ibid.*) At the mediation, Counsel for the Parties conducted extensive
12 arm’s-length settlement negotiations until the Parties finally reached an agreement on settlement.
13 (*Ibid.*)

14 Plaintiff believes in the merits of his case, but also recognizes the inherent risks of litigation
15 and understands the benefit of the Class receiving settlement funds immediately, as opposed to
16 risking continued litigation, the merits of the case before and after trial, damages awarded, and an
17 appeal that could take years to litigate. (Han Decl., *supra*, at ¶ 42.)

18 **d. The Settlement Agreement Is Fair, Reasonable, and Adequate**

19 In deciding whether to approve a proposed class action settlement under Code of Civil
20 Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and
21 reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action
22 settlement is presumed fair under the following circumstances: (1) the parties reached settlement
23 after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel
24 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
25 percentage of objectors is small. (*Id.* at p. 1802.)

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1 Here, a Maximum Settlement Amount of up to \$850,000.00 represents a fair, adequate,
2 and reasonable resolution of the case. (Han Decl., *supra*, at ¶ 43.) The proposed Settlement was
3 calculated using information and data uncovered through litigation, formal and informal discovery,
4 case investigation, and the informal exchange of information in the context of mediation. (*Ibid.*)
5 The proposed Settlement considers the potential risks and rewards inherent in any case and with
6 this case. (Han Decl., *supra*, at ¶ 43.)

7 Assuming that all the requested payments, fees, and costs are approved and paid in the full
8 amounts requested, the Net Settlement Amount is currently estimated to be approximately
9 \$442,500.00. (Han Decl., *supra*, at ¶ 44.) There is no reason to doubt the fairness of the proposed
10 plan of allocation of the Settlement funds for purposes of preliminary approval. (*Ibid.*) Even at the
11 final approval stage, “[a]n allocation formula need only have a reasonable, rational basis [to
12 warrant approval], particularly if recommended by experienced and competent counsel.” (*Ibid.*; *In*
13 *re American Bank note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d
14 418, 429-430.)

15 Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate, and
16 is in the best interest of the Class Members. (Han Decl., *supra*, at ¶ 45.) Although the
17 recommendations of Class Counsel are not conclusive, the Court can properly take the
18 recommendations into account, particularly if Class Counsel appear to be competent, have
19 experience with this type of litigation, and significant discovery and investigation have been
20 completed. (*Ibid.*; Conte & Newberg, *supra*, § 11.47.)

21 **e. Value of Settlement**

22 Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, Plaintiff has
23 conducted a significant amount of discovery and investigation in order to evaluate the potential
24 value and merit of all the claims. (Han Decl., *supra*, at ¶ 46.) The discovery and information
25 obtained in this case allowed Plaintiff to develop a damages model and complete evaluation of the
26 defenses that Defendant has asserted. (*Ibid.*)

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Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 53.) Defendant asserted that, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong arguments against the underlying claims, it had a strong argument that it would be unjust to award maximum PAGA penalties given the current unsettled state of the law. (Han Decl., *supra*, at ¶ 53.; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Plaintiff argued that without stacking and limited to the initial violation, PAGA penalties would be limited to \$334,500.00 (3,345 employees x \$100.00 initial violation) on the low end and \$1,672,500.00 on the high end based on five (5) major theories of recovery. (See Han Decl., at ¶¶ 54-56.)

Plaintiff also recognized the risk that any PAGA award could be significantly reduced. (Han Decl., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the statutory claims such as violations of California Labor Code sections 226(a), 226.7, 510, 512(a), 1194, 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$50,000.00 to PAGA civil penalties was reasonable based on a rate of \$1.37 per pay period [$\$50,000.00 \div 36,561$ pay periods in PAGA date range = \$1.37], given the fact that Defendant is also paying an additional \$800,000.00 in the class settlement.³ (*Ibid.*) Where PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are generally considered reasonable.⁴ (*Ibid.*)

³ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5.00 per violation and a total PAGA penalty of \$150,000.00 while the plaintiff requested a rate of \$25.00 to \$75.00 per violation and a total PAGA penalty of \$70,000,000.00].)

