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IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF RIVERSIDE, HISTORIC COURTHOUSE

JOSUE ARANA, an individual, and NICHOLAS
BORJON, an individual on behalf of all others
similarly situated,

Plaintiffs,

vs.

STATEWIDE TOWING AND RECOVERY,
INC., a California Corporation, CHRISTOPHER
O. KIRK, an individual, and DOES 1 through 20
inclusive,

Defendants.

Case No. CVRI2000629

Assigned to Hon. Angel Bermudez in Dept. 1

**CLASS ACTION AND
REPRESENTATIVE ACTION**

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT;
MEMORANDUM OF POINTS &
AUTHORITIES; DECLARATION OF
YESENIA L. RODRIGUEZ;
DECLARATION OF JOSUE ARANA;
DECLARATION OF NICHOLAS BORJON**

Date: December 19, 2023

Time: 8:30 a.m.

Dept.: 1

[Reservation ID: 197170367161]

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on December 19, 2023 at 8:30 a.m. in Department 1 of the
Riverside County Superior Court, Historic Courthouse, located at 4050 Main Street Riverside,
California 92501, Plaintiffs Josue Arana and Nicholas Borjon, on behalf of themselves and all others
similarly situated (collectively, "Plaintiffs"), will and hereby do move for an order of preliminary

1 approval of the proposed class action and PAGA settlement between Plaintiffs and Defendants
2 Statewide Towing and Recovery Inc. and Christopher Kirk in this action.

3 Plaintiffs specifically request that the Court determine that the proposed settlement is fair,
4 reasonable, and adequate, and enter the following orders:

- 5 1. Grant preliminary approval of the proposed settlement;
- 6 2. Conditionally certify the following class for settlement purposes only: all current and
7 former persons employed by Defendants in California as non-exempt employees at any time during
8 the Class Period who have not entered into an individual settlement agreement with Defendants. The
9 Class Period is from December 20, 2016, to the date of Preliminary Approval of the settlement by the
10 Court.
- 11 3. Appoint Plaintiffs as Class Representatives;
- 12 4. Appoint Pimentel Law, P.C. as Class Counsel;
- 13 5. Approve of Phoenix Class Action Solutions (“Phoenix”) as the Settlement Administrator;
- 14 6. Approve the Proposed Notice of Class Action Settlement (“Class Notice”); Establish a
15 schedule for the dissemination of the Class Notice to Class Members as well as deadlines for Class
16 Members to act; and
- 17 8. Schedule a hearing on the motion for final approval of class action settlement and motion
18 for attorneys’ fees, costs, and service payments.

19 This motion is made pursuant to CIV. PROC. CODE § 382 and CAL. R. 3.769. This motion is
20 based on this notice of motion, the accompanying memorandum of points and authorities,
21 declarations filed in support thereof, the pleadings and other papers on file in this case, and such oral
22 and documentary evidence as may be presented at the hearing on the motion.

23 **PIMENTEL LAW, P.C.**

24 Dated: November 17, 2023

By: _____

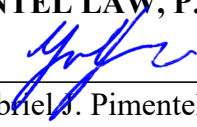

Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez
Attorneys for Plaintiffs and putative class

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1 **MEMORANDUM OF POINTS & AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs respectfully request preliminary approval of the proposed settlement in this class and
4 representative action totaling \$1,100,000.00. If approved, the proposed settlement will provide
5 monetary payments to all current and former persons employed by Defendants in California as non-
6 exempt employees at any time during the Class Period who have not entered into an individual
7 settlement agreement with Defendants. The proposed class is estimated to consist of 84 individuals.
8 The proposed Settlement will resolve the individual, class, collective, and representative claims of
9 Plaintiffs and participating Class Members against Defendant for violations of California's Labor
10 Code and Wage Orders that were alleged or could have been alleged based on the same facts as those
11 in the First Amended Complaint (FAC): (1) failure to indemnify for business expenditures (LAB.
12 CODE § 2802), (2) failure to pay minimum wages (LAB. CODE §§ 1182.12, 1194, 1197, 1197.1 1198),
13 (3) failure to pay overtime (LAB. CODE §§ 510, 1198), (4) failure to furnish accurate wage statements
14 (LAB. CODE §§ 226, 1174, 1198), (5) failure to provide meal periods (LAB. CODE §§ 226.7, 512, 1198),
15 (6) failure to provide rest periods (LAB. CODE §§ 226.7, 1198), (7) failure to pay wages (LAB. CODE §
16 204), (8) waiting time penalties (LAB. CODE §§ 201-203), (9) civil penalties under the Private Attorney
17 General Act (PAGA) (LAB. CODE §§ 2698, *et seq.*), and (10) unfair competition under the Unfair
18 Competition Law (UCL) (BUS. & PROF. CODE §§ 17200, *et seq.*).

19 In consideration of this settlement, Defendants have agreed to pay a total of \$1,100,000. This
20 is not a claims-made or reversionary settlement, so Class Members are not required to opt-in, and no
21 portion of the settlement will revert to Defendants. The Settlement is the product of arms-length
22 negotiations and was reached after multiple mediations and diligent investigation and discovery,
23 including a thorough review of Defendants' employment policies, its employment and personnel
24 records and interviews with Class Members. The settlement is supported by experienced counsel who
25 carefully considered the strength and weaknesses of the claims, as well as the expense, complexity,
26 and risks associated with continued litigation. The settlement should be preliminarily approved as it
27 satisfies all criteria for approval and will provide a significant monetary recovery to Class Members
28 in light of the risks of obtaining and maintaining class certification and proving liability and damages

1 at trial. Lastly, the Class should be conditionally certified for settlement purposes because all factors
2 for certification are met.

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

4 **A. Procedural History**

5 On December 16, 2020, Plaintiff Josue Arana filed a Complaint against Defendants in the
6 Superior Court of the State of California, County of Riverside. Plaintiff Arana asserted that Defendants
7 committed the following violations of the California Labor Code:

- 8 1) Labor Code § 2802 (failure to reimburse expenses);
- 9 2) Labor Code §§ 510 and 1198 (failure to pay overtime);
- 10 3) Labor Code §§ 226, 1174(d), and 1198 (failure to furnish accurate itemized wage
11 statements);
- 12 4) Labor Code §§ 226.7, 512(a), and 1198 (failure to provide meal periods);
- 13 5) Labor Code §§ 226.7, 1198 (failure to provide rest periods);
- 14 6) Labor Code § 204 (failure to timely pay wages);
- 15 7) Labor Code §§ 201-203 (willful failure to pay wages);
- 16 8) Labor Code §§ 2698 et seq. (civil penalties); and
- 17 9) Bus. & Prof. § 17200 (unfair competition). (Declaration of Yesenia Rodriguez, ¶ 6,
18 (“Rodriguez Decl.”))

19 On February 15, 2022, Plaintiffs Josue Arana and Nicholas Borjon filed a FAC which alleged
20 the same cause of action in the Complaint but added Nicholas Borjon as an additional named Plaintiff.
21 The FAC is the operative complaint in this action. (Rodriguez Decl., at ¶ 7)

22 On October 18, 2021, the Parties participated in an all-day mediation presided over by Hon.
23 Carl West (Ret.), a respected mediator of wage and hour representative and class actions. During the
24 mediation, each party was represented by its respective counsel but were unable to settle the matter.
25 (Rodriguez Decl., at ¶ 8)

26 On May 8, 2023, the Parties participated in a second all-day mediation presided over by
27 experienced wage-and-hour mediator, Hon. Steven Denton (retired), but were unable to resolve this
28 action at that time. (Rodriguez Decl., at ¶ 9)

1 On June 30, 2023, Plaintiffs filed their Motion for Class Certification and Defendants filed
2 their Opposition on July 28, 2023. The hearing on the Motion for Class Certification was continued
3 from August 10, 2023 to August 30, 2023 on the Court's own motion. Prior to the hearing date, the
4 Parties continued their settlement efforts and agreed to settle the matter on or around August 17, 2023.
5 (Rodriguez Decl., at ¶ 10)

6 **B. Investigation and Discovery**

7 Plaintiffs' counsel conducted a thorough investigation into the merits of Plaintiffs' claims and
8 the applicable law. (Rodriguez Decl. at ¶ 11.) Prior to filing suit, Plaintiffs' counsel met, on numerous
9 occasions, with the Plaintiff and requested and reviewed Plaintiff's respective employment records.
10 Rodriguez Decl. at ¶ 11). Plaintiffs' counsel performed extensive legal research with respect to the
11 merits and legal basis of the claims asserted by Plaintiffs and the defenses raised by Defendant.
12 Rodriguez Decl., at ¶ 11.) Prior to the first mediation, Plaintiff obtained a sample of Class documents
13 and information, including but not limited to relevant policies, procedures, and practices, time records
14 and wage statements for putative class members and data demonstrating the class size, hours worked,
15 workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the
16 Class. Rodriguez Decl., at ¶ 12) Plaintiffs propounded formal written discovery upon Defendant,
17 which resulted in the production of various documents related to the action, such as policy documents,
18 employee handbooks, communications, and Plaintiffs' time and payroll records. (Rodriguez Decl., at
19 ¶ 13.) In addition to written discovery, Plaintiffs also deposed five persons most knowledgeable on a
20 variety of topics relevant to Plaintiffs' claims.

21 Plaintiffs' counsel spent significant time and efforts reviewing Defendant's document
22 production to determine, among other things, the legality of Defendants' written policies and the
23 violation rates for each of the respective claims. (Rodriguez Decl., at ¶ 14.) This included review of
24 over 7,000 pages of relevant documents. (Rodriguez Decl., at ¶ 14.) Plaintiffs' counsel also reviewed
25 and analyzed Defendant's payroll and timekeeping data, which permitted counsel to prepare a liability
26 analysis and identify Defendant's potential exposure should Plaintiffs succeed on the asserted claims
27 at trial. (Rodriguez Decl., at ¶ 14.) Plaintiffs' counsel hired an expert to outline a detailed analysis of
28 Defendants' alleged liability and exposure. (Rodriguez Decl., at ¶ 15.)

1 Lastly, due to the size of Plaintiffs’ demand and the Defendants’ alleged financial issues,
2 Defendant produced financial records to demonstrate the financial constraints which were factored
3 into the resolution of the matter. The financial disclosures were made subject to a protective order.
4 (Rodriguez Decl., at ¶ 16.) The financial documents were produced directly to a forensic accounting
5 expert. (Rodriguez Decl., at ¶ 16.) Plaintiffs’ financial expert analyzed Defendants’ financial records
6 and produced a report for Plaintiffs’ consideration. Plaintiffs’ relied on their expert’s findings when
7 engaging in settlement efforts. (Rodriguez Decl., at ¶ 16.)

8 The documents, information, and data obtained from Defendants was more than sufficient to
9 analyze the Labor Code violations alleged by Plaintiffs and to make an informed decision about the
10 resolution of this case. (Rodriguez Decl., at ¶ 17.)

11 **III. THE SETTLEMENT TERMS AND CONDITIONS**

12 **A. Settlement Class**

13 “Class” is defined as all current and former persons employed by Defendants in California as
14 non-exempt employees at any time during the Class Period who have not entered into an individual
15 settlement agreement with Defendants. The Class Period is from December 20, 2016, to the date of
16 Preliminary Approval of the settlement by the Court. (Rodriguez Decl., at ¶¶ 3, 18.)

17 “PAGA Employees” are defined as all current and former persons employed by Defendants
18 in California as non-exempt employees at any time from August 27, 2019 to the date of Preliminary
19 Approval. (Rodriguez Decl., at ¶¶ 3, 19.)

20 **B. Settlement Terms**

21 Defendants have agreed to pay a “Gross Settlement Amount” of \$1,100,000.00, of which none
22 will revert to Defendants. (Rodriguez Decl., at ¶¶ 3, 20.) The settlement amount will be paid in two
23 installments and will be used to pay individual class payments, individual PAGA payments, the
24 LWDA PAGA payment, Class counsel fees, Class counsel expenses, Class representative service
25 payments, and the Administrator’s expenses. (Rodriguez Decl., ¶¶ 3, 20.) Participating Class
26 Members need not submit a claim form or do anything else to receive a settlement payment.
27 (Rodriguez Decl., at ¶¶ 3, 21.)

