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

RASON WILLIAMS, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiffs,

v.

NATIONAL CONSTRUCTION
RENTALS, INC., a California corporation;
and DOES 1 through 100, inclusive;

Defendant.

Case No.: RG20075904

Honorable Dennis Hayashi
Department 518

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT, CONDITIONAL
CERTIFICATION, APPROVAL OF CLASS
NOTICE, SETTING OF FINAL
APPROVAL HEARING DATE;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Reservation ID: 2268918]

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

Hearing Date: July 28, 2021
Hearing Time: 2:30 p.m.
Hearing Place: Department 518

Complaint Filed: September 23, 2020
FAC Filed: November 17, 2020
Jury Trial: None Set

1 **PLEASE TAKE NOTICE** that on at or as soon as the matter may be heard before the
2 Honorable Dennis Hayashi in Department 518 of the Alameda Superior Court Hayward Hall of
3 Justice, located at 24405 Amador Street, Hayward, CA 94544, Plaintiffs Rason Williams,
4 Quiandre Tate, and Matthew Pullen (“Plaintiffs,” “Plaintiff Williams,” “Plaintiff Tate,” and
5 “Plaintiff Pullen”) will and hereby move for an order:

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

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- Approving the proposed deadlines for the notice and Settlement Administration process;
- Approving Phoenix Class Action Administration Solutions (“Phoenix”) as the Settlement Administrator; and
- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the requests for Attorney Fee Award, Cost Award, Class Representative Enhancement Payments, the Administration Costs, and approval of the allocation for PAGA penalties.

This motion is based upon the following memorandum of points and authorities; the Declaration of Proposed Class Counsel (Douglas Han); the [Proposed] Order filed concurrently with this motion; 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: June 16, 2021

JUSTICE LAW CORPORATION

By: 

Douglas Han
Shunt Tatavos-Gharajeh
Areen Babajanian
Haig Hogdanian
Attorneys for Plaintiff

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	1
III.	INVESTIGATION/ LITIGATION HISTORY	4
a.	Discovery, Investigation, and the Parties' Staunchly Conflicting Positions	4
b.	The Parties Were Able to Reach an Agreement on Settlement of the Action.....	8
i.	The Parties Attended Mediation Which Ultimately Led to the Joint Stipulation and Settlement Agreement	8
ii.	The Settlement Was Reached as a Result of Arm's-Length Negotiations.....	9
iii.	The Settlement Is the Result of Thorough Investigation and Discovery....	9
c.	Terms of the Proposed Settlement.....	10
i.	Deductions from the Settlement	10
ii.	Calculation of the Settlement Payments to Class Members	11
iii.	Notice to the Class.....	12
iv.	Distribution of Funds.....	13
v.	Release of Claims	14
d.	Counsel for Both Parties Are Experienced in Similar Litigation	15
IV.	ARGUMENT	15
a.	Class Action Settlements Are Subject to Court Review	15
b.	The Proposed Settlement Is a Reasonable Compromise of Claims	16
i.	The Settlement Is Fair and Reasonable	17
ii.	The Settlement Amount of \$1,650,000 Is Reasonable	18
c.	Discount Analysis Justifies the Settlement.....	22
d.	Conditional Certification of the Class Is Appropriate	23
i.	The Proposed Class Is Ascertainable and Sufficiently Numerous	24
ii.	The Class Members Share a Well-Defined Community of Interest.....	24

1	1.	Common Issues Predominate	25
2	2.	Plaintiffs’ Claims Are Typical of the Class Claims	25
3	3.	Plaintiffs are Adequate to Represent the Class.....	26
4	4.	Class Action is Superior for the Fair and Efficient Adjudication of	
5		this Controversy	26
6	e.	The Settlement Is Fair, Reasonable, and Adequate	26
7	f.	Notice to Class Members Complies with California Rule of Court 3.769(f)	27
8	V.	CONCLUSION	27

TABLE OF AUTHORITIES

Cases

<i>Aguilar v. Cintas Corp. No. 2,</i>	
144 Cal. App. 4 th 121 (2006)	18
<i>Amaral v. Cintas Corp.,</i>	
163 Cal. App. 4 th 1157 (2008)	19
<i>Bartold v. Glendale Federal Bank,</i>	
81 Cal. App. 4 th 816 (2000)	24
<i>In re Beef Industry Antitrust Litigation,</i>	
607 F. 2d 167 (5 th Cir. 1979)	16
<i>Boyd v. Bechtel Corp.,</i>	
485 F. Supp. 610 (N.D. Cal. 1979)	9, 10, 17
<i>Brinker Restaurant Corporation v. Superior Court,</i>	
53 Cal. 4 th 1024 (2012)	5, 25
<i>Capitol People First v. Department of Developmental Services,</i>	
155 Cal. App. 4 th 676 (2007)	24, 25
<i>Carrington v. Starbucks Corp.,</i>	
30 Cal. App. 5 th 504 (2018)	21
<i>City of Detroit v. Grinnell Corporation,</i>	
495 F. 2d 448 (2d Cir. 1974)	23
<i>Classen v. Weller,</i>	
145 Cal. App. 3d 27 (1983)	25
<i>Costter v. Lyft, Inc.,</i>	
193 F. Supp. 3d 1030 (N.D. Cal. 2016)	20
<i>Dunbar v. Albertson's Inc.,</i>	
141 Cal. App. 4 th 1422 (2006)	18
<i>Dunk v. Ford Motor Co.,</i>	
48 Cal. App. 4 th 1794 (1996)	15, 26

1	<i>Espinoza v. Galardi South Enterprises Inc.,</i>	
2	Case No. 1:14-cv-21244 (S.D. Fla. 2016)	25
3	<i>Ghazaryan v. Diva Limousine, Ltd.,</i>	
4	169 Cal. App. 4 th 1524 (2008)	24
5	<i>Green v. Obledo,</i>	
6	29 Cal. 3d 126 (1981)	15
7	<i>Harris v. Superior Court,</i>	
8	154 Cal. App. 4 th 164 (2007)	18
9	<i>Hicks v. Kaufman & Broad Home Corp.,</i>	
10	89 Cal. App. 4 th 908 (2001)	24
11	<i>Hopson v. Hanesbrands Inc.,</i>	
12	2009 U.S. Dist. LEXIS 33900 (N.D. Cal. Apr. 3, 2009)	21
13	<i>Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n,</i>	
14	452 U.S. 905 (1981)	16
15	<i>Jones v. JGC Dallas LLC,</i>	
16	Case No. 3:11-cv-02743 (N.D. Tex. 2014)	25
17	<i>Kullar v. Foot Locker Retail, Inc.,</i>	
18	168 Cal. App. 4 th 116 (2008)	16
19	<i>Linder v. Thrifty Oil Co.,</i>	
20	23 Cal. 4 th 429 (2000)	24
21	<i>Linney v. Cellular Alaska Partnership,</i>	
22	151 F. 3d 1234 (9 th Cir. 1998)	23
23	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles,</i>	
24	186 Cal. App. 4 th 399 (2010)	16
25	<i>Nordstrom Com. Cases,</i>	
26	186 Cal. App. 4 th 576 (2010)	21
27	<i>Sav-On Drug Stores, Inc. v. Superior Court,</i>	
28	34 Cal. 4 th 319 (2004)	18, 23, 24, 25