⁴ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,

Considering Defendant’s defenses, supporting evidence, and position that the Action is not suitable for class treatment, the settlement amount of \$850,000.00 is reasonable and fair.

i. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, for the reasons stated the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$17,808,367.62** on the low end and **\$18,166,946.54** on the high end. (Han Decl., *supra*, at ¶ 58.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,433,232.36	70%	60%	\$171,987.88
Meal Break Premiums	\$33,815.88	60%	50%	\$6,763.18
Overtime/Minimum Wage: Off-the-Clock Work	\$716,616.18 to \$1,075,195.10	70%	60%	\$85,993.94 to \$129,023.41
Unreimbursed Business Expenses	\$404,250.00	50%	70%	\$60,637.50
Wage Statement Penalty	\$4,850,250.00	70%	60%	\$582,030.00
Waiting Time Penalty	\$10,370,203.20	70%	60%	\$1,244,424.38
MAXIMUM TOTAL EXPOSURE	\$17,808,367.62 to \$18,166,946.54⁵			\$2,151,836.88 to \$2,194,866.35⁶

Based on this analysis, the realistic recovery for this case is **\$2,151,836.88** on the low end and **\$2,194,866.35** on the high end. (Han Decl., *supra*, at ¶ 65.) The Maximum Settlement Amount of \$850,000.00 is approximately five percent (4.68%) of the maximum potential exposure and is approximately thirty-nine percent (38.73%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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⁵⁷⁹, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).

⁵ Han Decl., *supra*, at ¶¶ 48-52.

⁶ *Id.* at ¶¶ 59-64.

1 The only question at preliminary approval is whether the settlement is within the range of
2 possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.)
3 “The fact that a proposed settlement may only amount to a fraction of the potential recovery does
4 not, in and of itself, mean that the proposed settlement is grossly inadequate and should be
5 disapproved.” (*City of Detroit v. Grinnell Corporation, supra*, 495 F.2d at p. 455; see also *Linney*
6 *v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of
7 outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual
8 settlements. The proposed settlement is not to be judged against a hypothetical or speculative
9 measure of what might have been achieved by the negotiators”).)

10 **f. Conditional Certification of the Class Is Appropriate**

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

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

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

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1 This action involves three thousand six hundred seventy-five (3,675) Class Members. (Han
2 Decl., *supra*, at ¶ 66.) This Class is sufficiently numerous. (*Id.*; *Ghazaryan v. Diva Limousine, Ltd.*
3 (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current
4 and former employees” is sufficiently numerous].)

5 **ii. The Class Members Share a Well-defined Community of Interest**

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

15 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
16 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
17 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).)
18 Furthermore, the commonality inquiry centers on the “reasonableness” of the Defendant’s labor
19 policies as applied to the potential class. (*Ghazaryan v. Diva Limousine, Ltd., supra*, 169
20 Cal.App.4th at p. 1534.)

21 Specifically, Plaintiff asserts that common issues of fact and law predominate as to each of
22 the claims alleged by Plaintiff. (Han Decl., *supra*, at ¶ 67.) All hourly-paid and non-exempt
23 employees who worked for Defendant during the Class Period were subject to the same or similar
24 employment practices, policies, and procedures, as described in section III(a) above. (*Ibid.*)
25 Plaintiff concludes that the proposed Class is readily certifiable in this case. (*Ibid.*)

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Furthermore, Plaintiff was a non-exempt employee and alleges he and the Class Members were employed by the same company and injured by Defendant's common policies and practices related to meal and rest breaks, uncompensated off-the-clock work, unpaid overtime, untimely paid final wages, inaccurate wage statements, and unreimbursed business expenses. (Han Decl., *supra*, at ¶ 68.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiff's claims arise from the same employment practices and are based on the same legal theories as those applicable to the other Class Members. (*Ibid.*)

g. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the proposed settlement, and engaged in sufficient investigation, research and discovery to support the settlement. (Han Decl., *supra*, at ¶¶ 16-18.) The proposed settlement was only possible following discovery and evaluation of Defendant's policies and procedures, as well as the data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Id.* at ¶ 69.) The case is at the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