28 Not later than 15 calendar days after the Court grants Preliminary Approval of the Settlement,

1 Defendants will deliver the Class Data to the Administrator. (Rodriguez Decl., at ¶¶ 3, 22.)
2 Defendants will fund the first installment of \$900,000.00 within 30 days of the Effective Date and
3 the second installment will be funded 90 calendar days after the Effective Date. (Rodriguez Decl., at
4 ¶¶3, 23.) The Administrator will mail checks to each Participating Class Member and PAGA
5 Employee within 14 days after the first installment. (Rodriguez Decl., at ¶¶ 3, 23.) 20% of each
6 Participating Class Member's Individual Class Payment will be allocated to settlement of wage
7 claims, which will be subject to tax withholdings and reported on a IRS W-2 Form. (Rodriguez Decl.,
8 ¶¶ 3, 24.) 80% of each Participating Class Member's Individual Class Payment will be allocated to
9 settlement of claims for interest and penalties, which will not be subject to wage withholdings and
10 will be reported on IRS 1099 Form. (Rodriguez Decl., at ¶¶ 3, 24.) The employer's payroll taxes will
11 be paid separately by Defendant and will not be deducted from the Gross Settlement Amount. *Id.*

12 **C. Settlement Payments**

13 "Net Settlement Amount" means the Gross Settlement Amount less the Court-approved
14 amounts for the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative
15 Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and
16 the Settlement Administration Expenses. The remainder is to be paid to Participating Class Members
17 as Individual Class Payments. The Net Settlement Amount is estimated to be \$592,500, which will
18 be distributed amongst 84 Class Members. (Rodriguez Decl., at ¶¶ 3, 25.)

19 The "PAGA Payment" totals \$35,000 to be paid from the Gross Settlement Amount, with
20 \$26,250.00 being allocated as the LWDA PAGA Payment (75%) and \$8,750.00 (25%) being
21 allocated as the Individual PAGA Payments. (Rodriguez Decl., at ¶¶ 3, 27.)

22 The Settlement share allocated to each Participating Class Member will differ depending on
23 the Class Member's job title. The Settlement will be distributed amongst "Non-Driver Class
24 Members" and "Driver Class Members". (Rodriguez Decl., at ¶¶ 3, 29.) "Non-Driver Class Member"
25 is defined as any Class Member that worked for Defendants in a position other than mechanic or
26 intrastate tow-truck driver, while "Driver Class Member" is defined as Class Members that worked
27 for Defendants as mechanics or intrastate tow-truck drivers and did not enter into an individual
28 settlement agreement with Defendants. (Rodriguez Decl., at ¶¶ 3, 30.) Each Participating Non-Driver

1 Class Member settlement share will be calculated by dividing \$25,000 by the total number of
2 Workweeks worked by all Non-Driver Class Members during the Class Period, then, multiplying the
3 result by each Participating Non-Driver Class Members' Workweeks. (Rodriguez Decl., at ¶¶ 3, 31.)
4 Each Participating Driver Class Member's settlement share will be calculated by dividing the Net
5 Settlement Amount (\$592,500) minus \$25,000 paid to Non-Driver Class Members (\$567,500) by the
6 total number of Workweeks worked by all Participating Driver Class Members during the Class
7 Period, then, multiplying the result by each Participating Driver Class Member's Workweeks.
8 (Rodriguez Decl., at ¶¶ 3, 32.)

9 "Administration Expenses Payment" means the amount the Administrator will be paid from
10 the Gross Settlement Amount to reimburse its reasonable fees and expenses in connection with
11 approval of the settlement. The Administration Expenses Payment shall not exceed \$7,500.
12 (Rodriguez Decl., at ¶¶ 3, 33.) The Parties have selected Phoenix to serve as the Settlement
13 Administrator. *Id.*

14 "Class Representative Service Payment" means payment to Class Representative Josue
15 Arana in the amount of \$20,000.00 and Class Representative Nicholas Borjon in the amount of
16 \$10,000.00 for initiating the Action, performing the work in support of the Action, undertaking the
17 risk of liability for Defendant's expenses in the event Plaintiffs were unsuccessful in the prosecution
18 of the Action, and for the general release of all claims by the Plaintiffs. (Rodriguez Decl., at ¶¶ 3,
19 34.) Thus, Plaintiffs are seeking a combined total of \$30,000 in Class Representative Service
20 Payments. *Id.*

21 "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment" mean the
22 amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and expenses,
23 respectively, incurred to prosecute the Action, as approved by the Court. (Rodriguez Decl., at ¶¶ 3,
24 34.) Class Counsel will request that the Court approve an award of attorneys' fees not to exceed
25 thirty-five percent (35%) of the Gross Settlement Amount (\$385,000.00 of \$1,100,000.00), plus costs
26 and expenses not to exceed \$50,000. (Rodriguez Decl., at ¶¶ 3, 34.)

27 **D. Uncashed Checks**

28 For any Class Member whose Individual Class Payment check or Individual PAGA
Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the

1
2 funds represented by such checks to the California Controller's Unclaimed Property Fund in the name
3 of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California
4 Code of Civil Procedure Section 384. (Rodriguez Decl., at ¶¶ 3, 36.)

5 **E. The Release of Claims**

6 All Participating Class Members release all claims that were alleged, or reasonably could have
7 been alleged, based on the Class Period facts stated in the Operative Complaint. Participating Class
8 Members do not release any other claims, including claims for vested benefits, wrongful termination,
9 violation of the Fair Employment and Housing Act, unemployment insurance, disability, social
10 security workers' compensation, or claims based on facts occurring outside the Class Period.
11 (Rodriguez Decl., at ¶¶ 3, 38.) The Class Representatives release all claims that were, or reasonably
12 could have been, alleged, based on the facts contained, in the Operative Complaint and all PAGA
13 claims that were, or reasonably could have been, alleged based on facts contained in the Operative
14 Complaint. (Rodriguez Decl., at ¶¶ 3, 38.)

15 **IV. LEGAL STANDARDS**

16 **A. Class Certification**

17 Provisional certification is appropriate at the preliminary approval stage where, as here, the
18 Court has not yet certified the class and the requirements for certification are met. *Newberg on Class*
19 *Actions* (5th Ed. 2011-2017) §§ 13:16-13:18; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 17941,
20 806; *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 809-811.) It is well established in California
21 that the proponent of class certification must demonstrate: (1) a well-defined community of interest;
22 (2) the existence of an ascertainable class; and (3) that class certification is the superior alternative.
23 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021. At the certification stage,
24 the question is whether the action is suitable for class-wide resolution, not whether the action is legally
25 or factually meritorious. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-440.

26 **B. Approval of Settlements**

27 **i. Approval of Class Action Settlement**

28 California courts favor settlement, particularly in class actions and other complex actions

1 where substantial resources may be conserved by avoiding the time, costs, and rigors of protracted
2 formal litigation. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th
3 1135, 1151.) Rule 3.769(a) of the California Rules of Court provides that the Court must review and
4 approve any settlement of class litigation. (See also *Dunk, supra*, 48 Cal.App.4th at p. 1800.) Court
5 approval of a class action settlement is a two-step process, including a preliminary review by the
6 court and a subsequent final review and approval by the court after notice has been distributed to the
7 class members for their comment or objections. (Cal. R. Court, R. 3.769(c)-(f); see also *Manual for*
8 *Complex Litigation* (4th Ed. 2004) Federal Judicial Center § 21.632.) In the event the court has not
9 yet certified the action as a class action when settlement is reached, the court must certify the class
10 according to the standards set out in Code of Civil Procedure § 382, in addition to ordering the
11 settlement notice to be distributed. (Cal. R. Court, R. 3.769(d).)

12 Courts have broad discretion to approve a proposed settlement. *Wershba v. Apple Computer,*
13 *Inc.* (2001) 91 Cal.App.4th 224, 234-235. At the preliminary approval stage, the court’s review is
14 generally “limited to the extent necessary to reach a reasoned judgment that the agreement is not the
15 product of fraud or overreaching by, or collusion between, the negotiating parties, and that the
16 settlement, taken as a whole, is fair, reasonable, and adequate to all concerned.” *Officers for Justice*
17 *v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 625. “The strength of the findings made by a
18 judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary.
19 The court may find that the settlement proposal contains some merit, is within the range of
20 reasonableness required for a settlement offer or is presumptively valid subject only to objections that
21 may be raised at a final hearing.” (4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*,
22 (4th Ed. 2009) § 11.26.) Where a class action settlement is determined to be within the “range of
23 reasonableness,” the court should grant preliminary approval. *Hernandez v. Vitamin Shoppe Indus.,*
24 *Inc.* (2009) 174 Cal.App.4th 1441, 1446.)

25 **ii. Approval of PAGA Settlement**

26 Pursuant to Labor Code § 2699(l)(2), a settlement of a civil action brought under the PAGA
27 statute must be submitted to the LWDA and must be approved by the court. Where a settlement
28 purports to resolve both class and PAGA claims, courts must examine the settlement as a whole and
the amount allocated to PAGA, including the amount distributed to the LWDA. *O’Connor v. Uber*

1 *Techs, Inc.* (2016) 201 F.Supp.3d 1110, 1134-1135. Accordingly, the PAGA settlement must be fair,
2 adequate and reasonable. *Id.*

3 **V. PROVISIONAL CERTIFICATION IS APPROPRIATE**

4 **A. The Class Should be Certified for Purposes of Settlement**

5 Pursuant to California Rules of Court, rule 3.769(d), the Court is permitted at the preliminary
6 approval stage to make an order approving certification of a provisional settlement class. The standard
7 of scrutiny applied by a court to determine the propriety of certifying a settlement class is a lesser
8 standard than that applied to a litigation class, since the case management concerns inherent in
9 determining if a litigation class should be certified need not be addressed with respect to a settlement
10 class where trial is not anticipated. *Dunk, supra*, 48 Cal.App.4th at p. 1807, n. 19; see also *Officers*
11 *for Justice, supra*, 688 F.2d at p. 633 “[C]ertification issues raised by class action litigation that is
12 resolved short of a decision on the merits must be viewed in a different light.”.) Additionally, the
13 court’s fairness review adequately protects the absent class members. For the reasons discussed
14 below, and for settlement purposes only, Plaintiffs request that this Court provisionally certify the
15 Settlement Class pursuant to Code of Civil Procedure § 382.

16 **i. There is a Well-Defined Community of Interest**

17 A community of interest is established by the preponderance of common issues of law and
18 fact. “The community of interest requirement involves three factors: (1) predominant common
19 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3)
20 class representatives who can adequately represent the class.” *Linder, supra*, 23 Cal.4th 429 at p. 435

21 **a. Common Issues of Law and Fact Predominate**

22 “The predominance requirement presents an ‘ultimate question’ of whether ‘the issues which
23 may be jointly tried, when compared with those requiring separate adjudication, are so numerous or
24 substantial that the maintenance of a class action would be advantageous to the judicial process and
25 to the litigants.’” *Brinker Restaurant Corp. v. Sup. Ct.*, 53 Cal.4th 1004, 1021 (2012). Here, the
26 common question, from which most liability flows, is whether the time spent by tow truck drivers
27 and mechanics during their on-call shifts is compensable under California law. Based on that common
28 question, Defendants liability extends to payment of overtime, wait-time penalties and failure to

1 timely pay penalties. Additionally, common questions of fact predominate to all class members
2 regarding their wage statement, meal period, rest period, failure to reimburse, and unfair competition
3 claims. Class members' claims would be adjudicated using Defendants' practices and policies, which
4 applied uniformly to all class members. Thus, common issues of law and fact predominate.

5 **b. Plaintiffs' Claims are Typical of the Claims of the Class**

6 "It has never been the law in California that the class representative must
7 have *identical* interests with the class members. The only requirements are that common questions of
8 law and fact *predominate* and that the class representative be *similarly* situated." *B.W.I. Custom*
9 *Kitchen v. Owens-Illinois, Inc.*, 191 Cal.App.3d 1341, 1347 (1987). "A class action is not
10 inappropriate simply because each member of the class may at some point be required to make an
11 individual showing as to his or her eligibility for recovery or as to the amount of his or her
12 damages." *Classen v. Weller*, 145 Cal.App.3d 27, 46 (1983). Here, Plaintiffs' claims are typical of
13 the Class because they were employed by Defendants in California as mechanic or tow-truck driver
14 and were subject to the same policies and procedures applicable to the Class during the Class Period.
15 (Rodriguez Decl., at ¶ 39).