1	<i>In re Tableware Antitrust Litig.,</i>	
2	484 F. Supp. 2d 1078 (N.D. Cal. 2007).....	23
3	<i>Tech-Bilt v. Woodward-Clyde & Associates,</i>	
4	38 Cal. 3d 488 (1985).....	16
5	<i>Ubrino v. Orkin Svcs. Of Calif., Inc.,</i>	
6	726 F. 3d 118 (9 th Cir. 2013).....	20
7	<i>Vasquez v. Superior Court,</i>	
8	4 Cal. 3d 800 (1971).....	15
9	<i>Viceral v. Mistras Grp., Inc.,</i>	
10	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016).....	20
11	<i>Walsh v. IKON Solutions, Inc.,</i>	
12	148 Cal. App. 4 th 1440 (2007).....	18
13	<i>Yocupicio v. PAE Grp., LLC,</i>	
14	795 F. 3d 1057 (9 th Cir. 2015).....	20
15	<u>Statutes</u>	
16	Business and Professions Code §§ 17200	2, 3, 17
17	Code of Civil Procedure § 382	23, 26
18	Code of Civil Procedure § 877.6	16
19	Federal Rule 23.....	15
20	Labor Code § 201	2, 3, 18
21	Labor Code § 202	2, 3, 18
22	Labor Code § 203	7, 8
23	Labor Code § 226	2, 3, 7, 17, 18, 21
24	Labor Code § 226.7	2, 3, 18, 21
25	Labor Code § 510	2, 3, 18, 21
26	Labor Code § 512	2, 3, 18, 21
27	Labor Code § 1194	2, 3, 18, 21
28	Labor Code § 1197	2, 3, 18, 21

1	Labor Code § 1197.1	18
2	Labor Code § 1198	2, 3, 18, 21
3	Labor Code § 2699	19, 20
4	Labor Code § 2699.5	19
5	Labor Code § 2800	2, 3
6	Labor Code § 2802	2, 3, 18, 21
7	Rule 3.769	15, 27

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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$1,650,000 proposed wage
3 and hour class action settlement by Plaintiffs on behalf of themselves and all persons who
4 worked for Defendant National Construction Rentals (“Defendant”) in California as an hourly-
5 paid or non-exempt employee during the Class Period (“Class”). The Class Period is the time
6 period from April 6, 2016, to the date the Court issues an order granting preliminary approval of
7 the Settlement, or August 23, 2021, whichever occurs earlier (“Class Period”). At the time of this
8 filing, the number of Class Members provided by Defendants is currently estimated to be seven
9 hundred sixty-six (766).

10 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
11 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
12 proposed settlement of \$1,650,000 – with an average settlement share amount estimated at
13 \$1,180.16¹ – is well within the “ballpark” of reasonableness.

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

21 **II. BACKGROUND**

22 Defendant provides solutions for temporary fencing, barricades, and portable toilets,
23 among other temporary site services. (Declaration of Douglas Han (“Han Dec.”) at ¶ 9.) Founded
24 in 1962, Defendant has over 100,000 customers and services 275 metro areas across the country.
25 (*Ibid.*) This case involves all persons who worked for Defendant in California as a non-exempt
26 employee during the Class Period (“Class”). (*Ibid.*) The Class Period is the time period from
27

28 ¹ \$904,000 (Net Settlement Amount) / 766 (Class Members) = \$1,180.16.

1 April 6, 2016, to the date the Court issues an order granting preliminary approval of the
2 Settlement, or August 23, 2021, whichever occurs earlier (“Class Period”). (Han Dec., *supra*, at ¶
3 9.) Plaintiffs allege that at all times during the Class Period, Defendant’s non-exempt employees
4 work and/or worked on an hourly basis. (*Ibid.*)

5 Plaintiff Williams is a former employee of Defendant who filed a class action on behalf
6 of all current and former California-based (i.e., currently “residing” in California with the intent
7 to remain in California indefinitely) hourly-paid or non-exempt employees (either directly or
8 through a staffing agency or labor contractor) of Defendant within the State of California at any
9 time during the period from April 6, 2016 to the present. (Han Dec., *supra*, at ¶ 10.) Plaintiff
10 Williams filed his complaint on September 23, 2020, in the Superior Court of Los Angeles,
11 alleging eight (8) causes of action for numerous violations of the California Labor Code and
12 California Business & Professions Code. (*Ibid.*) Plaintiff Williams alleged the following causes
13 of action: (1) violation of Labor Code sections 510 and 1198 (unpaid overtime); (2) violation of
14 Labor Code sections 226.7 and 512(a) (unpaid meal period premiums); (3) violation of Labor
15 Code section 226.7 (unpaid rest period premiums); (4) violation of Labor Code sections 1194
16 and 1197 (unpaid minimum wages); (5) violation of Labor Code sections 201 and 202 (final
17 wages not timely paid); (6) violation of Labor Code sections 226(a) (non-compliant wage
18 statements); (7) violation of Labor Code section 2800 and 2802 (unreimbursed business
19 expenses); and (8) violation of Business & Professions Code section 17200 et seq. (*Ibid.*)

20 On August 28, 2020, Plaintiff Williams provided written notice to the Labor and
21 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
22 Labor Code he contends were violated and the theories supporting his contention. (Han Dec.,
23 *supra*, at ¶ 11.) On September 11, 2020, Plaintiff Williams amended his August 28, 2020 Private
24 Attorneys General Act (“PAGA”) Notice to add Quiandre Tate and Matthew Pullen as additional
25 claimants against Defendant. (*Ibid.*) On April 8, 2020, Plaintiff Nguyen also provided written
26 notice to the LWDA and Defendant. (*Ibid.*)

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1 After waiting the requisite sixty-five (65) days for the Private Attorneys General Act of
2 2004 (“PAGA”) notice period to expire, Plaintiffs Williams, Tate, and Pullen filed their
3 representative PAGA action on November 17, 2020 in the Superior Court of Alameda on behalf
4 of all current and former hourly-paid or non-exempt employees (whether hired directly or
5 through a labor contractor or staffing agency) of Defendant who worked for Defendant at any
6 time during the period from August 28, 2019 to the present. (Han Dec., *supra*, at ¶ 12.) Plaintiffs
7 Williams, Tate, and Pullen’s allegations were that, since August 28, 2019, Defendant violated the
8 Labor Code by failing to pay minimum and overtime wages, failing to provide meal periods and
9 rest breaks, failing to timely pay wages during employment and upon termination, failing to
10 provide complete and accurate wage statements, and failing to reimburse business expenses.
11 (*Ibid.*)

12 The Parties attended mediation on Plaintiffs’ claims on May 13, 2021. (Han Dec., *supra*,
13 at ¶ 13.) Under the auspices of the mediator Jeffrey Krivis, the Parties were eventually able to
14 reach an agreement on the settlement of the action. (*Ibid.*)