h. Request for Attorneys' Fees and Costs

Class Counsel have actively investigated and litigated this case for months and were actively preparing for class certification. (Han Decl., *supra*, at ¶ 70.) The ongoing work has been extensive, demanding, and ultimately successful in achieving a substantial settlement resolution. (*Ibid.*) Class Counsel conducted formal and informal investigations and discovery into the facts of the case, including obtaining the class contact list, interviewing Plaintiff and dozens of other putative class members, and reviewing and analyzing a volume of documents and data produced by Defendant and obtained through other sources. (*Ibid.*) These documents and data included, and were not limited to, personnel records for Plaintiff and other putative class members (including detailed time and pay records), payroll and pay history data for Class Members, and Defendant's operations and employment policies, procedures, and practices. (*Ibid.*) Class Counsel also prepared

multiple forms of written discovery requests and met and conferred with defense counsel on numerous occasions regarding issues relating to the pleadings, discovery, proper jurisdiction and venue, among other issues. (*Ibid.*)

The proposed Settlement establishes a Maximum Settlement Amount of up to \$850,000.00. (Han Decl., *supra*, at ¶ 71.) The proposed Settlement provides for Class Counsel to apply to the Court for an award of attorneys' fees in an amount not to exceed thirty-five percent (35%) of the Maximum Settlement Amount (\$297,500.00) and reimbursement of litigation costs and expenses in an amount not to exceed \$20,000.00. (*Ibid.*) The proposed Notice Packet will provide the Class Members with information as to the amounts allocated toward Attorneys' Fees and Costs under the Settlement Agreement. (*Ibid.*)

Trial courts have "wide latitude" in assessing the value of attorneys' fees and their decisions will "not be disturbed on appeal absent a manifest abuse of discretion." (*Lealao v. Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.) Indeed, it is long settled that the "experienced trial judge is the best judge of the value of professional services rendered in his court[.]" (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132.) California law provides that attorney fee awards should be equivalent to fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (See *Lealao*, at p. 47.) In *Lealao*, the court held that when an action leads to a recovery that can be "monetized" with a reasonable degree of certainty, the trial court should "ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Id.* at p. 50.) In cases where class members present claims against a maximum settlement fund and the settlement agreement provides that the defendant agrees to paying the attorneys a percentage of the same, use of the percentage method is appropriate. (*Id.* at p. 32.)

Considering the facts and circumstances surrounding this case, Class Counsel's application for attorneys' fees is well within the range of reasonableness. Historically, courts have awarded fees as high as fifty percent (50%) of the settlement fund, depending on the circumstances of the case. (Conte & Newberg, *supra*, § 14.03; see also *In re Ampicillin Antitrust Litigation* (D.D.C. 1981) 526 F.Supp. 494 [awarding attorneys' fees in the amount of 45% of the \$7.3 million settlement fund]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480

F.Supp. 1195 [awarding approximately 53% of the settlement fund as attorney fees].) California Courts routinely approve attorneys' fees "averag[ing] around one-third of the recovery." (*Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions]; see also *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage and hour). In the present case, Class Counsel have borne all the risks and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶ 72.) Considering the amount of the fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded. (*Ibid.*)

i. Counsel for Both Parties Are Experienced in Similar Litigation

Both Plaintiff's counsel and Defendant's counsel are particularly experienced in wage-and-hour employment law and class actions. Plaintiff's counsel has significant experience in litigating unpaid wages, non-compliant meal period, and non-compliant rest period, and unfair business practices class actions. (Han Decl., *supra*, at ¶¶ 2-8; Exhibit 1.) Specifically, Class Counsel have prosecuted numerous cases on behalf of employees for California Labor Code violations and thus are experienced and qualified to evaluate the class claims and to evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses. (Han Decl., at ¶¶ 2-8; Exhibit 1.) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.⁷ (Han Decl., at ¶¶ 2-8; Exhibit 1.)