16 **c. The Adequacy Requirement is Met**

17 "Adequacy of representation depends on whether the plaintiff's attorney is qualified to
18 conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the
19 class." *McGhee v. Bank of America*, 60 Cal.App.3d 442, 450 (1976). There is no indication that
20 Plaintiff's counsel is unqualified to represent the Class or lacking in ability. Further, counsel is
21 experienced in litigating representative wage actions. (Rodriguez Decl., at ¶ 40). Also, Plaintiffs'
22 claims are typical of the Class. As such, there are no apparent interests which would be antagonistic
23 to those of the Class. *Id.* Indeed, Plaintiffs have worked closely with Class Counsel and assisted at
24 every stage, provided relevant documents and information, and remained actively involved
25 throughout the litigation. (Rodriguez Decl., at ¶ 41). Class Counsel thoroughly investigated the claims
26 raised in this action, the underlying case law, Defendants' defenses, and meticulously reviewed the
27 information and documents exchanged, formally and informally, prior to attending mediation.
28 (Rodriguez Decl., at ¶ 42). Thus, Plaintiffs and Class Counsel have and will continue to adequately

1 represent the interest of the Settlement Class.

2 **ii. There is an Ascertainable and Sufficiently Numerous Class**

3 “Class members are ‘ascertainable’ where they may be readily identified without
4 unreasonable expense or time by reference to official records.” *Rose v. City of Hayward*, 126
5 Cal.App.3d 926, 932 (1981). “No set number is required as a matter of law for the maintenance of a
6 class action. Thus, our Supreme Court has upheld a class representing the 10 beneficiaries of a trust
7 in an action for removal of the trustees. Similarly, in *Hebbard*, a class action on behalf of a minimum
8 of 28 beneficiaries of a trust alleging improper conduct by trustees was not inappropriate on the theory
9 that the class was too small.” *Rose*, 126 Cal.App.3d at 934. The proposed Class consists of
10 approximately 84 members. (Rodriguez Decl., at ¶ 25). Under *Rose*, this satisfies the numerosity
11 requirement. The class is also ascertainable as they can all be identified by reference to Defendants
12 employment records. (Rodriguez Decl., at ¶ 43). Additionally, Defendants will be able to provide
13 Class Members full names, last known mailing address, social security number, job title, and the
14 number of workweeks employed during the Class and PAGA period. (Rodriguez Decl., at ¶ 43).

15 **VI. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

16 **A. Legal Standard for Granting Preliminary Approval of Class Settlement**

17 In granting preliminary approval of a class settlement, the court considers whether the
18 agreement, “taken as a whole, is fair, reasonable and adequate to all concerned.” *Wershba v. Apple*
19 *Computer Inc.*, 91 Cal.App.4th 224, 244-45 (2001). “The trial court possesses a broad discretion to
20 determine the fairness of the settlement, a discretion exercised through the application of a handful of
21 identified criteria. Both the federal circuit courts and our Court of Appeal have adopted a mix of
22 relevant considerations, including [1] the strength of plaintiffs’ case; [2] the risk, expense, complexity
23 and likely duration of further litigation; [3] the risk of maintaining class action status through trial;
24 [4] the amount offered in settlement; [5] the extent of discovery completed and the stage of the
25 proceedings; [6] the experience and views of counsel and [7] the reaction of the class members to the
26 proposed settlement. The list of factors is not exhaustive and should be tailored to each case. [Thus],
27 a presumption of fairness exists where: (1) the settlement is reached through arm’s-length bargaining;
28 (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3)

counsel is experienced in similar litigation; and (4) the percentage of objectors is small.” *7-Eleven Owners For Fair Franchising v. Southland Corp.*, 85 Cal.App.4th 1135, 1146 (2000).

i. The Settlement is a Product of Arm-Length and Informed Negotiations

“What transpires in settlement negotiations is highly relevant to the assessment of a proposed settlement's fairness.” *State of California v. Levi Strauss Co.*, 41 Cal.3d 460, 482 (1986). “The court undoubtedly should give considerable weight to the competency and integrity of counsel and the involvement of a neutral mediator in assuring itself that a settlement agreement represents an arm’s-length transaction entered without self-dealing or other potential misconduct. An agreement reached under these circumstances presumably will be fair to all concerned, particularly when few of the affected class members express objections” *Clark v. American Residential Services LLC*, 175 Cal.App.4th 785, 800 (2009).

Here, the settlement is the product of adversarial, arm’s-length negotiations. (Rodriguez Decl., at ¶ 44). Indeed, Plaintiffs’ counsel did not discuss settlement until after receipt of information and documents necessary to conduct an informed evaluation of the case. (Rodriguez Decl., at ¶ 44. It was only after receipt of informal discovery and investigation that Plaintiffs finally engaged in mediation. (Rodriguez Decl., at ¶ 44). Further, the parties’ negotiations were informed. Indeed, all settlement negotiations were facilitated by qualified wage and hour mediators, which include Hon. Carl West and Hon. Steven Denton, who are both retired Superior Court judges. Also, Plaintiff’s counsel, who specializes in the area of representative wage and hour actions, considered the legal authorities relevant to this case and was in possession of all information necessary to understand the relative strengths and weaknesses of Plaintiff’s claims. *Id.* It was only after such investigation, discovery, preparation and negotiations that a compromise of this action was obtained. *Id.* Based on the foregoing, the settlement was a product of an informed and adversarial arm’s-length negotiation.

ii. The Settlement is a Product of Informed Investigation and Discovery

“That no class action can be settled until the last particle of discovery has been completed and analyzed is not the law. In the context of class action settlements, formal discovery is not a necessary

1 ticket to the bargaining table where the parties had sufficient information to make an informed
2 decision about settlement.” *7-Eleven Owners For Fair Franchising.*, 85 Cal.App.4th at 1150.

3 Plaintiffs’ counsel conducted sufficient research, investigation, analysis and discovery on the
4 core issues in this case, which ultimately resulted in receipt of written employment policies, Plaintiffs’
5 employment records, time records and wage statements for all putative class members. Plaintiffs’
6 counsel reviewed over 7,000 pages of relevant documents, which allowed Plaintiffs’ counsel to
7 evaluate the merits of Plaintiffs’ claims. (Rodriguez Decl. at ¶ 45). Additionally, Plaintiffs’ counsel
8 evaluated data demonstrating the class size, hours worked, workweeks (pay periods), hourly-rates,
9 and total compensation of non-exempt employees in the Class. (Rodriguez Decl., at ¶ 46.) Plaintiffs
10 propounded formal written discovery on Defendant, which resulted in the production of various
11 documents related to the action, such as policy documents, employee handbooks, and Plaintiffs’ time
12 and payroll records. (Rodriguez Decl., at ¶ 47.) In addition to written discovery, Plaintiffs also
13 deposed five persons most knowledgeable on a variety of topics relevant to Plaintiffs’ claims.

14 Plaintiffs’ counsel also prepared a liability analysis and identified Defendant’s potential
15 exposure should Plaintiffs succeed on the asserted claims at trial. (Rodriguez Decl., at ¶ 48). Lastly,
16 Plaintiffs’ counsel conducted interviews with Plaintiffs as well as several formal employees of
17 Statewide Towing, which provided valuable insight into the nature of Defendants’ day-to-day
18 operations. (Rodriguez Decl., at ¶ 48.)

19 **iii. Class Counsel is Sufficiently Experienced to Support Preliminary**
20 **Approval**

21 Throughout this litigation, Class Members have been represented by well-qualified counsel
22 who have years of experience in wage and hour class action litigation. (Rodriguez Decl., at ¶ 49.)
23 Plaintiffs’ counsel relied on their extensive experience when negotiating the Settlement. (Rodriguez
24 Decl., at ¶ 49.) Plaintiffs’ counsel has litigated dozens of representative wage and hours cases,
25 including class actions. (Rodriguez Decl., at ¶ 49.) Further, Plaintiffs’ counsel is a member of various
26 consumer advocate organizations, including the Consumer Attorneys Association of Los Angeles
27 (CAALA) and California Employment Lawyers Association (CELA). (Rodriguez Decl., at ¶ 50.)
28 Plaintiffs’ counsel regularly attend conferences, seminars and conventions offered by Plaintiff

1 attorneys organizations and stays informed on new developments in employment law through various
2 law publications. *Id.* Class Counsel is sufficiently experienced, qualified and familiar with the
3 applicable law to make an informed judgment on the fairness of the settlement. As such, the settlement
4 is fair, adequate and reasonable, taking into account all relevant factors.

5 **B. The Settlement Provides Substantial Monetary Relief to the Class in Light of the**
6 **Risk and Expense of Further Litigation**

7 **i. The Settlement Is Within the Range of Reasonableness**

8 The reasonableness is determined with an “understanding of the amount that is in controversy
9 and the realistic range of outcomes of the litigation.” *Kullar v. Foot Locker Retail*, 168 Cal.App.4th
10 116, 120 (2008). A settlement is fair if the “consideration being paid for the release of those claims
11 represents a reasonable compromise.” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal.App.4th 399,
12 408 (2010). “Neither the trial court nor this court is to reach any ultimate conclusions on the contested
13 issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome
14 in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements.
15 In other words, the settlement or fairness hearing is not to be turned into a trial or rehearsal for trial
16 on the merits.” *7-Eleven Owners For Fair Franchising*, 85 Cal.App.4th at 1145. “We emphasize that
17 the merits of the underlying class claims are not a basis for upsetting the settlement of a class action.
18 The proposed settlement is not to be judged against a hypothetical or speculative measure of what
19 might have been achieved had plaintiffs prevailed at trial.” *Wershba*, 91 Cal.App.4th at 246.

20 “The court must stop short of the detailed and thorough investigation that it would undertake
21 if it were actually trying the case.” *Clark*, 175 Cal.App.4th at 799. “A settlement need not obtain 100
22 percent of the damages sought in order to be fair and reasonable. (See *Rebney v. Wells Fargo Bank*,
23 *supra*, 220 Cal.App.3d at p. 1139 [settlements found to be fair and reasonable even though monetary
24 relief provided was ‘relatively paltry’]; *City of Detroit v. Grinnell Corp.*, *supra*, 495 F.2d at p.
25 455 [settlement amounted to only ‘a fraction of the potential recovery’].) Compromise is inherent and
26 necessary in the settlement process. Thus, even if the relief afforded by the proposed settlement is
27 substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a
28 class settlement because the public interest may indeed be served by a voluntary settlement in which

1 each side gives ground in the interest of avoiding litigation.” *Wershba*, 91 Cal.App.4th at 250.

2 (1) *Failure to Indemnify Claim:*

3 Plaintiffs allege that Defendants failed to reimburse class members for necessary business
4 expenses. Class members were required to supply their own hand tools, which were necessary to
5 perform their jobs but were not reimbursed for the purchase of those hand tools. Declaration of Josue
6 Arana (“Arana Decl.”), ¶ 19.; Declaration of Nicholas Borjon (“Borjon Decl.”) ¶ 21. Plaintiff Arana’s
7 individual claim for reimbursement of “hand tools and equipment,” as defined by the DLSE Manual,
8 totaled \$3,300. Arana Decl. ¶ 20. Plaintiff Borjon’s individual claim for reimbursement of “hand
9 tools and equipment” totaled \$800. Borjon Decl. ¶ 22. These figures represent the total amount that
10 Plaintiffs contend would be necessary for any Statewide Towing employee performing mechanic and
11 tow truck driving duties to perform their positions. *Id.* Thus, assuming the average amount
12 recoverable for the Driver Class Members, which includes tow-truck drivers and mechanics, is
13 \$2,050, the maximum value of this claim would be \$79,950. (Rodriguez Decl., at ¶ 51.) This amount
14 was calculated by combining the individual claims for reimbursement of both Plaintiffs, which
15 resulted in an average of \$2,050 for a tool reimbursement claim. That amount (\$2,050) was then
16 multiplied by the number of class members that were either tow-truck drivers and mechanics during
17 the class period (39 driver class members), totaling \$79,950. (Rodriguez Decl., at ¶ 51.)

18 Defendants deny that class members are owed any reimbursement of business expenses and
19 maintain that tools were provided to mechanics and tow-truck drivers. Based on interviews and
20 depositions of Statewide Towing employees, there was a consensus that Defendant did supply *some*
21 of the tools necessary to perform the mechanic and tow truck driver positions (Rodriguez Decl., at ¶
22 51.) Defendants also contend that any tools purchased by Class Members prior to their employment
23 at Statewide would not have been recoverable as those tools were not purchased at the direction of
24 the employer nor in direct consequence of their job duties at Statewide as required by Labor Code §
25 2802. (Rodriguez Decl., at ¶ 51.) Thus, the \$79,950 maximum amount recoverable under this claim
26 was challenged and subject to reduction by those amounts that were incurred prior to the Class
27 Members’ employment at Statewide. Plaintiffs believe the amount the Class could reasonably expect
28 to be awarded at trial on this claim is \$79,950. *Id.* Plaintiffs believe this amount would have been
recovered because every single mechanic and tow truck driver that would have testified would have

1 confirmed that no hand tools were provided by Defendants. As such, Plaintiffs believe that the
2 overwhelming weight of their testimony would not have been overcome by Statewide Towing's
3 defenses.