15 On September 23, 2020, in line with the settlement reached between the Parties at
16 mediation, Plaintiffs filed their First Amended Class Action Complaint in the Superior Court of
17 Alameda on behalf of themselves and the putative class, which consists of all persons who
18 worked for Defendant in California as an hourly-paid or non-exempt employee during the period
19 from April 6, 2016, to final judgment. (Han Dec., *supra*, at ¶ 14.) Plaintiffs’ First Amended
20 Class Action Complaint alleges causes of action for (1) violation of California Labor Code §§
21 510 and 1198 (unpaid overtime); (2) violation of Labor Code §§ 226.7 and 512(a) (unpaid meal
22 period premiums); (3) violation of Labor Code § 226.7 (unpaid rest period premiums); (4)
23 violation of California Labor Code §1194 and 1197 (unpaid minimum wages); (5) violation of
24 California Labor Code §§ 201 and 202 (final wages not timely paid); (6) violation of California
25 Labor Code § 226(a) (non-compliant wage statements); (7) violation of Labor Code § 2800 and
26 2802 (unreimbursed business expenses); (8) violation of PAGA; and (9) violation of Business &
27 Professions Code §§ 17200, et seq. (*Ibid.*)

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1 Defendant generally and specifically denies any and all liability or wrongdoing of any
2 sort with regard to any of the claims alleged, makes no concessions or admissions of liability of
3 any sort, and contends that for any purpose other than settlement, the Class Action is not
4 appropriate for class or representative treatment. (Han Dec., *supra*, at ¶ 15.) Furthermore,
5 Defendant asserts a number of defenses to the claims, and has denied any wrongdoing or liability
6 arising out of any of the alleged facts or conduct in the Class Action (*Ibid.*)

7 **III. INVESTIGATION/ LITIGATION HISTORY**

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

9 After Plaintiff Williams, Plaintiff Tate, and Plaintiff Pullen filed their representative
10 PAGA action, both Parties conducted significant investigation and discovery of the facts and
11 law. (Han Dec., *supra*, at ¶ 16.) Prior to the mediation with Jeffrey Krivis on May 13, 2021,
12 Defendant produced hundreds of documents relating to its policies, practices, and procedures
13 regarding reimbursement of business expenses, paying non-exempt employees for all hours
14 worked, meal and rest period policies, and payroll and operational policies. (*Ibid.*) As part of
15 Defendant’s production, Plaintiffs also reviewed time records, pay records, and information
16 relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the
17 number of workweeks in the Class Period. (*Ibid.*)

18 Furthermore, Plaintiffs also interviewed several Class Members who worked for
19 Defendant throughout the Class Period. (Han Dec., *supra*, at ¶ 17.) The Parties agree that the
20 above-described investigation and evaluation, as well as the information exchanged during the
21 settlement negotiations, are more than sufficient to assess the merits of the respective Parties’
22 positions and to compromise the issues on a fair and equitable basis. (Han Dec., *supra*, at ¶ 16.)

23 Based upon Defendant’s discovery responses and document production, as well as
24 interviews Plaintiffs’ counsel had with non-exempt employees, Plaintiffs contend – and
25 Defendant denies – that Defendant failed to provide employees legally mandated rest breaks.
26 (Han Dec., *supra*, at ¶ 17.) From April 6, 2016 until January 2017, Defendant failed to maintain
27 a compliant rest period policy by leaving the scheduling of all rest periods up to the supervisor’s
28 discretion, driven by factors such as “workloads, operational efficiency and staffing needs.” (Han

Dec., *supra*, at ¶ 17.) Although Defendant eventually revised its Employee Handbook in 2017 to correct the deficient rest policies, interviews with putative class members confirm that these compliant policies were not enforced as part of Defendant’s actual practice. (*Ibid.*) Since Defendant’s general policy discouraged overtime hours by disciplining or terminating workers for unauthorized overtime, employees were often unable to take their rest breaks because their supervisors would constantly pressure employees to finish their tasks and avoid falling behind on their schedules. (*Ibid.*) For example, service technicians and mechanics were specifically instructed by their supervisors to complete their tasks before taking their rest breaks. (*Ibid.*) When there was an urgent task, the employee was expected to cut their break short and resolve the issue immediately. (*Ibid.*) Finally, Plaintiffs also assert that Defendant failed to pay employees premium wages in spite of several instances of failing to provide compliant rest breaks. (*Ibid.*)

Moreover, Plaintiffs assert – and Defendant denies – that Defendant failed to provide employees with legally mandated meal breaks. (Han Dec., *supra*, at ¶ 18.) Firstly, Defendant’s meal break policy from April 2016 to January 2017 failed to advise employees of their right to receive a first meal break before the end of the employee’s fifth (5th) hour of work and second meals no later than the tenth (10th) hour. (*Ibid.*) Moreover, Plaintiffs also assert that despite later amending its meal break policy to be *Brinker*-compliant, Defendant still maintained uniform, improper practices that prevented employees from receiving compliant meal breaks. (*Ibid.*) Specifically, employees often had late, missed, short, or interrupted meal breaks because of their workload, pressures to make timely deliveries and complete their assignments, and not having reasonable opportunities to park their vehicles. (*Ibid.*) For example, sanitation pump drivers were often forced to miss their meal breaks due to a heavy workload with no opportunity for unauthorized overtime: sanitation drivers were assigned a high number of stops each day, ranging anywhere from twenty-five to forty (25-40), and as much as six (6) portable toilets at each stop. (*Ibid.*) Finally, Plaintiffs contend that Defendant did not pay employees premium wages in spite of these many instances of non-compliant meal breaks. (*Ibid.*)

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1 Plaintiffs also assert – and Defendant denies – that Defendant failed to compensate
2 employees for all hours worked. (Han Dec., *supra*, at ¶ 19.) Specifically, Defendant’s uniform,
3 improper practices frequently pressured employees into working off-the-clock for which they
4 were not compensated. (*Ibid.*) Regardless of the location (i.e., Pacoima, Montebello, Fontana),
5 employees would wait in line for about three to five (3-5) minutes before the start of their shift in
6 order to clock in. (*Ibid.*) The process of clocking in would take time because the timeclock would
7 require employees to take a picture of their face and scan their finger. (*Ibid.*) Predictably, there
8 were often technical issues with clocking in because the timeclocks did not always function
9 properly. (*Ibid.*) Whenever issues like this would arise, employees were told to fill out and
10 submit a timesheet in lieu of clocking in, which would take an additional few minutes.
11 Employees were also directed by their supervisors to don and doff their personal protective
12 equipment (“PPE”) off-the-clock. (*Ibid.*) Similarly, employees who worked in the office were
13 also pressured to work off-the-clock as well, which included “booting up” their computers before
14 clocking in; the process of “booting up” would take approximately two to five (2-5) minutes.
15 (*Ibid.*) Since Defendant prohibited working unauthorized overtime, employees were regularly
16 required and instructed to clock out for the workday and complete their remaining tasks off-the-
17 clock. (*Ibid.*)