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⁷ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice Packet has been provided to the Class and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 **j. Appointment of Simpluris as the Claims Administrator**

2 The Parties have agreed to select Simpluris as the Claims Administrator to administer the
3 proposed Settlement. (Han Decl., *supra*, at ¶ 73.) The Claims Administration Costs, currently
4 estimated at \$18,000.00 but not to exceed \$30,000.00, will be paid from the Maximum Settlement
5 Amount and will include, *inter alia*, the required tax reporting on the Individual Settlement
6 Payments, the issuing of 1099 and W-2 IRS Forms, distributing the Notice Packet, sending
7 reminder notices, calculating shares and payment, distributing the Maximum Settlement Amount
8 in accordance with the Settlement and the Court's order, and providing necessary reports and
9 declarations. (*Ibid.*) Considering the number of Class Members, the estimated costs are reasonable.
10 (*Ibid.*)

11 **k. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

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

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

17 The proposed Notice Packet will provide: (a) information regarding the nature of the
18 Action; (b) a summary of the Settlement's principal terms; (c) the Class definition; (d) the total
19 number of Workweeks each respective Class Member worked for Defendant during the Class
20 Period; (e) each Class Member's estimated Individual Settlement Payment and the formula for
21 calculating Individual Settlement Payments; (f) the dates which comprise the Class Period; (g)
22 instructions on how to submit valid Claim Forms, disputes regarding Workweeks, Requests for
23 Exclusion, or objections; (h) the requirements relating to, and deadlines by which the Class
24 Member must submit Claim Forms, disputes regarding Workweeks, Requests for Exclusions, and
25 objections to the Settlement; (i) the claims to be released; and (j) the date for the Final Approval
26 Hearing. (Han Decl., *supra*, at ¶ 74.)

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1 The proposed Notice Packet will include the Claim Form, attached to the Agreement as
2 Exhibit B, which will provide pertinent employment information for each Class Member,
3 including the number of his or her Workweeks. (Han Decl., *supra*, at ¶ 75.) The proposed Claim
4 Form will state the estimated gross amount of each Class Member's Individual Settlement Payment
5 and provide detailed instructions on how to properly complete the Claim Form and timely submit
6 it to the Claims Administrator, as well as the procedure and deadline for challenging the number
7 of Workweeks provided on the Claim Form. (*Ibid.*)

8 The proposed notice procedure provided by the proposed Settlement fulfills the
9 requirement of neutrality in class notices. (Conte & Newberg, *supra*, § 8.39.) "Sufficient
10 information about the case should be provided to enable class members to make an informed
11 decision about their participation." (Manual for Complex Litigation, Fourth (2004) § 21.311.) The
12 proposed Notice Packet summarizes the proceedings to date and the terms and conditions of the
13 proposed Settlement in an informative and coherent manner. The proposed Notice Packet
14 recognizes that the Court has not yet granted final approval and appries the Class Members of
15 how to object to the proposed Settlement. The proposed Notice Packet satisfies all due process
16 requirements and complies with the standards of fairness, completeness, and neutrality. (Cal. Rules
17 of Court, rule 3.766; Conte & Newberg, *supra*, §§ 8.21 and 8.39; Manual for Complex Litigation,
18 *supra*, §§ 21.311 and 21.312; see *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960.) Accordingly,
19 the Court should approve the proposed Notice Packet (composed of the Notice of Class Action
20 Settlement and Claim Form.)

21 **I. Proposed Deadlines for the Notice Process**

22 At this preliminary approval stage, Plaintiff also seeks approval of the proposed deadlines
23 for the notice and claims administration process. (Han Decl., *supra*, at ¶ 76; Conte & Newberg,
24 *supra*, § 11.26.) The notice process entails the mailing of the Notice Packet to all known and
25 reasonably ascertainable Class Members based on Defendant's records. (*Ibid.*) Within twenty (20)
26 business days of Preliminary Approval, Defendant will provide the Class List(s) to the Claims
27 Administrator. (*Ibid.*)

28 ///

1 Within fifteen (15) calendar days of receipt of the Class List(s), the Claims Administrator
2 will perform a search based on the National Change of Address Database (“NCOA”), or any other
3 similar services available, and mail a Notice Packet to all Class Members via regular First-Class
4 U.S. Mail, using the most current, known mailing addresses available. (Han Decl., *supra*, at ¶ 77.)