4 (2) *Failure to Pay Overtime Claim:*

5 Plaintiffs allege that they were not compensated for hours spent on-call. Thus, assuming the
6 on-call time worked by tow truck drivers and mechanics is compensable, Defendants failed to
7 compensate them fully for overtime hours worked. As a tow truck driver, Plaintiff Borjon worked
8 about 96 overtime hours when factoring the on-call time where he was waiting to be dispatched.
9 ("Borjon Decl.") ¶ 16. Similarly, Plaintiff Arana did not receive additional compensation for hours
10 spent on-call, which is estimated to be 38 unpaid overtime hours. Arana Decl. ¶ 14. Thus, taking the
11 average rate of pay for tow-truck drivers and mechanics of \$25 per hour and the average overtime
12 rate of \$37.50, the recoverable overtime hours for tow-truck drivers is \$3,600 per work week and
13 \$1,425 per work week for mechanics. As such, the maximum value of this claim for Driver Class
14 Members would be \$3,675,787.50. (Rodriguez Decl., at ¶ 52.) This amount was calculated by taking
15 the average of the overtime claim for tow-truck drivers and mechanics (\$2,512.50) and multiplying
16 it by the total number of workweeks for Driver Class Members (1,463 workweeks) which resulted in
17 the maximum value of the overtime claim-\$3,675,787.50. (Rodriguez Decl., at ¶ 52.)

18 Defendants maintain that on-call shifts were optional and Statewide Towing employees were
19 able to decline calls. As such, Statewide employees were paid additional wages for on-call hours
20 when they were dispatched and serviced a call. Plaintiffs admit they were compensated for additional
21 time spent servicing calls while on-call but were not compensated for the time waiting to be
22 dispatched. (Rodriguez Decl., at ¶ 52.) The success of Plaintiffs' overtime claims hinges on whether
23 Class Members are entitled to compensation for the time waiting to be dispatched while on-call. *Id.*
24 Even though Defendants submitted declarations from current employees, under the penalty of perjury
25 that they were not required to work on-call, Plaintiffs' testimony would have established the requisite
26 level of control needed to make the time waiting to be dispatched compensable. Thus, Plaintiffs
27 believe the amount the Class could reasonably expect to be awarded at trial on this claim is –
28 \$3,675,787.50.

1 (3) *Failure to Furnish Accurate Wage Statements Claim:*

2 The premise of the wage statement claim is that Defendants failed to list the correct number
3 of overtime hours worked because they uniformly show 30-32 overtime hours worked per week when
4 in fact tow truck drivers work 96 overtime hours per week, and mechanics work 38. However, if
5 Plaintiffs fail to prove that they are entitled to compensation for time spent during on-call shifts, then
6 many of the overtime hours claimed by the class are not compensable, and therefore don't count as
7 hours worked under the Labor Code.

8 Here, if Plaintiffs are successful on their overtime claim, then, the maximum value of their
9 wage statement claim would be \$233,850. (Rodriguez Decl., at ¶ 53.) The maximum value was
10 calculated by taking the total number of workweeks worked by all Class Members (4,677 workweeks)
11 and multiplying it by the \$50 penalty. *Id.* However, Non-Driver Class Members were not required to
12 work on-call and were not subject to the same facial error on their wage statements because they were
13 not paid a fixed number of overtime hours like the Driver Class Members. (Rodriguez Decl., at ¶ 53.)
14 As such, a more accurate maximum value of the wage statement claim is \$73,150, which was
15 calculated by taking the \$50 penalty and multiplying it by the total number of workweeks worked by
16 the Driver Class Members (1,463 workweeks), who were subject to overtime violations. *Id.*

17 (4) *Failure to Provide Meal Period Claim:*

18 During Plaintiffs' employment, Defendants' practices and policies made it difficult for
19 Plaintiffs to take compliant meal periods. Arana Decl. ¶¶ 7-10; Borjon Decl. ¶¶ 9-12. Using the
20 average hourly rate of \$25.00 as a basis for calculating the damages for Defendants' alleged failure
21 to provide meal periods and multiplying it by approximately 4,677 workweeks, this class claim had
22 a maximum value of \$116,925. (Rodriguez Decl., at ¶ 54.) Defendants maintain that they had
23 compliant meal period policies and that in fact employees were given an opportunity to take their
24 meal periods. They submitted declarations from current employees, under the penalty of perjury that
25 they indeed did receive their meal periods. In light of the conflicting evidence regarding whether
26 employees were permitted to take meal periods and difficulties associated with proving it on a class
27 wide basis, the amount that the Class could reasonably expect to be awarded at trial is \$58,462.50,
28 which reflects the 50/50 chance that Plaintiffs would be successful on their meal period claim.

1 (5) *Failure to Provide Rest Period Claim:*

2 During Plaintiffs' employment, Defendants' practices and policies made it difficult for
3 Plaintiffs to take compliant rest periods. Arana Decl. ¶¶ 11-13; Borjon Decl. ¶¶ 11-15. Using the
4 average hourly rate of \$25.00 as a basis for calculating the damages for Defendants' alleged failure
5 to provide rest periods and multiplying it by approximately 4,677 workweeks, this class claim had a
6 maximum value of \$116,925. (Rodriguez Decl., at ¶ 55.) Defendants maintain that they had compliant
7 rest period policies and that in fact employees were given an opportunity to take their rest periods.
8 They submitted declarations from current employees, under the penalty of perjury that they indeed
9 did receive their rest periods. In light of the conflicting evidence regarding whether employees were
10 permitted to take rest periods and difficulties associated with proving it on a class wide basis, the
11 amount that the Class could reasonably expect to be awarded at trial is \$58,462.50, which reflects the
12 50/50 chance that Plaintiffs would have been successful on their meal period claim at trial. This figure
13 recognizes the possibility that a trier of fact would have believed the testimony that Statewide Towing
14 management discouraged at least some employees from taking a rest period.

15 (6) *Waiting Time Penalties Claim:*

16 Plaintiffs' cause of action for wait-time penalties alleges that Defendants' failure to pay
17 eligible employees the correct overtime rates was willful, thereby entitling each of them to waiting
18 time penalties under Labor Code § 201-203. As such, this claim is derivative of the failure to pay
19 overtime wages claim. However, because of the derivative nature of the claim and obstacles to
20 recovery on those claims, the waiting time penalties claim must be discounted. (Rodriguez Decl., at
21 ¶ 56.) Here, because the average hourly rate of the Class Members was \$25, and the 30-day maximum
22 was reached as to each of the approximately 71 Class Members whose employment with Statewide
23 has terminated, the maximum value of this claim would have been approximately \$497,000.
24 (Rodriguez Decl., at ¶ 56.) This amount was calculated by taking the average number of hours worked
25 in a month (280) and multiplying it by the average hourly rate of pay (\$25) for mechanics and tow
26 truck drivers-equaling \$7,000 and multiplying it by the total number of employees whose
27 employment has terminated (71). *Id.* Defendants have a viable defense that their conduct was not
28 willful but rather that they were acting under an incorrect understanding of the law. Based on this,

1 there is a 50/50 likelihood that Plaintiff would succeed on this claim at trial, so the amount that the
2 Class could reasonably expect to be awarded at trial on this claim is \$248,500.

3 (7) *PAGA Claim:*

4 Defendants' records estimate that there are 59 Aggrieved Employees, who worked a total of
5 2,622 PAGA Pay Periods. (Rodriguez Decl., at ¶ 27.) The PAGA claim seeks penalties for
6 Statewide's alleged violations of Labor Code §§ 510, 226.7, 512, 2802, 226, and 204. *Id.* "The civil
7 penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
8 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
9 subsequent violation." LAB. CODE § 2699 (f) (2). Assessing a \$100 penalty for each of the 2,622
10 PAGA Pay Periods, the maximum total of PAGA penalties for each Labor Code violation equals
11 \$262,200. *Id.* Then, multiplying the maximum amount of PAGA penalties per Labor Code violation
12 (\$262,200) by the total number of Labor Code violations (6), the maximum PAGA penalties should
13 Plaintiffs succeed on all their PAGA claims totals \$1,573,200. (Rodriguez Decl., at ¶ 57.) Considering
14 the weight of the evidence, clarity of applicable law and relative strength and weaknesses of the
15 claims and defenses, Defendants would likely have been found liable for committing Labor Code §
16 226 violations. However, it is likely that the Court would exercise its discretion to lower the amount
17 in penalties and further reduce the amount in penalties by not allowing "stacking" of multiple
18 violations during each pay period. As such, a more accurate total of the PAGA penalties to be awarded
19 at trial is \$262,200. (Rodriguez Decl., at ¶ 57.)

20 Here, the settlement allocates \$35,000 to PAGA penalties. (Rodriguez Decl., at ¶ 57.) This
21 sum was agreed upon by taking into consideration that the maximum PAGA penalties are most likely
22 \$262,200 and on the basis had a larger allocation been made to PAGA penalties, Class Members
23 would have received less compensation for class claims. *Id.* Courts have routinely approved allocation
24 of far smaller amounts to PAGA penalties in class action settlements involving exponentially larger
25 sums than in this case. *See Nordstrom Commi. Cases*, 186 Cal.App.4th 576, 580, 589 (2010) (no abuse
26 discretion in approving settlement of class action that allocated \$6.405 million to class members and
27 zero to PAGA claim). As such, the amount allocated to penalties is appropriate and best serves the
28 interests of the Class.

1 (8) *Unfair Competition Claim*

2 The unfair competition statute, Business & Professions Code § 17200, “borrows violations
3 from other laws, making them independently actionable as unfair practices.” *Sullivan v. Oracle Corp.*,
4 51 Cal.4th 1191, 1207 (2011). The word “unfair” in the UCL reaches any conduct that *significantly*
5 threatens or harms competition, even conduct not specifically prohibited by some other law. *Cel-Tech*
6 *Communications, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.4th 163, 187 (1999). The UCL
7 “imposes strict liability when property or monetary losses are occasioned by conduct that constitutes
8 an unfair business practice.” *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal.4th 163, 172
9 (2000).

10 This class claim is derivative of the failure to pay overtime claim. However, because of the
11 derivative nature of the claim and obstacles to recovery on those claims, the waiting time penalties
12 claim must be discounted. (Rodriguez Decl., at ¶ 59.) Given the UCL claim seeks repayment of
13 overtime wages, assuming Plaintiff prevailed on their overtime and tool reimbursement claims, none
14 of the damages pled in the UCL claim would have been recoverable as a matter of law because this
15 claim seeks double recovery. *Id.*

16 Thus, excluding the PAGA claims, the collective total for all the class claims is \$4,603,512,
17 while the collective total for claims likely to be awarded at trial is \$4,135,850. If you factor in the
18 PAGA claims, then, the maximum potential recovery is \$6,176,712.50, while the likely total to be
19 awarded at trial is \$4,398,050.

20 **ii. The Scope of Released Claims Is Appropriately Limited**

21 The released claims share a reasonable nexus with the alleged violations in both substance and
22 time. Here, the Class Members’ release covers only the claims and time period alleged in the FAC. It
23 only releases claims that were pled in the FAC, or that could have been pled, and excludes unrelated
24 claims such as wrongful termination, harassment and workers’ compensation. (Rodriguez Decl., at ¶
25 37.). While the Class Representatives will execute a broader individual general release of all claims.
26 (Rodriguez Decl., at ¶ 38.).

27 **iii. The Settlement Provides for Reasonable Attorneys’ Fees and Costs**

28 “Courts recognize two methods for calculating attorney fees in civil class actions: the

1 lodestar/multiplier method and the percentage of recovery method. California case law permits fee
2 awards in the absence of detailed time sheets.” *Wershba*, 91 Cal.App.4th at 254-55.

3 “When class action litigation establishes a monetary fund for the benefit of the class members,
4 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
5 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
6 created. The recognized advantages of the percentage method—including relative ease of calculation,
7 alignment of incentives between counsel and the class, a better approximation of market conditions
8 in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid
9 unnecessarily prolonging the litigation—convince us the percentage method is a valuable tool that
10 should not be denied our trial courts.” *Laffitte*., 1 Cal.5th at 503.