18 Furthermore, Plaintiffs contend – and Defendant denies – that employees were not
19 compensated at their regular rate of pay for non-discretionary incentive payments. (Han Dec.,
20 *supra*, at ¶ 20.) Specifically, Defendant would periodically pay employees non-discretionary
21 safety incentive payments that were not factored into employees’ regular rates of pay for
22 purposes of overtime compensation. (*Ibid.*) From 2016-2020, drivers would receive a \$500
23 safety bonus every four (4) months using objective factors, such as maintenance, safety, and
24 performance. (*Ibid.*) In 2021, Defendant changed the \$500 safety bonus so that it was earned and
25 paid out every three (3) months. (*Ibid.*) But in spite paying its employees various non-
26 discretionary safety incentive payments, Defendant failed to include them into employees’
27 regular rates to change their overtime rates. (*Ibid.*)

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1 Additionally, Plaintiffs assert – and Defendant denies – that Defendant failed to
2 reimburse employees for necessary business-related expenses. (Han Dec., *supra*, at ¶ 21.) For
3 example, employees were not reimbursed for purchasing steel toed boots, which cost them
4 approximately \$200 per year. (*Ibid.*) Employees were also provided with six or seven (6-7)
5 company shirts. (*Ibid.*) However, due to the nature of the job, employees would quickly cycle
6 through these shirts. (*Ibid.*) As a result, many employees were required to purchase additional
7 shirts at ten dollars (\$10) each. (*Ibid.*) Since Defendant did not provide services to clean or wash
8 employees’ shirts, employees were forced to wash their shirts at home; Defendant failed to
9 reimburse its employees for having to clean or wash their clothes. (*Ibid.*)

10 Furthermore, Plaintiffs contend – and Defendant denies – that Defendant is liable for
11 issuing non-compliant wage statements. (Han Dec., *supra*, at ¶ 22.) Specifically, Defendant
12 issued wage statements in violation of Labor Code section 226(a) because of the underlying
13 violations that are discussed above. (*Ibid.*) Even if Defendant asserts that its violation of section
14 226(a) is trivial, the California courts have held that strict compliance of section 226(a) is exactly
15 what is intended. (*Ibid.*)

16 Finally, Plaintiffs contend – and Defendant denies – that Defendant is liable for waiting
17 time penalties. (Han Dec., *supra*, at ¶ 25.) Specifically, Defendant’s hourly-paid or non-exempt
18 employees are entitled to back underpaid overtime and compensation for time worked off-the-
19 clock as well as missed meal and rest breaks, thereby triggering waiting time penalties under
20 Labor Code section 203. (*Ibid.*) Thus, Defendant owes compensation for underpaid work and
21 missed meal and rest breaks as a matter of fact and law but intentionally failed or refused to
22 perform an act, which was required to be done, constituting “willful” conduct and justifying
23 “waiting-time” penalties under section 203 to former employees. (*Ibid.*)

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1 Defendant denies Plaintiffs' contentions in their entirety. (Han Dec., *supra*, at ¶ 24.)
2 Among other things, Defendant denies Plaintiffs' rest and meal break contentions, on the
3 grounds that it provided rest and meal periods within compliant times and that non-exempt
4 employees were given discretion as to when to take their rest and meal periods. (*Ibid.*) Defendant
5 also contends that both its meal and rest break policies complied with California law by January
6 2017 and that non-exempt employees were allowed to use their rest period and meal period time
7 for their own purposes. (*Ibid.*) Defendant further contends that whether non-exempt employees
8 took meal and rest breaks during compliant time frames and were relieved of all duties are
9 questions that could only be resolved by resorting to individualized inquiries to each non-exempt
10 employee and, therefore, class certification would not be appropriate. (*Ibid.*) Defendant also
11 asserts that it paid its employees for all times worked, including overtime, minimum, and
12 premium wages. (*Ibid.*) Moreover, Defendant contends that it did factor non-discretionary safety
13 incentive payments into eligible employees' regular rates for overtime purposes. (*Ibid.*) Further,
14 Defendant contends that Plaintiffs' claims regarding off-the-clock work and unpaid overtime are
15 trivial as only a small number of employees actually worked off-the-clock. (*Ibid.*) Defendant also
16 asserts that it reimbursed employees for all business expenses, including the use of personal cell
17 phones for business-related purposes. (*Ibid.*) Finally, Defendant argues that its failure to comply
18 with California labor laws was an honest mistake made in good faith. (*Ibid.*) Thus, Defendant's
19 conduct could not be deemed "willful" under Labor Code section 203. (*Ibid.*)

20 As demonstrated above, the Parties took staunchly conflicting positions concerning
21 Defendant's policies and procedures and their effect on hourly-paid and non-exempt employees.

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

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

25 The Parties agreed to go to mediation with experienced wage and hour mediator, Jeffrey
26 Krivis. The mediation took place on May 13, 2021. (Han Dec., *supra*, at ¶ 25.) During the
27 mediation, the Parties discussed the risks of continued litigation, risks of certification, and risks
28 on the merits of the claims versus the benefits of settlement. (*Ibid.*) Under the auspices of the

mediator, the Parties were able to reach an agreement on a settlement of the Class Action, the terms of which were memorialized in a Settlement Agreement, that the Parties now seek Preliminary Approval of in the instant motion. (Han Dec., *supra*, at ¶ 25.; Exhibit 2.)

ii. The Settlement Was Reached as a Result of Arm's-Length Negotiations

The Settlement Agreement was reached as a result of arm's-length negotiations. (Han Dec., *supra*, at ¶ 40.) Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. (*Ibid.*) At the mediations, Counsel for the Parties conducted extensive arm's length settlement negotiations until an agreement was ultimately reached by all Parties. (*Ibid.*)

Plaintiffs and Class Counsel believe in the merits of the case but also recognize the expense and length of continued proceedings necessary to continue the litigation against Defendant through class certification and trial and through any possible appeals. (Han Dec., *supra*, at ¶ 41.) Plaintiffs and Class Counsel have also taken into account the uncertainty and risk of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and Class Counsel have conducted extensive settlement negotiations, including formal mediation on May 13, 2021. (*Ibid.*) Based on the foregoing, Plaintiffs and Class Counsel believe the settlement set forth in the Settlement Agreement is a fair, adequate, and reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

iii. 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 Dec., *supra*, at ¶ 42.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel*

Corp. (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (Han Dec., *supra*, at ¶ 42.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$1,650,000 (“Gross Settlement Amount”) which includes, subject to Court approval: (a) Attorney Fee Award in an amount not to exceed \$577,500 (thirty-five percent (35%) of the Gross Settlement Amount) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administrating the settlement and securing Court approval; (b) Cost Award for actual litigation costs not to exceed \$30,000²; (c) Class Representative Enhancement Payments in the amount of \$10,000 to each Class Representative in recognition of Plaintiffs’ work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved; (d) Administration Costs to Phoenix Class Action Administration Solutions (“Phoenix”), the Settlement Administrator, not to exceed \$8,500; and (e) PAGA Payment of \$100,000, seventy-five percent (75%) of which (\$75,000) be paid to the LWDA and twenty-five percent (25%) of which (\$25,000) shall be distributed to the aggrieved employees eligible to recover the PAGA Payment that consist of all hourly-paid or non-exempt employees of Defendant in California during the period from April 6, 2019 through the date the Court signs an order granting preliminary approval of this Settlement, or August 23, 2021, whichever occurs earlier (“Eligible Aggrieved Employees,” “PAGA Period,” and “Individual PAGA Payment”), on a pro rata basis. (Han Dec., *supra*, at ¶ 26.)