5 Class Members will have forty-five (45) calendar days from the initial mailing of the
6 Notice Packet by the Claims Administrator to submit their Claim Forms, Requests for Exclusion,
7 or Notices of Objection to Simpluris, as measured by the postmark date. (Han Decl., *supra*, at ¶
8 78.)

9 Within three (3) business days after the Final Approval of the Settlement, the Claims
10 Administrator will provide the Parties with an accounting of the amounts to be paid by Defendant
11 pursuant to the terms of the Settlement. (Han Decl., *supra*, at ¶ 35.) Defendant will deposit all
12 Court-approved costs, fees, and payments, and claim amounts from the Maximum Settlement
13 Amount into a Qualified Settlement Fund (“QSF”) account to be established by the Claims
14 Administrator within fourteen (14) calendar days of the Effective Date. (*Ibid.*) Within three (3)
15 business days of the Court granting final approval, the Claims Administrator will calculate all
16 payments due. (*Ibid.*) Individual Settlement Payments shall be mailed by regular First-Class U.S.
17 Mail to the respective Claimant’s last known mailing address within fourteen (14) calendar days
18 after Defendant deposits all Court-approved and claim amounts from the Maximum Settlement
19 Amount into a QSF. (*Ibid.*)

20 **m. Appointment of the Class Representative and Approval of the Class**
21 **Representative Enhancement Payment**

22 A named plaintiff is eligible for payment that reasonably compensates him for undertaking
23 and fulfilling a fiduciary duty to represent absent class members. (*Cellphone Termination Fee*
24 *Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th
25 715, 726 [upholding “service payments” to named plaintiffs for their efforts in bringing the case];
26 *Stevens v. Safeway, Inc.* (C.D.Cal. Feb. 25, 2008, No. CV 05-01988 MMM (SHx)) 2008
27 U.S.Dist.LEXIS 17119 [\$20,000.00 and \$10,000.00 to two class representatives]; *In re Janney*
28 *Montgomery Scott LLC Financial Consultant Litig.* (E.D.Pa. July 16, 2009) 2009 U.S.Dist.LEXIS

60790 [\$20,000.00 each to three class representatives].)

Plaintiff has proven to be an adequate Class Representative. (Han Decl., *supra*, at ¶ 79.) Plaintiff has conducted himself diligently and responsibly in representing the Class in this litigation, understands his fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff has also spent time in meetings and conferences with counsel to provide counsel with a complete understanding of his work environment and requirements. (*Ibid.*) Furthermore, Plaintiff does not have any interest that is averse to the interest of other Class Members. (*Id.*; *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 340.)

The requested Class Representative Enhancement Payment is fair and reasonable compensation for Plaintiff's efforts in bringing the action, assisting counsel with the investigation, litigation, and settlement, regularly conferring with Class Counsel on the status of the case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and that it provides adequate relief to the proposed Class. (Han Decl., *supra*, at ¶ 80.) Accordingly, it is appropriate and just for Plaintiff, serving as the Class Representative, to receive a reasonable Class Representative Enhancement Payment in addition to his share of the Net Settlement Amount, for his services on behalf of the Class Members. (*Ibid.*)

V. CONCLUSION

Plaintiff respectfully 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: November 30, 2021

JUSTICE LAW CORPORATION



Douglas Han
Shunt Tatavos-Gharajeh
Phillip Song
Attorneys for Plaintiff

**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 mking@justicelawcorp.com

On November 30, 2021, 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: **Flores v. Rivermaid Trading Company**
LWDA/Court Case No.: **LWDA Case No.: CM- 797434-20**
Court Case No.: STK-CV-UOE-2020-0008623
San Joaquin 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 November 30, 2021, at Pasadena, California.



Madeline King