11 “The percentage of the fund method more accurately reflects the results achieved. The lodestar
12 method has been ... criticized for discouraging early settlement and consuming too large an amount
13 of judicial resources in its application. The percentage method is easy to calculate; it establishes
14 reasonable expectations on the part of plaintiffs’ attorneys as to their expected recovery; and it
15 encourages early settlement, which avoids protracted litigation. Where the class settlement is for a
16 very large amount, a percentage fee may be criticized as providing counsel a windfall in relation to
17 the amount of work performed.” *Laffitte*, 1 Cal.5th at 561-62. “Some courts have approved fee awards
18 representing a small percentage of the fund in cases involving very large settlements, the so-called
19 ‘megafunds,’ in view of the ‘windfall’ that would otherwise accrue to counsel.” *Id.* at 566.

20 “Although many courts in common-fund cases permit use of either a percentage-of-the-fund
21 approach or a lodestar ... most courts and commentators now believe that the percentage method is
22 superior. Critics of the lodestar method note, for example, the difficulty in applying the method and
23 cite the undesirable incentives created by that approach—i.e., a financial incentive to extend the
24 litigation so that the attorneys can accrue additional hours (and thus, additional fees). Moreover, some
25 courts and commentators have criticized the lodestar method because it gives counsel less of an
26 incentive to maximize the recovery for the class.” *Laffitte*, 1 Cal.5th at 565.

27 Defendants have agreed not to oppose any request up to \$385,000, which is 35% of the gross
28 settlement amount. (Rodriguez Decl., at ¶ 59.). At the final fairness hearing, Plaintiff’s counsel will

1 request attorney’s fees of 35% of the common fund (\$385,000) plus up to \$50,000 in costs.
2 (Rodriguez Decl., at ¶ 60.) Here, the “percentage-of-the-fund” approach is the superior method of
3 compensating counsel for the monetary benefit conferred on the Class because it most accurately
4 reflects the results achieved in this action. The 35% requested fee is reasonable because it is within
5 the range that is typically negotiated for wage litigation in the marketplace. *Id.* If a smaller percentage
6 is awarded, the class would reap a windfall because they would receive a substantial monetary benefit
7 without ever having to invest the time and energy of pursuing suit individually at a below-market rate.

8 **iv. Plaintiff Seeks a Reasonable Service Award**

9 “Since without a named plaintiff there can be no class action, such compensation may be
10 necessary to induce him to participate in the suit.” *Clark*, 175 Cal.App.4th at 804. “It is established
11 that named plaintiffs are eligible for reasonable incentive payments to compensate them for the
12 expense or risk they have incurred in conferring a benefit on other members of the class.” *Munoz*,
13 186 Cal.App.4th at 412. For purposes of preliminary approval, the requested \$20,000 for Plaintiff
14 Arana and \$10,000 for Plaintiff Borjon is fair in light of Plaintiffs’ personal investment of time, risk
15 they undertook in this litigation for the benefit of the class and personal sacrifice of executing a
16 broader release than the Class. (Rodriguez Decl., at ¶ 61.)

17 By being the named representatives, Plaintiffs Arana and Borjon put their names forward on
18 public record at the risk of present or potential employers choosing not to hire them. *Id.* Plaintiffs
19 also ran the risk of being liable for Defendants’ attorneys’ fees and costs as a result of the fee shifting
20 provisions of the Labor Code. (See e.g., Labor Code §§ 218.5, 226.) Plaintiffs spent a significant time
21 reviewing documents, communicating with counsel, assisting with the preparation of the LWDA
22 letters, complaints, and other pleadings, responding to discovery, and attending depositions. *Id.* Thus,
23 the combined \$30,000 sought by Plaintiffs is reasonable.

24 **VII. THE PROPOSED CLASS NOTICE TO CLASS MEMBERS IS ADEQUATE**

25 **A. The Class Notice is Accurate and Informative**

26 “Rule 3.769 requires class representatives to notify class members of a pending settlement on
27 the merits and provide them with the opportunity to object at the final settlement fairness hearing.
28 Rule 3.771(b) requires that notice of a pending judgment be provided to class members, and rule

1 3.769(f) provides that notice of the final approval hearing must be given to the class members in the
2 manner specified by the court. The notice must contain an explanation of the proposed settlement and
3 procedures for class members to follow in filing written objections to it and in arranging to appear at
4 the settlement hearing and state any objections to the proposed settlement.” *Hernandez*, 4
5 Cal.5that267.

6 “The notice given to the class must fairly apprise the class members of the terms of the
7 proposed compromise and of the options open to dissenting class members. The purpose of a class
8 notice in the context of a settlement is to give class members sufficient information to decide whether
9 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
10 settlement. As a general rule, class notice must strike a balance between thoroughness and the need
11 to avoid unduly complicating the content of the notice and confusing class members. Here again the
12 trial court has broad discretion. The court has virtually complete discretion regarding notice to class
13 members.” *Wershba*, 91 Cal.App.4th at 251-52.

14 The Class Notice provides all information necessary to make an informed decision about the
15 settlement. Exhibit A to S.A. It summarizes the lawsuit, including the parties’ contentions and denials,
16 the proceedings to date, and explains the terms of the settlement in plain language. Rodriguez Decl.,
17 at ¶ 65. It also informs the Class of their rights, including to object, be excluded from the settlement
18 or do nothing and receive a share of the settlement. *Id.* It also explains the consequences of exercising
19 these options. *Id.* The Class Notice makes clear that each Class Member will receive a payment unless
20 he or she opts out and explains the process for doing so. *Id.* As such, the Class Notice is accurate and
21 informative.

22 The Class Administrator will send to all Class Members identified in the Class Data, via first
23 class USPS mail, the Class Notice with Spanish translation, substantially in the form attached as
24 Exhibit 2 (Class Notice). Additionally, the Administrator will update Class Members addresses using
25 the National Change of Address database to ensure greater success of delivery. Rodriguez Decl., at ¶
26 66)

27 **VIII. CONCLUSION**

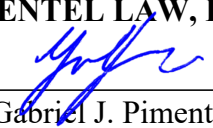
28 Based on the foregoing, Plaintiffs respectfully request that the Court grant preliminary

1 approval of the class settlement.

2 **PIMENTEL LAW, P.C.**

3 Dated: November 29, 2023

By: _____


Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiffs

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1. I am an attorney at law duly licensed to practice before the State Courts of California, and the attorney of record for Plaintiff in the above-entitled action.

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1 10. On June 30, 2023, Plaintiffs filed their Motion for Class Certification and Defendants
2 filed their Opposition on July 28, 2023. The hearing on the Motion for Class Certification was
3 continued from August 10, 2023 to August 30, 2023 on the Court's own motion. Prior to the hearing
4 date, the Parties continued their settlement efforts and agreed to settle the matter on or around August
5 17, 2023.

6 **Investigation and Discovery G(3)(a)(vi)**

7 11. Plaintiffs' counsel conducted a thorough investigation into the merits of Plaintiffs'
8 claims and the applicable law. Prior to filing suit, Plaintiffs' counsel met, on numerous occasions,
9 with the Plaintiff and requested and reviewed Plaintiff's respective employment records. Plaintiffs'
10 counsel performed extensive legal research with respect to the merits and legal basis of the claims
11 asserted by Plaintiffs and the defenses raised by Defendant.

12 12. Prior to the first mediation, Plaintiff obtained a sample of Class documents and
13 information, including but not limited to relevant policies, procedures, and practices, time records and
14 wage statements for putative class members and data demonstrating the class size, hours worked,
15 workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the Class.

16 13. Plaintiffs propounded formal written discovery upon Defendant, which resulted in the
17 production of various documents related to the action, such as policy documents, employee
18 handbooks, communications, and Plaintiffs' time and payroll records. In addition to written discovery,
19 Plaintiffs also deposed five persons most knowledgeable on a variety of topics relevant to Plaintiffs'
20 claims.

21 14. Plaintiffs' counsel spent significant time and efforts reviewing Defendant's document
22 production to determine, among other things, the legality of Defendants' written policies and the
23 violation rates for each of the respective claims. This included review of over 7,000 pages of relevant
24 documents. Plaintiffs' counsel also reviewed and analyzed Defendant's payroll and timekeeping data,
25 which permitted counsel to prepare a liability analysis and identify Defendant's potential exposure
26 should Plaintiffs succeed on the asserted claims at trial.

27 15. Plaintiffs' counsel hired an expert to outline a detailed analysis of Defendants' alleged
28 liability and exposure.

 16. Due to the size of Plaintiffs' demand and the Defendants' alleged financial issues,
Defendant produced financial records to demonstrate the financial constraints which were factored
into the resolution of the matter. The financial disclosures were made subject to a protective order.
The financial documents were produced directly to a forensic accounting expert. Plaintiffs' financial

1 expert analyzed Defendants' financial records and produced a report for Plaintiffs' consideration.
2 Plaintiffs' relied on their expert's findings when engaging in settlement efforts.

3 17. The documents, information, and data obtained from Defendants was more than
4 sufficient to analyze the Labor Code violations alleged by Plaintiffs and to make an informed decision
5 about the resolution of this case.

6 **Settlement Terms and Conditions**

7 18. "Class" is defined as all current and former persons employed by Defendants in
8 California as non-exempt employees at any time during the Class Period who have not entered into
9 an individual settlement agreement with Defendants. The Class Period is from December 20, 2016,
10 to the date of Preliminary Approval of the settlement by the Court.

11 19. "PAGA Employees" are defined as all current and former persons employed by
12 Defendants in California as non-exempt employees at any time from August 27, 2019 to the date of
13 Preliminary Approval.

14 20. Defendants have agreed to pay a "Gross Settlement Amount" of \$1,100,000.00, of
15 which none will revert to Defendants. The settlement amount will be paid in two installments and will
16 be used to pay individual class payments, individual PAGA payments, the LWDA PAGA payment,
17 Class counsel fees, Class counsel expenses, Class representative service payments, and the
18 Administrator's expenses.

19 21. Participating Class Members need not submit a claim form or do anything else to
20 receive a settlement payment.

21 22. Not later than 15 calendar days after the Court grants Preliminary Approval of the
22 Settlement, Defendants will deliver the Class Data to the Administrator.

23 23. Defendants will fund the first installment of \$900,000.00 within 30 days of the
24 Effective Date and the second installment will be funded 90 calendar days after the Effective Date.
25 The Administrator will mail checks to each Participating Class Member and PAGA Employee within
26 14 days after the first installment.

27 **Allocation of Settlement Payments for Tax Purposes G(3)(i)**

28 24. 20% of each Participating Class Member's Individual Class Payment will be allocated
to settlement of wage claims, which will be subject to tax withholdings and reported on a IRS W-2
Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to
settlement of claims for interest and penalties, which will not be subject to wage withholdings and
will be reported on IRS 1099 Form. The employer side of payroll taxes on the portion of the settlement

1 attributable to wages will be paid by Defendant, and will not be taken from the Gross Settlement
2 aMOUNT

3 **Number of Individuals in the Class G(3)(a)(i)**

4 25. "Net Settlement Amount" means the Gross Settlement Amount less the Court-
5 approved amounts for the Individual PAGA Payments, the LWDA PAGA Payment, Class
6 Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses
7 Payment, and the Settlement Administration Expenses. The remainder is to be paid to Participating
8 Class Members as Individual Class Payments. The Net Settlement Amount is estimated to be
\$592,500, which will be distributed amongst 84 Class Members

9 26. During the PAGA period (August 27, 2019 to the date of Preliminary Approval) I
10 estimate that there are 59 aggrieved employees.

11 **Estimated Recovery by the Individual Aggrieved Employees G(3)(a)(v)**

12 27. The "PAGA Payment" totals \$35,000 to be paid from the Gross Settlement Amount,
13 with \$26,250.00 being allocated as the LWDA PAGA Payment (75%) and \$8,750.00 (25%) being
allocated as the Individual PAGA Payments.

14 28. During the PAGA Period, 59 Aggrieved Employees worked a total of 2,622 pay
15 periods, thus, each aggrieved employee will receive \$3.33 for each pay period worked during the
16 PAGA period. With an average of 48 workweeks, the average amount paid to aggrieved employees
17 is \$159.84.

18 **Estimated Recovery by the Average Class Member G(3)(a)(iv)**

19 29. The Settlement share allocated to each Participating Class Member will differ
20 depending on the Class Member's job title. The Settlement will be distributed amongst "Non-Driver
Class Members" and "Driver Class Members".

21 30. "Non-Driver Class Member" is defined as any Class Member that worked for
22 Defendants in a position other than mechanic or intrastate tow-truck driver, while "Driver Class
23 Member" is defined as Class Members that worked for Defendants as mechanics or intrastate tow-
truck drivers and did not enter into an individual settlement agreement with Defendants.