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² The actual amount of actual litigation costs will be provided to the Court in conjunction with Plaintiffs’ motion for final approval. At that time, Plaintiffs will ask the Court to approve the amount of these costs. (Han Dec., *supra*, at ¶ 27.) If Plaintiffs’ actual litigation costs exceed \$30,000, Plaintiffs will only seek reimbursement in the amount of \$30,000. (*Ibid.*) If the amount awarded is less than the amount requested by Class Counsel for the Attorney Fee Award and/or Cost Award, the difference shall become part of the Net Settlement Amount and will be distributed to all Class Members who do not submit a valid and timely request to exclude themselves from the class action Settlement (“Participating Class Members”). (*Ibid.*)

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

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 that \$904,000 (“Net Settlement Amount”) will be distributed to Class Members – with an
4 average settlement share estimated at \$1,180.16. (Han Dec., *supra*, at ¶ 28.) The Settlement
5 Administrator will withhold the amount of the Participating Class Members’ portion of normal
6 payroll withholding taxes out of each person’s Individual Settlement Share. (*Ibid.*) The
7 Settlement Administrator will calculate the amounts of the Participating Class Members’ and
8 Defendant’s portions of payroll withholding taxes. (*Ibid.*) Finally, the Settlement Administrator
9 will submit Defendant’s portion of payroll withholding tax calculation to Defendant for
10 additional funding and forward those amounts along with each person’s Individual Settlement
11 Share withholdings to the appropriate taxing authorities. (*Ibid.*) The Individual Settlement Share
12 is calculated based on each Participating Class Member’s pro rata share of the Net Settlement
13 Amount based on workweeks during the Class Period as follows:

- 14 (i) the number of weeks he or she worked as a hourly-paid or non-exempt
15 employee during the Class Period, divided by (ii) the total number of
16 weeks worked by all Participating Class Members collectively during the
17 Class Period, which is then multiplied by the Net Settlement Amount. The
18 Settlement Administrator will use the Class Data to calculate the number
19 of workweeks worked by each Class Member based on their dates of
20 employment for purposes of this calculation. (Han Dec., *supra*, at ¶ 29.)

21 Furthermore, the Settlement Administrator shall pay each Eligible Aggrieved Employee
22 according to his or her proportional share, which will be based upon the total number of work
23 weeks he or she was employed during the PAGA Period. (Han Dec., *supra*, at ¶ 30.) The
24 Individual PAGA Payment is calculated based on each Eligible Aggrieved Employee’s pro rata
25 share of the PAGA Payment allocated to Eligible Aggrieved Employees based on work weeks
26 during the PAGA Period as follows:

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- (i) the number of work weeks he or she worked as a hourly-paid or non-exempt employee during the PAGA Period, divided by (ii) the total number of work weeks worked by all Eligible Aggrieved Employees collectively during the PAGA Period, which is then multiplied by the PAGA Payment allocated to the Eligible Aggrieved Employees. The Settlement Administrator will use the Class Data to calculate the number of periods worked by each Eligible Aggrieved Employee based on their dates of employment for purposes of this calculation. (*Ibid.*)

The precise number of compensable weeks worked per Class Member will not be known until Defendant have tabulated them, following preliminary approval. (Han Dec., *supra*, at ¶ 31.) No portion of the Gross Settlement Amount will revert to Defendant for any reason. (*Ibid.*)

iii. Notice to the Class

Within fifteen (15) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class Data to the Settlement Administrator. (Han Dec., *supra*, at ¶ 32.) The Class Data will be formatted as a Microsoft Excel spreadsheet and will include: (i) each Class Member's full name; (ii) each Class Member's last-known address; (iii) each Class Member's Social Security and Employee ID number, if any; (iv) the Class Member's relevant dates of employment; (v) number of workweeks worked by the Class Member during the Class Period (excluding weeks where the Class Member performed no work for Defendant) ("Class Data"). (*Ibid.*)

Within fourteen (14) calendar days after Defendant's deadline to provide the Class Data to the Settlement Administrator, the Settlement Administrator will mail the Notice Packets to all identified Class Members via first-class regular U.S. Mail. (Han Dec., *supra*, at ¶ 33.) Class Members are not required to submit a claim form to receive their Individual Settlement Payments pursuant to the Settlement. (*Ibid.*) Eligible Aggrieved Employees are not required to submit a claim form to receive their Individual PAGA Payment. (*Ibid.*) The proposed Class Notice and Exclusion Form are attached as Exhibits A and B to the Settlement Agreement respectively, which is Exhibit 2 to the Declaration of Douglas Han. (*Ibid.*)

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1 **iv. Distribution of Funds**

2 No later than ten (10) calendar days after the date the Final Approval of the Settlement
3 can no longer be appealed or, if there are no objectors and no Plaintiffs in intervention at the time
4 the Court grants Final Approval of the Settlement, the date the Court enters judgment granting
5 Final Approval of the Settlement, Defendant shall deposit the Gross Settlement Amount of
6 \$1,650,000 needed to pay the entire Gross Settlement Amount by wiring the funds to the
7 Settlement Administrator. (Han Dec., *supra*, at ¶ 34.)

8 After sixty-one (61) calendar days after the deadline to fund the Settlement, the
9 Settlement Administrator shall calculate and disburse all payments due under the Settlement
10 Agreement, including all Individual Settlement Shares, Individual PAGA Payments, the
11 Attorney Fee Award, the Cost Award, the Class Representative Enhancement Payments, the
12 PAGA Payment, and the Administration Costs. (Han Dec., *supra*, at ¶ 35.) The Settlement
13 Administrator will forward a check for seventy-five percent (75%) of the PAGA Payment to the
14 LWDA for settlement of the PAGA claim. (*Ibid.*)

15 Participating Class Members and Eligible Aggrieved Employees must cash or deposit
16 their Individual Settlement Share and Individual PAGA Payment checks within one hundred
17 eighty (180) calendar days after the checks are mailed to them. (Han Dec., *supra*, at ¶ 36.) If any
18 checks are returned as undeliverable and without a forwarding address, the Settlement
19 Administrator will conduct a skip trace search to find the most up-to-date mailing addresses and
20 re-mail the checks promptly. (*Ibid.*) If any checks are not redeemed or deposited within ninety
21 (90) calendar days after mailing, the Settlement Administrator will send a reminder postcard.
22 (*Ibid.*) If any checks remain uncashed or not deposited by the expiration of the 90-day period
23 after mailing the reminder notice, the Settlement Administrator will, within two hundred (200)
24 calendar days after the checks are mailed, pay the amount of the Individual Settlement Share or
25 Individual PAGA Payment (as applicable) to the California State Controller's Office in
26 accordance with California Unclaimed Property Law so that the Participating Class Member
27 and/or Eligible Aggrieved Employee will have his or her Individual Settlement Share and/or
28 Individual PAGA Payment available to him or her per the applicable claim procedure to request

that money from the State of California. (Han Dec., *supra*, at ¶ 36.)

v. Release of Claims

As of the Effective Final Settlement Date and upon Defendant’s fully funding of the Settlement, all Eligible Aggrieved Employees and the State of California shall be deemed to have fully, finally, and forever released, relinquished and will release all claims for civil penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period (“PAGA Released Claims”). See Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 37.)

As of the Effective Final Settlement Date and upon Defendant’s fully funding of the Settlement, all Eligible Aggrieved Employees and the State of California shall be deemed to have fully, finally, and forever released, relinquished and will release all claims for civil penalties pursuant to PAGA for the PAGA Released Claims during the PAGA Period (“PAGA Released Claims”). See Exhibit 2 §§ (I)(EE), (III)(K). (Han Dec., *supra*, at ¶ 38.)

The Released Parties include Defendant and its past or present officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers and reinsurers, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents, attorneys, and any entities that may be considered joint employers (“Released Parties”). See Exhibit 2 § (I)(KK). (Han Dec., *supra*, at ¶ 39.)

As of the Effective Final Settlement Date, and in exchange for the Class Representative Enhancement Payment to the Plaintiffs in an amount not to exceed \$10,000 each, in recognition of their work and efforts in obtaining the benefits for the Class and undertaking the risk for the payment of costs in the event this matter had not successfully resolved, Plaintiffs provide a general release of claims for themselves and their spouses, heirs, successors and assigns. See Exhibit 2 §§ (III)(L). (Han Dec., *supra*, at ¶ 40.)

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

2 Both Plaintiffs’ counsel and Defendant’s counsel are particularly experienced in wage
3 and hour employment law and class actions. Plaintiffs’ counsel has significant experience in
4 litigating unpaid wages, non-compliant meal period, and non-compliant rest period class actions.
5 (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

6 Plaintiffs’ counsel has prosecuted numerous cases on behalf of employees for California
7 Labor Code violations and thus are experienced and qualified to evaluate the class claims, to
8 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the
9 defenses. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.) This experience instructed Plaintiffs’ counsel
10 on the risks and uncertainties of further litigation and guided their determination to endorse the
11 proposed Settlement.³ (*Ibid.*)

12 **IV. ARGUMENT**

13 **a. Class Action Settlements Are Subject to Court Review**

14 California Rule of Court 3.769 requires court approval for class action settlements.⁴
15 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
16 settlement.” (California Rules of Court, Rule 3.769(g).) Rule 3.769 further requires a noticed
17 motion for preliminary approval of class settlements:

18 (a) A settlement or compromise of an entire class action, or a cause of action
19 in a class action, or as to a party, requires the approval of the court after
20 hearing.

21 ...

22 (c) Any party to a settlement agreement may serve and file a written notice of
23 motion for preliminary approval of the settlement. The settlement
24 agreement and proposed notice to class members must be filed with the
25 motion, and the proposed order must be lodged with the motion.

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

⁴ The California Supreme Court also has authorized California’s trial courts to use Federal 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.

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

In weighing the strength of the plaintiff’s case, *Kullar* instructs that the court is not to “decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys.” (*Kullar, supra*, 168 Cal.App.4th at p. 133.) Finally, *Kullar* does not require an explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all his claims, provided there is a record that allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz, supra*, 186 Cal.App.4th at p. 409.) Put differently, “as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.” (*Kullar, supra*, 168 Cal.App.4th at p. 133 (citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500.).)

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As the following subsections show, the Parties' investigation and discovery revealed numerous reasons to discount claims and agree to the Settlement.

i. The Settlement Is Fair and Reasonable

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 Dec., *supra*, at ¶ 42.) The proposed settlement was only possible following significant discovery and evaluation of Defendant's relevant policies and procedures, as well as the data they produced for the putative Class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) Furthermore, this case has reached the stage where "the Parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the Settlement. (*Boyd v. Bechtel Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 617.) (*Ibid.*)

This discovery resulted in Plaintiffs' central theories of liability, which are predicated on Plaintiffs' claims that Defendant failed to pay overtime wages, failed to provide meal breaks and pay applicable premiums, failed to provide rest periods and pay applicable premiums, failed to pay minimum wages, failed to pay final wages in a timely manner, failed to issue compliant wage statements, failed to reimburse business expenses, violated PAGA, and violated the Business & Professions Code sections 17200, et seq. (Han Dec., *supra*, at ¶ 43.)

Defendant vehemently denies Plaintiffs' theories of liability and contend, as stated above, that all meal and rest periods were provided in compliance with California law, that all wages were properly paid to Class Members, that it provided final wages in a timely manner, that it provided wage statements in compliance with Labor Code section 226, and that it reimbursed all business expenses. (Han Dec., *supra*, at ¶ 44.) Defendant further contends that any mistakes made were honest rather than willful. (*Ibid.*) Finally, Defendant argues that if litigation were to continue, it feels confident that it would prevail. (*Ibid.*)

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1 Although Plaintiffs believe the case is suitable for certification on the basis that there are
2 company-wide policies that Plaintiffs contends violate California law and uniformly affect the
3 putative Class Members, uncertainties with respect to certification are always present. (Han
4 Dec., *supra*, at ¶ 45.) As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004)
5 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*)
6 Decisions following *Sav-On* have reached different conclusions concerning certification of wage
7 and hour claims.⁵ (*Ibid.*)

8 Although remaining confident in the strengths of his claims, all of these factors led
9 Plaintiffs to discount the following calculations of potential damage claims:

10 **ii. The Settlement Amount of \$1,650,000 Is Reasonable**

11 In addition to being able to discover the strengths and vulnerabilities associated with
12 Plaintiffs' claims, in preparing for mediation, Defendant provided Plaintiffs with a sampling of
13 time and pay records and information regarding the estimated number of workweeks worked by
14 putative class members and the average hourly rate for class members. (Han Dec., *supra*, at ¶
15 46.) Defendant also confirmed that there were approximately 68,608 workweeks worked by
16 Class Members. (*Ibid.*) Plaintiffs were also able to determine that the average hourly rate for
17 Class Members was \$22.50. (*Ibid.*)

18 Moreover, the provisions of the Labor Code potentially triggering PAGA penalties in this
19 case include but are not limited to Labor Code sections 201, 202, 226(a), 226.7, 510, 512(a),
20 1194, 1197, 1197.1, 1198, and 2802. (Han Dec., *supra*, at ¶ 53.) Defendant asserted that,
21 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory
22 but permissive and discretionary. (*Ibid.*) Defendant also maintained that, in addition to its strong
23 arguments against the underlying claims, it had a strong argument that it would be unjust to
24 award maximum PAGA penalties given the current unsettled state of law. (*Ibid.*)

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26 ⁵ (See, e.g., *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 (reversing decertification of class claiming
27 misclassification and ordering summary adjudication in favor of employees), review granted Nov. 28, 2007, 171
28 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*,
148 Cal.App.4th 1440 (affirming decertification of class claiming misclassification); *Aguilar v. Cintas Corp. No. 2*
(2006) 144 Cal.App.4th 121 (reversing denial of certification); *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th
1422 (affirming denial of certification).)