24 31. Each Participating Non-Driver Class Member settlement share will be calculated by
25 dividing \$25,000 by the total number of Workweeks worked by all Non-Driver Class Members during
26 the Class Period, then, multiplying the result by each Participating Non-Driver Class Members'
27 Workweeks. Based on Defendants' records, there are 45 Non-Driver Class Members who worked a
28 total of 3,214 workweeks during the class period, so each Non-Driver Class Member will receive

1 \$7.77 per workweek worked during the class period. For Non-Driver Class Members, the lowest
2 amount that would be recovered is \$7.77 (1 workweek) and the highest amount recovered would be
3 \$2,812.74 (362 workweeks).

4 32. Each Participating Driver Class Member's settlement share will be calculated by
5 dividing the Net Settlement Amount (\$592,500) minus \$25,000 paid to Non-Driver Class Members
6 (\$567,500), by the total number of Workweeks worked by all Participating Driver Class Members
7 during the Class Period, then, multiplying the result by each Participating Driver Class Member's
8 Workweeks. Based on Defendants records, there are 39 Driver Class Members who worked a total of
9 1,463 workweeks during the class period, so each Driver Class Member will receive \$370.81 per
10 workweek worked during the class period. For Driver Class Members, the lowest amount that will be
11 recovered is \$370.81 (1 workweek) and the highest amount recovered would be \$128,672.24 (362
workweeks).

11 **Miscellaneous Payments**

12 33. "Administration Expenses Payment" means the amount the Administrator will be paid
13 from the Gross Settlement Amount to reimburse its reasonable fees and expenses in connection with
14 approval of the settlement. The Administration Expenses Payment shall not exceed \$7,500.

15 34. "Class Representative Service Payment" means payment to Class Representative Josue
16 Arana in the amount of \$20,000.00 and Class Representative Nicholas Borjon in the amount of
17 \$10,000.00 for initiating the Action, performing the work in support of the Action, undertaking the
18 risk of liability for Defendant's expenses in the event Plaintiffs were unsuccessful in the prosecution
of the Action, and for the general release of all claims by the Plaintiffs.

19 35. "Class Counsel Fees Payment" and "Class Counsel Litigation Expenses Payment"
20 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys' fees and
21 expenses, respectively, incurred to prosecute the Action, as approved by the Court. Class Counsel will
22 request that the Court approve an award of attorneys' fees not to exceed thirty-five percent (35%) of
23 the Gross Settlement Amount (\$385,000.00 of \$1,100,000.00), plus costs and expenses not to exceed
\$50,000.

24 **Uncashed Checks G(3)(c)(i)**

25 36. For any Class Member whose Individual Class Payment check or Individual PAGA
26 Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the
27 funds represented by such checks to the California Controller's Unclaimed Property Fund in the name
28 of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California
Code of Civil Procedure Section 384.

1 **Release of Claims G(3)(e)**

2 37. All Participating Class Members release all claims that were alleged, or reasonably
3 could have been alleged, based on the Class Period facts stated in the Operative Complaint.
4 Participating Class Members do not release any other claims, including claims for vested benefits,
5 wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance,
6 disability, social security workers' compensation, or claims based on facts occurring outside the Class
Period.

7 38. The Class Representatives release all claims that were, or reasonably could have been,
8 alleged, based on the facts contained, in the Operative Complaint and all PAGA claims that were, or
9 reasonably could have been, alleged based on facts contained in the Operative Complaint.

10 **Class Certification**

11 39. Plaintiffs' claims are typical of the Class because they were employed by Defendants
12 in California as mechanics or tow-truck drivers and were subject to the same policies and procedures
applicable to the Class during the Class Period.

13 40. There is no indication that Plaintiff's counsel is unqualified to represent the Class or
14 lacking in ability. Further, counsel is experienced in litigating representative wage actions. Plaintiffs'
15 claims are typical of the Class. As such, there are no apparent interests which would be antagonistic
16 to those of the Class.

17 41. Plaintiffs have worked closely with Class Counsel and assisted at every stage, provided
relevant documents and information, and remained actively involved throughout the litigation.

18 42. Class Counsel thoroughly investigated the claims raised in this action, the underlying
19 case law, Defendants' defenses, and meticulously reviewed the information and documents
20 exchanged, formally and informally, prior to attending mediation.

21 43. The class is also ascertainable as they can all be identified by reference to Defendants
22 employment records. Defendants will be able to provide Class Members full names, last known
23 mailing address, social security number, job title, and the number of workweeks employed during the
Class and PAGA period.

24 44. The settlement is the product of adversarial, arm's-length negotiations. Plaintiffs'
25 counsel did not discuss settlement until after receipt of information and documents necessary to
26 conduct an informed evaluation of the case. It was only after receipt of informal discovery and
27 investigation that Plaintiffs finally engaged in mediation. The parties' negotiations were informed.
28 Indeed, all settlement negotiations were facilitated by qualified wage and hour mediators, which
include Hon. Carl West and Hon. Steven Denton, who are both retired Superior Court judges. Also,

1 Plaintiff's counsel, who specializes in the area of representative wage and hour actions, considered
2 the legal authorities relevant to this case and was in possession of all information necessary to
3 understand the relative strengths and weaknesses of Plaintiff's claims. It was only after such
4 investigation, discovery, preparation and negotiations that a compromise of this action was obtained

5 45. Plaintiffs' counsel conducted sufficient research, investigation, analysis and discovery
6 on the core issues in this case, which ultimately resulted in receipt of written employment policies,
7 Plaintiffs' employment records, time records and wage statements for all putative class members.
8 Plaintiffs' counsel reviewed over 7,000 pages of relevant documents, which allowed Plaintiffs'
counsel to evaluate the merits of Plaintiffs' claims.

9 46. Plaintiffs' counsel evaluated data demonstrating the class size, hours worked,
10 workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the Class.

11 47. Plaintiffs propounded formal written discovery on Defendant, which resulted in the
12 production of various documents related to the action, such as policy documents, employee
13 handbooks, and Plaintiffs' time and payroll records. In addition to written discovery, Plaintiffs also
deposed five persons most knowledgeable on a variety of topics relevant to Plaintiffs' claims.

14 48. Plaintiffs' counsel also prepared a liability analysis and identified Defendant's
15 potential exposure should Plaintiffs succeed on the asserted claims at trial. Additionally, Plaintiffs'
16 counsel conducted interviews with Plaintiffs as well as several former employees of Statewide
17 Towing, which provided valuable insight into the nature of Defendants' day-to-day operations.

18 49. Throughout this litigation, Class Members have been represented by well-qualified
19 counsel who have years of experience in wage and hour class action litigation. Plaintiffs' counsel
20 relied on their extensive experience when negotiating the Settlement. Plaintiffs' counsel has litigated
dozens of representative wage and hours cases, including class actions.

21 50. I am a member of various consumer advocate organizations, including the Consumer
22 Attorneys Association of Los Angeles (CAALA) and California Employment Lawyers Association
23 (CELA). I regularly attend conferences, seminars and conventions offered by Plaintiff attorneys
24 organizations and stays informed on new developments in employment law through various law
publications.

25 **Amount of Damages if Claims Were Entirely Successful at Trial G(3)(a)(ii) and**
26 **G(3)(a)(iii)**

27 51. *Failure to Indemnify Claim:* (A) assuming the average amount recoverable for the
28 Driver Class Members, which includes tow-truck drivers and mechanics, is \$2,050, the maximum

1 value of this claim would be \$79,950. (B) This amount was calculated by combining the individual
2 claims for reimbursement of both Plaintiffs, which resulted in an average of \$2,050 for a tool
3 reimbursement claim. That amount (\$2,050) was then multiplied by the number of class members
4 that were either tow-truck drivers and mechanics during the class period (39 driver class members),
5 totaling \$79,950.

6 (A) Defendants deny that class members are owed any reimbursement of business expenses
7 and maintain that tools were provided to mechanics and tow-truck drivers. Based on interviews and
8 depositions of Statewide Towing employees, there was a consensus that Defendant did supply *some*
9 of the tools necessary to perform the mechanic and tow truck driver positions. Defendants also
10 contend that any tools purchased by Class Members prior to their employment at Statewide would
11 not have been recoverable as those tools were not purchased at the direction of the employer nor in
12 direct consequence of their job duties at Statewide as required by Labor Code § 2802.

13 (A) Thus, the \$79,950 maximum amount recoverable under this claim was challenged and
14 subject to reduction by those amounts that were incurred prior to the Class Members' employment at
15 Statewide. Plaintiffs believe the amount the Class could reasonably expect to be awarded at trial on
16 this claim is \$79,950. *Id.* (B) Plaintiffs believe this amount would have been recovered because every
17 single mechanic and tow truck driver that would have testified would have confirmed that no hand
18 tools were provided by Defendants. As such, Plaintiffs believe that the overwhelming weight of their
19 testimony would not have been overcome by Statewide Towing's defenses.

20 52. *Failure to Pay Overtime Claim:* (A) taking the average rate of pay for tow-truck
21 drivers and mechanics of \$25 per hour and the average overtime rate of \$37.50, the recoverable
22 overtime hours for tow-truck drivers is \$3,600 per work week and \$1,425 per work week for
23 mechanics. As such, the maximum value of this claim for Driver Class Members would be
24 \$3,675,787.50. (B) This amount was calculated by taking the average of the overtime claim for tow-
25 truck drivers and mechanics (\$2,512.50) and multiplying it by the total number of workweeks for
26 Driver Class Members (1,463 workweeks) which resulted in the maximum value of the overtime
27 claim-\$3,675,787.50.

1 (A) Defendants maintain that on-call shifts were optional and Statewide Towing
2 employees were able to decline calls. As such, Statewide employees were paid additional wages for
3 on-call hours when they were dispatched and serviced a call. Plaintiffs admit they were compensated
4 for additional time spent servicing calls while on-call but were not compensated for the time waiting
5 to be dispatched. The success of Plaintiffs' overtime claims hinges on whether Class Members are
6 entitled to compensation for the time waiting to be dispatched while on-call. (B) Even though
7 Defendants submitted declarations from current employees, under the penalty of perjury that they
8 were not required to work on-call, Plaintiffs' testimony would have established the requisite level of
9 control needed to make the time waiting to be dispatched compensable. Thus, Plaintiffs believe the
10 amount the Class could reasonably expect to be awarded at trial on this claim is –\$3,675,787.50.

11 53. *Failure to Furnish Accurate Wage Statements Claim:* (A) If Plaintiffs are successful
12 on their overtime claim, then, the maximum value of their wage statement claim would be \$233,850.
13 (B) The maximum value was calculated by taking the total number of workweeks worked by all Class
14 Members (4,677 workweeks) and multiplying it by the \$50 penalty. However, Non-Driver Class
15 Members were not required to work on-call and were not subject to the same facial error on their
16 wage statements because they were not paid a fixed number of overtime hours like the Driver Class
17 Members. As such, a more accurate maximum value of the wage statement claim is \$73,150, which
18 was calculated by taking the \$50 penalty and multiplying it by the total number of workweeks worked
19 by the Driver Class Members (1,463 workweeks), who were subject to overtime violations.

20 54. *Failure to Provide Meal Period Claim:* (A)/ (B) Using the average hourly rate of
21 \$25.00 as a basis for calculating the damages for Defendants' alleged failure to provide meal periods
22 and multiplying it by approximately 4,677 workweeks, this class claim had a maximum value of
23 \$116,925.

24 (A)/(B) Defendants maintain that they had compliant meal period policies and that in fact
25 employees were given an opportunity to take their meal periods. They submitted declarations from
26 current employees, under the penalty of perjury that they indeed did receive their meal periods. In
27 light of the conflicting evidence regarding whether employees were permitted to take meal periods
28 and difficulties associated with proving it on a class wide basis, the amount that the Class could

1 reasonably expect to be awarded at trial is \$58,462.50, which reflects the 50/50 chance that Plaintiffs
2 would be successful on their meal period claim.

3 55. *Failure to Provide Meal Period Claim:* (A) Using the average hourly rate of \$25.00 as
4 a basis for calculating the damages for Defendants' alleged failure to provide rest periods and
5 multiplying it by approximately 4,677 workweeks, this class claim had a maximum value of
6 \$116,925.