1 Class Counsel calculated penalties under this cause of action by multiplying the number
2 of active Class Members (because of the shortened statutory period for this claim), by the civil
3 penalties that each could be awarded for the Labor Code sections enumerated under Labor Code
4 section 2699.5 that were applicable in this case. (Han Dec., *supra*, at ¶ 54.) Class Counsel then
5 applied discounts in light of the countervailing arguments with regard to the other causes of
6 action, as well as the Court’s power to award “a lesser amount than the maximum civil liability.”
7 Lab. Code § 2699(e)(2). (*Ibid.*)

8 Given the state of the law and the range of PAGA penalties requested and actually
9 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
10 for PAGA penalties. (Han Dec., *supra*, at ¶ 55.) However, if PAGA penalties are granted on
11 any one of the violations alleged in Plaintiffs’ operative complaint, the total penalties exposure
12 for the eligible pay periods could be approximately \$2,860,000 ($([1 \times \$100] + [32 \times \$200]) \times 440$
13 employees). (*Ibid.*) Plaintiffs calculated Defendant’s PAGA exposure using one hundred percent
14 (100%) violation rate based on the average number of pay periods (33) during the one-year
15 statutory period. (*Ibid.*) Multiplying the PAGA exposure by the number of alleged violations
16 under the PAGA theories of recovery (6) gives potential civil penalties of \$17,160,000. (*Ibid.*)

17 Although Plaintiffs argued they could obtain over \$17 million for PAGA penalties, it
18 seems highly unlikely that the Court would award such a large amount. (Han Dec., *supra*, at ¶
19 56.) PAGA’s plain language indicates that an employer will be assessed a lower, “initial” penalty
20 for each initial pay period in which a violation occurs, and a higher, “subsequent” penalty for
21 each subsequent pay period in which a violation occurs. (Lab. Code, § 2699, subd. (f)(2).) In
22 *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157; however, the court held, “Until the
23 employer has been notified that it is violating a Labor Code provision (whether or not the
24 commissioner or court chooses to impose penalties), the employer cannot be presumed to be
25 aware that its continuing underpayment of employees is a ‘violation’ subject to penalties [and
26 will be assessed only the ‘initial’ violation rate].” (*Amaral, supra*, 163 Cal.App.4th at 1209.)
27 This language could be interpreted as indicating that until the Labor Commissioner or a court
28 informs an employer that it has violated the Labor Code, the employer can only be assessed the

1 “initial” violation rate. Under this interpretation, the maximum individual civil penalty for one
2 statutory violation is \$44,000 (440 employees x 100 (initial violation)), and for all possible Labor
3 Code violations is \$264,000.

4 Furthermore, PAGA’s statutory language is unclear as to whether PAGA penalties may
5 be “stacked” – that is, whether multiple civil penalties can be recovered in the same pay period
6 for different Labor Code violations. On one hand, Labor Code section 2699, subdivision (f)
7 establishes “a civil penalty for a violation” (emphasis added), implying a separate civil penalty
8 for each violation. On the other hand, employers cite Labor Code section 2699, subdivision
9 (g)(1), which states that “an aggrieved employee may recover the civil penalty described in
10 subdivision (f)...on behalf of himself or herself and other current or former employees against
11 whom one or more of the alleged violations was committed” (emphasis added). However,
12 Defendants contended that the Ninth Circuit’s opinions in *Ubrino v. Orkin Svcs. of Calif., Inc.*
13 (9th Cir. 2013) 726 F.3d 118 and *Yocupicio v. PAE Grp., LLC* (9th Cir. 2015) 795 F.3d 1057,
14 which, preclude the aggregation of PAGA penalties for purposes of removal, prevents “stacking”
15 of PAGA penalties. Without stacking and limited to the initial violation, the PAGA penalties
16 would be limited to \$44,000 on the low end and \$264,000 on the high end based on six (6) major
17 theories of recovery.

18 To the extent Defendant’s exposure remains in the hundreds of thousands of dollars, the
19 civil penalties would certainly be “unjust, arbitrary and oppressive, or confiscatory.” In fact,
20 many courts have taken liberties to dramatically reduce the civil penalties. (See e.g. *Viceral v.*
21 *Mistras Grp., Inc.* (N.D. Cal. Oct. 11, 2016, 2016 WL 5907869 at 9* [preliminarily approving
22 class action settlement that included a PAGA set-aside of just 0.15 percent of the PAGA claims’
23 full potential value, where “Plaintiffs face[d] a substantial risk of recovering nothing on either
24 class or PAGA claims”]; *Costter v. Lyft, Inc.* (N.D. Cal. 2016) 193 F.Supp.3d 1030, 1037
25 [preliminarily approving class action settlement allocating a PAGA set-aside worth a fraction of
26 the PAGA claims’ potential value, where the defendant’s obligations were “genuinely unclear”
27 and there was no evidence the defendant acted deliberately or negligently failed to learn about its
28 obligations].).

1 Under a more conservative approach, Plaintiffs’ counsel considered the possibility that
2 the Court could assess only the initial violation rate, bringing the basic PAGA penalty to
3 \$264,000 [440 employees x \$100 x 6 theories of recovery]. (Han Dec., *supra*, at ¶ 56.)

4 Plaintiffs also recognized the risk that any PAGA award could be significantly reduced.
5 (Han Dec., *supra*, at ¶ 57.) Many of the causes of action brought were duplicative of the
6 statutory claims such as violations of California Labor Code §§ 226(a), 226.7, 510, 512(a), 1194,
7 1197, 1198, and 2802. (*Ibid.*) Thus, the maximum penalties for each pay period are not
8 justified. (*Ibid.*) It was indeed arguable whether the Court would award the maximum penalties
9 under the law. (*Ibid.*) Thus, allocating \$100,000 to PAGA civil penalties was reasonable based
10 on a rate of \$6.93 per pay period [$\$100,000 \div 14,439$ Pay Periods in PAGA Date Range =
11 \$6.93], given the fact that Defendant are also paying an additional \$1,550,000 in the class
12 settlement. (*Id.* (citing see *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529
13 (affirming a rate of \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff
14 requested a rate of \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)) Where
15 PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the
16 result of self-interest at the expense of other Class Members,” such amounts are generally
17 considered reasonable. (Han Dec., *supra*, at ¶ 57.) (citing *Hopson v. Hanesbrands Inc.* (N.D.
18 Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24; see, e.g.,
19 *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579 (“[T]rial court did not abuse its
20 discretion in approving a settlement which does not allocate any damages to the PAGA
21 claims.”).))

22 Accordingly, taking into consideration Defendants’ defenses, their supporting evidence,
23 and their position that the Class Action is not suitable for class treatment, the settlement amount
24 of \$1,650,000— with an average settlement share estimated at \$1,180.16—is reasonable and fair.