7 (A)/(B) Defendants maintain that they had compliant rest period policies and that in fact
8 employees were given an opportunity to take their rest periods. They submitted declarations from
9 current employees, under the penalty of perjury that they indeed did receive their rest periods. In light
10 of the conflicting evidence regarding whether employees were permitted to take rest periods and
11 difficulties associated with proving it on a class wide basis, the amount that the Class could reasonably
12 expect to be awarded at trial is \$58,462.50, which reflects the 50/50 chance that Plaintiffs would have
13 been successful on their meal period claim at trial. This figure recognizes the possibility that a trier
14 of fact would have believed the testimony that Statewide Towing management discouraged at least
15 some employees from taking a rest period.

16 56. *Waiting Time Penalties Claim:* (A) Because the average hourly rate of the Class
17 Members was \$25, and the 30-day maximum was reached as to each of the approximately 71 Class
18 Members whose employment with Statewide has terminated, the maximum value of this claim would
19 have been approximately \$497,000.00. (B) This amount was calculated by taking the average number
20 of hours worked in a month (280) and multiplying it by the average hourly rate of pay for mechanics
21 and tow truck drivers-equaling \$7,000 and multiplying it by the total number of employees whose
22 employment has terminated.

23 (B) Plaintiffs' cause of action for wait-time penalties alleges that Defendants' failure to pay
24 eligible employees the correct overtime rates was willful, thereby entitling each of them to waiting
25 time penalties under Labor Code § 201-203. As such, this claim is derivative of the failure to pay
26 overtime wages claim. However, because of the derivative nature of the claim and obstacles to
27 recovery on those claims, the waiting time penalties claim must be discounted. Defendants have a
28 viable defense that their conduct was not willful but rather they were acting under an incorrect

1 understanding of the law. Based on this, there is a 50/50 likelihood that Plaintiff would succeed on
2 this claim at trial, so the amount that the Class could reasonably expect to be awarded at trial on this
3 claim is \$248,500.

4 57. *PAGA Claim:* (A) Assessing a \$100 penalty for each of the 2,622 PAGA Pay Periods,
5 the maximum total of PAGA penalties for each Labor Code violation equals \$262,200. (B) Then,
6 multiplying the maximum amount of PAGA penalties per Labor Code violation (\$262,200) by the
7 total number of Labor Code violations (6), the maximum PAGA penalties should Plaintiffs succeed
8 on all their PAGA claims totals \$1,573,200.

9 The PAGA claim seeks penalties for Statewide’ s alleged violations of Labor Code §§ 510,
10 226.7, 512, 2802, 226, and 204.

11 (A) /(B) Considering the weight of the evidence, clarity of applicable law and relative
12 strength and weaknesses of the claims and defenses, Defendants would likely have been found liable
13 for committing Labor Code § 226 violations. However, it is likely that the Court would exercise its
14 discretion to lower the amount in penalties and further reduce the amount in penalties by not allowing
15 “stacking” of multiple violations during each pay period. As such, a more accurate total of the PAGA
16 penalties to be awarded at trial is \$262,200.

17 The settlement allocates \$35,000 to PAGA penalties. This sum was agreed upon by taking into
18 consideration that the maximum PAGA penalties are most likely \$262,200 and on the basis had a
19 larger allocation been made to PAGA penalties, Class Members would have received less
20 compensation for class claims. Courts have routinely approved allocation of far smaller amounts to
21 PAGA penalties in class action settlements involving exponentially larger sums than in this case. *See*
22 *Nordstrom Commi. Cases*, 186 Cal.App.4th 576, 580, 589 (2010) (no abuse discretion in approving
23 settlement of class action that allocated \$6.405 million to class members and zero to PAGA claim).
24 As such, the amount allocated to penalties is appropriate and best serves the interests of the Class.

25 58. *Unfair Competition Claim:* (A)/(B) This class claim is derivative of the failure to pay
26 overtime claim. However, because of the derivative nature of the claim and obstacles to recovery on
27 those claims, the waiting time penalties claim must be discounted. Given the UCL claim seeks
28 repayment of overtime wages, assuming Plaintiff prevailed on their overtime and tool reimbursement

1 claims, none of the damages pled in the UCL claim would have been recoverable as a matter of law
2 because this claim seeks double recovery.

3 (C) Thus, excluding the PAGA claims, the collective total for all the class claims is
4 \$4,603,512, while the collective total for claims likely to be awarded at trial is \$4,135,850. If you
5 factor in the PAGA claims, then, the maximum potential recovery is \$6,176,712.50, while the likely
6 total to be awarded at trial is \$4,398,050.

7 **Attorney's Fees**

8 59. Defendants have agreed not to oppose any request up to \$385,000, which is 35% of
9 the gross settlement amount.

10 60. At the final fairness hearing, Plaintiff's counsel will request attorney's fees of 35% of
11 the common fund (\$385,000) plus up to \$50,000 in costs. Here, the "percentage-of-the-fund"
12 approach is the superior method of compensating counsel for the monetary benefit conferred on the
13 Class because it most accurately reflects the results achieved in this action. The 35% requested fee is
14 reasonable because it is within the range that is typically negotiated for wage litigation in the
15 marketplace.

16 **Service Award for Plaintiffs**

17 61. For purposes of preliminary approval, the requested \$20,000 for Plaintiff Arana and
18 \$10,000 for Plaintiff Borjon is fair in light of Plaintiffs' personal investment of time, risk they
19 undertook in this litigation for the benefit of the class and personal sacrifice of executing a broader
20 release than the Class. By being the named representatives, Plaintiffs Arana and Borjon put their
21 names forward on public record at the risk of present or potential employers choosing not to hire
22 them. Plaintiffs also ran the risk of being liable for Defendants' attorneys' fees and costs as a result
23 of the fee shifting provisions of the Labor Code. (See e.g., Labor Code §§ 218.5, 226.) Plaintiffs spent
24 a significant time reviewing documents, communicating with counsel, assisting with the preparation
25 of the LWDA letters, complaints, and other pleadings, responding to discovery, and attending
26 depositions

27 **Pending Cases G(3)(a)(vii)**

28 62. I am not aware of any other case (class, representative, or collective action) asserting

1 claims similar to the claims asserted in this matter in the Superior Court of Riverside or any other
2 jurisdiction.

3 **Case Administrator G(3)(d)(i)**

4 63. The Parties have selected Phoenix Class Action Solutions as the case administrator.
5 Prior to the selection of Phoenix, I obtained bids from several case administrators which included
6 CPT Group, ILYM Group, Inc. and Phoenix. True and correct copies of the bids from the case
7 administrators are attached hereto as Exhibit 3.

8 64. The second lowest bid was selected, which was a \$650 difference, because of
9 familiarity with the competency of Phoenix to administer previous class settlements.

10 **Class Notice G(3)(k)**

11 65. The Class Notice provides all information necessary to make an informed decision
12 about the settlement. Exhibit A to S.A. It summarizes the lawsuit, including the parties' contentions
13 and denials, the proceedings to date, and explains the terms of the settlement in plain language. It also
14 informs the Class of their rights, including to object, be excluded from the settlement or do nothing
15 and receive a share of the settlement. It also explains the consequences of exercising these options.
16 The Class Notice makes clear that each Class Member will receive a payment unless he or she opts
17 out and explains the process for doing so.

18 66. The Class Administrator will send to all Class Members identified in the Class Data,
19 via first class USPS mail, the Class Notice with Spanish translation, substantially in the form attached
20 as Exhibit 2 (Class Notice). Additionally, the Administrator will update Class Members addresses
21 using the National Change of Address database to ensure greater success of delivery.

22 **Notice of Settlement Agreement to LWDA**

23 67. Attached hereto as Exhibit 4 is a true and correct copy of the confirmation of the
24 submission of the Class Action and Private Attorneys General Act ("PAGA") Settlement Agreement
25 ("Settlement Agreement"), which was uploaded onto the LWDA website on November 29, 2023.

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

28 Dated: November 29, 2023

By: _____

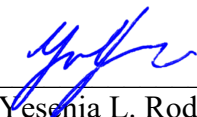

Yesenia L. Rodriguez

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiffs Josue Arana (“Plaintiff Arana”) and Nicholas Borjon (“Plaintiff Borjon”) and Defendants Statewide Towing and Recovery, Inc., a California Corporation (“Statewide”) and Christopher O. Kirk, an individual (collectively, “Defendants”). The Agreement refers to Plaintiff Arana, Plaintiff Borjon, and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiffs’ lawsuit alleging wage and hour violations against Defendants captioned *Josue Arana, et. al. v. Statewide Towing and Recovery, Inc., et al.*, Case No.CVRI2000629 initiated on December 20, 2020 and pending in Superior Court of the State of California, County of Riverside.
- 1.2. “Administrator” means Phoenix Class Action Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement. In this case, the Administration Expense Payment shall not exceed \$7,500.00.
- 1.4. “Aggrieved Employee” means all current and former persons employed by Defendants in California as non-exempt employees at any time during the PAGA Period.
- 1.5. “Class” means all current and former persons employed by Defendants in California as non-exempt employees at any time during the Class Period who have not entered into an individual settlement agreement with Defendants.
- 1.6. “Class Counsel” means Gabriel J. Pimentel and Yesenia L. Rodriguez of Pimentel Law, P.C., 30 N. Raymond Avenue, Suite 211, Pasadena, California, 91103.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, classification as Driver Class Member or Non-Driver Class Member, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English and Spanish, in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from December 20, 2016 to the date of Preliminary Approval.
- 1.13. “Class Representatives” means Plaintiff Arana and Plaintiff Borjon, the named Plaintiffs in the operative complaint in the Action seeking Court approval to serve as Class Representatives.
- 1.14. “Class Representative Service Payment” means payment to Class Representative Josue Arana in the amount of \$20,000.00 and Class Representative Nicholas Borjon in the amount of \$10,000.00 for initiating the Action and providing services in support of the Action.
- 1.15. “Court” means the Superior Court of California, County of Riverside.
- 1.16. “Defendants” means named Defendants Statewide Towing and Recovery, Inc., a California Corporation and Christopher O. Kirk, an individual
- 1.17. “Defense Counsel” means Allyson K. Thompson and Amir D. Benakote of Kaufman Dolowich Voluck, LLP, 11111 Santa Monica Boulevard, Suite 850, Los Angeles, CA 90025.
- 1.18. “Driver Class Member” means any Class Member who worked for Defendants as either a mechanic or an intrastate tow-truck driver.
- 1.19. “Effective Date” means the date by when both of the following have occurred:
(a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or

if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23. “Gross Settlement Amount” means \$1,100,000.00 which is the total amount Defendants agree to pay under the Settlement except as provided in Paragraph 4 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payments and the Administrator’s Expenses.
- 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period and whether the Class Member was a Driver Class Member or a Non-Driver Class Member.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Workweeks worked during the PAGA Period.
- 1.26. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. “Non-Driver Class Member” means any Class Member who worked for Defendants in a position other than mechanic or intrastate tow-truck driver.

- 1.31. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.32. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.33. “PAGA Period” means the period from August 27, 2019 to the date of Preliminary Approval.
- 1.34. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.35. “PAGA Notice” means Plaintiff’s August 27, 2020 letter to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.36. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (i.e., \$8,750.00) and 75% to the LWDA (i.e., \$26,250.00) in settlement of PAGA claims.
- 1.37. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.38. “Plaintiffs” means Josue Arana and Nicholas Borjon, the named plaintiffs in the Action.
- 1.39. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.40. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.41. “Released Class Claims” means the claims being released as described in Paragraph 5.1.2 below.
- 1.42. “Released PAGA Claims” means the claims being released as described in Paragraph 5.1.3 below.
- 1.43. “Released Parties” means: Christopher O. Kirk and Statewide, including but not limited to each of its former and present directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors, assigns, subsidiaries, and affiliates.
- 1.44. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.45. “Response Deadline” means 45 days after the Administrator mails Notice to Class

Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.46. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.47. “Workweek” means any week during which a Class Member worked for Defendant for at least one day, during the Class Period.

2. RECITALS.

2.1. On December 16, 2020, Plaintiff Arana commenced this Action by filing a Complaint alleging causes of action against Defendants for (1) Failure to Indemnify for Necessary Expenditures in Violation of Labor Code §2808; (2) Failure to Pay Minimum Wage in Violation of Labor Code §§1182.12, 1194, 1197, 1197.1 and 1198; (3) Failure to Pay Overtime in Violation of Labor Code §§510 and 1198; (4) Failure to Furnish Compliant Wage Statements and Maintain Accurate Pay Records in Violation of §226, 1174(d), and 1198; (5) Failure to Provide Meal Periods in Violation of §§226.7, 512(a), and 1198; (6) Failure to Provide Rest Periods in Violation of §§226.7 and 1198; (7) Failure to Timely Pay Wages in Violation of Labor Code §204; (8) Willful Failure to Pay Wages in Violation of Labor Code §§201-203; (9) Civil Penalties in Violation of Labor Code §§2698, et seq.; (10) Unfair Competition (California Business and Professions Code §§ 17200, et seq.).