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c. 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 \$6,702,065.15 on the low end and \$7,342,692.35 on the high end. (Han Dec., *supra*, at ¶ 58.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$743,856.75	70%	60%	\$89,262.81
Meal Break Premiums	\$133,920	40%	50%	\$40,176
Overtime/Minimum Wage: Off-the-Clock	\$1,281,254.40 To \$1,921,881.60	60%	50%	\$256,250.88 To \$384,376.32
Overtime/Minimum Wage: Non-Discretionary Safety Payments	\$121,674	30%	40%	\$51,103.08
Waiting Time Penalty	\$2,835,000	50%	50%	\$708,750
Wage Statement Penalty	\$1,430,000	50%	50%	\$357,500
Unreimbursed Business Expenses	\$160,860	30%	70%	\$33,780.60
MAXIMUM TOTAL EXPOSURE	\$6,706,565.15 To \$7,347,192.35⁶			\$1,536,823.37 To \$1,664,948.81⁷

Based on this analysis, the realistic recovery for this case is \$1,536,823.37 on the low end and \$1,664,948.81 on the high end. (Han Dec., *supra*, at ¶ 66.) The Gross Settlement Amount of \$1,650,000 is approximately twenty-two percent (22.45%) of the maximum potential exposure and is approximately ninety-nine percent (99.1%) of the maximum realistic exposure at trial, which is an excellent settlement. (*Ibid.*)

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⁶ Han Dec., *supra*, at ¶¶ 47-52.

⁷ Han Dec., *supra*, at ¶¶ 59-66.

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 1078,
3 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential
4 recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and
5 should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448,
6 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 (“[I]t is
7 the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation
8 that induce consensual settlements. The proposed settlement is not to be judged against a
9 hypothetical or speculative measure of what might have been achieved by the negotiators.”)
10 Nevertheless, this settlement exceeds the realistic exposure Plaintiffs could have prevailed at trial
11 and provide a significant recovery for the Class Members. Thus, there can be no doubt that this
12 settlement is fair and reasonable.

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

14 For settlement purposes only, the requisites for establishing conditional class certification
15 are met. Code of Civil Procedure Section 382 “authorizes class actions ‘when the question is one
16 of a common or general interest, of many persons, or when the parties are numerous, and it is
17 impracticable to bring them all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court*
18 (2004) 34 Cal. 4th 319, 326.) California courts certify class actions where the plaintiff identifies
19 “both [1] an ascertainable class and [2] a well-defined community of interest among class
20 members.” (*Ibid.*)

21 The proposed Class is ascertainable and numerous as to make it impracticable to join all
22 Class Members, and there are common questions of law and fact that predominate over any
23 questions affecting any individual Class Member. (Han Dec., *supra*, at ¶ 67.) Plaintiffs’ claims
24 are typical of the claims of the Class Members, and Class Counsel will fairly and adequately
25 protect the interests of the Class. (*Ibid.*) Also, the prosecution of separate actions by individual
26 Class Members would create the risk of inconsistent or varying adjudications, and a class action
27 is superior to other available means for the fair and efficient adjudication of the case. (*Ibid.*) As
28 discussed below, this case is amenable to class certification. (*Ibid.*)

1 **i. 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 The Class Action involves seven hundred sixty-six (766) Class Members. (Han Dec.,
10 *supra*, at ¶ 68.) This Class is sufficiently numerous. (*Id.* (citing see *Ghazaryan v. Diva*
11 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 (finding that a proposed class of “as
12 many as 190 current and former employees” is sufficiently numerous.) Further, all Class
13 Members can and will be identified by Defendant to the Settlement Administrator through a
14 review of Defendant’s employment records concerning hourly-paid and non-exempt employees
15 employed by Defendant within the State of California during the Class Period. (*Ibid.*)

16 **ii. 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 Drugs,*
20 *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not*
21 *mandate that class members have uniform or identical claims.*” (*Capitol People First v.*
22 *Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).)
23 Rather, courts focus on the Defendant’s internal policies and “pattern and practice . . . in order to
24 assess whether that common behavior toward similarly situated plaintiffs renders class
25 certification appropriate.” (*Id.* (citing *Sav-On Drugs, supra*, 34 Cal.4th at p. 333).) The
26 application of each of these factors is discussed below.

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Plaintiffs assert that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs. (Han Dec., *supra*, at ¶ 69.) All hourly-paid and non-exempt employees who worked for Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures. (*Ibid.*) All of Plaintiffs' claims surround Defendant's common practice and scheme of failing to maintain compliant meal and rest break policies and practices, failing to reimburse business expenses, and failing to fully and properly compensate employees, *inter alia*, for non-compliant rest and meal breaks, off-the-clock work, overtime work, associated wage statement, and waiting time penalties. (*Ibid.*)

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Typical claims rely on legal theories and facts that are substantially similar to other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.) Plaintiffs were non-exempt employees and allege they 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 Dec., *supra*, at ¶ 70.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal

theories as those applicable to the other Class Members. (Han Dec., *supra*, at ¶ 70.)

3. Plaintiffs are Adequate to Represent the Class

Plaintiffs have proven to be an adequate Class Representatives. (Han Dec., *supra*, at ¶ 71.) They have conducted themselves diligently and responsibly in representing the Class in this litigation, understands their fiduciary obligations, and have actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs have spent time in meetings and conferences with counsel to provide counsel with a complete understanding of their work environment and requirements. (*Ibid.*) Furthermore, Plaintiffs do not have any interest that is adverse to the interest of other Class Members. (*Ibid.*) Moreover, the proposed Class Counsel is adequate to represent the Class. (Han Dec., *supra*, at ¶¶ 2-7, Exhibit 1.)

4. Class Action is Superior for the Fair and Efficient

Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Joinder of all members of the proposed class is impractical. Class treatment will permit a large number of similarly-situation persons to prosecute their common claims in a single forum simultaneously for settlement purposes without the necessary duplication of effort and expense that numerous individual actions would engender. Moreover, because a number of the class members are current employees, the fear of retaliation further support superiority of class-wide relief because that fear of retaliation often discourages victims from seeking legal redress while currently employed by the same employer.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm’s-length negotiations; (2) investigation and discovery were 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.* at p. 1802.) As the foregoing analysis shows,

1 all of these elements are present here. Thus, Plaintiffs request that this Court grant their motion
2 for Preliminary Approval.

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

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

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

11 The proposed Notice Packet meets all of these requirements. The proposed Notice
12 Packet advises the Class Members of their right to participate in the Settlement; how and when to
13 object to or request exclusion from the Settlement; and the date, time, and location of the Final
14 Approval hearing. (See Han Dec., *supra*; Exhibit A to Exhibit 2.)

15 **V. CONCLUSION**

16 Plaintiffs respectfully submit that the proposed Settlement is in the best interests of the
17 Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and
18 guidelines, the proposed Settlement should be preliminarily approved by the Court, the Class
19 should be conditionally certified for purposes of settlement only, and the Notice Packet should
20 be approved.

21 Dated: June 16, 2021

JUSTICE LAW CORPORATION

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23 _____

24 Douglas Han
25 Shunt Tatavos-Gharajeh
26 Phillip Song
27 Attorneys for Plaintiff
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On June 16, 21, I served the foregoing document described as

**PLAINTIFFS' 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: **Williams v. National Construction Rentals, Inc.**
LWDA/Court Case No.: **LWDA-CM- 804398-20**
RG20075904
Alameda 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 June 16, 2021, at Pasadena, California.



Allana Rivera