2.2. On February 15, 2022 Plaintiff Arana filed a First Amended Complaint adding Plaintiff Borjon as a named Plaintiff and setting forth the same causes of action alleged in the Complaint (“FAC”). The FAC is the operative complaint in the Action (the “Operative Complaint”). Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.3. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.4. On October 18, 2021, the Parties participated in mediation presided over by experienced wage-and-hour mediator, Hon. Carl West (retired), but were unable to resolve this Action at that time. On May 8, 2023, the Parties participated in a second all-day mediation presided over by experienced wage-and-hour mediator, Hon. Steven Denton (retired), but were unable to Resolve this Action at that time. Plaintiffs filed their Motion for Class Certification, along with all relevant documents, on June 30, 2023. Defendants filed their Opposition to Plaintiffs’ Motion for Class Certification, along with all relevant documents, on July 28, 2023. The hearing on the Motion for Class Certification was continued from August 10, 2023 to August 30, 2023 on the Court’s own motion. That

said, the Parties continued settlement negotiations for several weeks, which led to this Agreement to settle the Action on or around August 17, 2023.

- 2.5. Prior to the first mediation, Plaintiffs obtained, through informal discovery a sample of Class documents and information, including but not limited to relevant policies, procedures, and practices, time records and wage statements for putative class members, and data demonstrating the class size, hours worked, workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the Class. Thereafter, Plaintiffs obtained through formal discovery substantial information pertaining to Plaintiffs' claims, including but not limited to policies, procedures, and practices, time records and wage statements for putative class members, and data demonstrating the class size, hours worked, workweeks (pay periods), hourly-rates, and total compensation of non-exempt employees in the Class. Plaintiffs also deposed the various persons most knowledgeable on a variety of topics relevant to Plaintiffs' claims, and Defendants deposed the Plaintiffs. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").
- 2.6. Plaintiffs contend the majority of potential liability to Defendants was suffered by Driver Class Members, who worked on-call shifts which Plaintiffs contend were improperly compensated, leading to substantial exposure for unpaid wages and overtime, failure to provide meal and rest periods, failure to reimburse, inaccurate wage statements, waiting time penalties, failure to timely pay wages, and unfair competition. Plaintiffs further contend that Non-Driver Class Members also suffered damages, although far lower than Driver Class Members because Non-Driver Class Members were not required to work on-call shifts, for the same causes of action. As such, Individual Class Payments to be distributed among Non-Driver Class Members will total \$25,000, which will be distributed on a pro-rata basis based on the number of Workweeks.
- 2.7. The Court has not granted class certification.
- 2.8. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Statewide promises to pay \$1,100,000.00 in two installments as described below and no more as the Gross Settlement Amount. Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To Plaintiffs: Class Representative Service Payment to the Class Representatives of not more than \$20,000.00 to Plaintiff Arana and \$10,000.00 to Plaintiff Borjon (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representatives are entitled to receive as Participating Class Members). Defendants will not oppose Plaintiffs' request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiffs will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiffs assume full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 35%, which is currently estimated to be \$385,000.00 and a Class Counsel Litigation Expenses Payment of not more than \$50,000.00. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiffs and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiffs' Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these Payments.
- 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,500.00, except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$7,500.00, the Administrator will retain the remainder in the Net Settlement Amount.
- 3.2.4. To Each Participating Non-Driver Class Member: Each participating Non-Driver Class Member who was employed by Defendant shall receive an

Individual Class Payment calculated by (a) dividing \$25,000.00 by the total number of Workweeks worked by all Non-Driver Class Members during the Class Period and (b) multiplying the result by each Participating Non-Driver Class Members Workweeks.

3.2.5. To Each Participating Class Member: Each Participating Driver Class Member shall have their Individual Class Payment calculated by (a) dividing the Net Settlement Amount (reduced by the \$25,000.00 paid to Non-Driver Class Members) by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Driver Class Member's Workweeks.

3.2.5.1. Tax Allocation of Individual Class Payments. 20% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.5.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members, whether Non-Driver Class Members or Driver Class Members, on a pro rata basis. If the Non-Participating Class Member was a Non-Driver Class Member, the amounts equal to their Individual Class Payments will be retained for distribution amongst the Participating Non-Driver Class Members. If the Non-Participating Class Member was a Driver Class Member, the amounts equal to their Individual Class Payments will be retained for distribution amongst the Participating Driver Class Members.

3.2.6. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$35,000.00 to be paid from the Gross Settlement Amount, with 75% (\$26,250.00) allocated to the LWDA PAGA Payment and 25% (\$8,750.00) allocated to the Individual PAGA Payments.

3.2.6.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$35,000.00 total) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.6.2.If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of its records to date, Defendants estimate there are 84 Class Members who collectively worked a total of 4,677 Workweeks, and 59 Aggrieved Employees who worked a total 2,622 of PAGA Pay Periods. Of the 84 Class Members, Defendants estimate there are 39 Driver Class Members who worked a total of 1,463 Workweeks during the Class Period, and 45 Non-Driver Class Members who worked a total of 3,214 Workweeks during the Class Period.
- 4.2. Class Data. Not later than 15-calendar days after the Court grants Preliminary Approval of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount. Defendants shall pay the first installment of \$900,000.00 within 30-calendar days of the Effective Date ("First Installment"). Defendants shall pay the second installment of \$200,000.00 on the date that is 90 calendar days after the Effective Date ("Second Installment").
- 4.4. Payments from the Gross Settlement Amount. Within 14 calendar days after the First Installment, the Administrator will mail checks in for Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. "Proportionate Shares" means the proportionate percentage of Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment compared to the Gross Settlement Amount. In each of the two disbursements, the disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment

shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Statewide fully funds the entire Gross Settlement Amount, Plaintiffs, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiffs' Release. Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences including, but not

limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiffs' PAGA Notice, or ascertained during the Action and released under 6.2, below. ("Plaintiff's Release") As part of his consideration for this Agreement, Plaintiffs further agree to dismiss, with prejudice, any claims for workers' compensation, including but not limited to any claim for benefits pursuant to Labor Code §132a, previously raised at the Workers' Compensation Appeals Board, Case No. ADJ15052565. Plaintiffs' Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose after the Class Period, or based on occurrences outside the Class Period. Plaintiffs acknowledge that Plaintiffs may discover facts or law different from, or in addition to, the facts or law that Plaintiffs now know or believe to be true but agrees, nonetheless, that Plaintiffs' Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiffs' discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiffs' Release, Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

5.1.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including claims for failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks (including requiring, suffering, and/or permitting Class Members to work through meal breaks), failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, unfair and unlawful business practices, and any other claims, including claims for statutory and/or civil penalties. Except as set forth in Section 5.1.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.1.3 Release by Aggrieved Employees: All Aggrieved Employees, whether Participating Class Members or not, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the

Operative Complaint and the PAGA Notice, including specifically include but is not limited to claims for failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks (including requiring, suffering, and/or permitting Class Members to work through meal breaks), failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, and any other claims, including claims for statutory and/or civil penalties.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s March 4, 2021 Class Action Case Management Order #1. Defendants’ Declaration in Support of Preliminary Approval. Within 14-calendar days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration from Defendants and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Defendants shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.1 Plaintiffs’ Responsibilities. Plaintiffs will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiffs, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiffs confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and/or the Administrator. In their Declarations, Plaintiffs and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 60 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4 Notice to Class Members.
- 7.4.1 No later than three business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 14-calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially

in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 7.4.3 Not later than three business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14-calendar days beyond the 45 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Defendants or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The

Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.4 of this Agreement and are eligible for an Individual PAGA Payment.

7.6 Challenges to Calculation of Workweeks. Each Class Member shall have 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

7.7 Objections to Settlement.

7.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

- 7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- 7.7.3 Non-Participating Class Members have no right to object to any of the class action components of the Settlement.
- 7.8 Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.
- 7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.
- 7.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than five days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).
- 7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 7.8.4 Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.8.5 Administrator's Declaration. Not later than 14 days before the date by which Plaintiffs are required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.
8. **CLASS SIZE ESTIMATES**. Based on its records, Defendants estimates that, as of the date of this Settlement Agreement, (1) there are 84 Class Members and 4,677 Total Workweeks during the Class period and (2) there were 59 Aggrieved Employees who worked 2,622 Pay Periods during the PAGA Period. Of the 84 Class Members, Defendants estimate there are 39 Driver Class Members who worked a total of 1,463 Workweeks during the Class Period, and 45 Non-Driver Class Members who worked a total of 3,214 Workweeks during the Class Period.
9. **DEFENDANTS' RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendants must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections

will have no effect.

- 10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiffs will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiffs shall provide drafts of these documents to Defense Counsel prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

10.1 Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

10.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. **AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. **ADDITIONAL PROVISIONS.**

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserves the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 Confidentiality Prior to Preliminary Approval. Plaintiffs, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and

Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

12.3No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

12.4Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

12.5Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

12.6Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

12.7No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

12.8No Tax Advice. Neither Plaintiffs, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

12.9Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all

Parties or their representatives, and approved by the Court.

- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiffs: PIMENTEL LAW, P.C.
 30 N. Raymond Avenue, Suite 211
 Pasadena, California 91103

To Defendant: KAUFMAN DOLOWICH & VOLUCK
11111 Santa Monica Blvd., Suite 850
Los Angeles, CA 90025

12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

SIGNATURES ON FOLLOWING PAGE

PLAINTIFFS AND CLASS
REPRESENTATIVES

STATEWIDE TOWING AND RECOVERY,
INC. AND CHRISTOPHER O. KIRK

Josue Arana Personally and as Representative
Plaintiff



Authorized Representative of Statewide
Towing and Recovery Inc.

Nicholas Borjon Personally and as
Representative Plaintiff



Christopher O. Kirk

To Defendant: KAUFMAN DOLOWICH & VOLUCK
11111 Santa Monica Blvd., Suite 850
Los Angeles, CA 90025

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SIGNATURES ON FOLLOWING PAGE

PLAINTIFFS AND CLASS
REPRESENTATIVES

STATEWIDE TOWING AND RECOVERY,
INC. AND CHRISTOPHER O. KIRK

Josue Arana Personally and as Representative
Plaintiff

Authorized Representative of Statewide
Towing and Recovery Inc.


Nicholas Borjon (Oct 13, 2023 19:41 PDT)

Nicholas Borjon Personally and as
Representative Plaintiff

Chistopher O. Kirk

To Defendant: KAUFMAN DOLOWICH & VOLUCK
11111 Santa Monica Blvd., Suite 850
Los Angeles, CA 90025

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SIGNATURES ON FOLLOWING PAGE

PLAINTIFFS AND CLASS
REPRESENTATIVES


josue arana (Oct 12, 2023 15:55 PDT)

Josue Arana Personally and as Representative
Plaintiff

Nicholas Borjon Personally and as
Representative Plaintiff

STATEWIDE TOWING AND RECOVERY,
INC. AND CHRISTOPHER O. KIRK

Authorized Representative of Statewide
Towing and Recovery Inc.

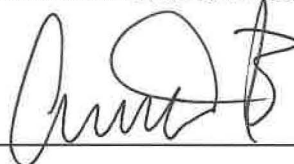
Chistopher O. Kirk

PIMENTAL LAW, PC.



Yesenia L. Rodriguez , Counsel For Plaintiffs

KAUFMAN DOLOWICH & VOLUCK



Amir D. Benakote, Counsel For Defendants

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

(Josue Arana, et al. v. Statewide Towing and Recovery, Inc., et al., Case No.CVRI2000629)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Statewide Towing and Recovery, Inc., a California Corporation (“Statewide” or “Defendant”), and Christopher O. Kirk, an individual, (hereafter referred to collectively as “Defendants”) for alleged wage and hour violations. The Action was filed by a former employees of Defendants, Josue Arana and Nicholas Borjon (collectively, “Plaintiffs”) and seeks payment of back wages, penalties, and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants during the Class Period (December 20, 2016 to DATE OF PRELIMINARY APPROVAL); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Defendants during the PAGA Period (August 27, 2019 to DATE OF PRELIMINARY APPROVAL) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Statewide’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors, including whether you were employed in a position as a driver (either a mechanic or intrastate driver, collectively referred to as “Drivers”) or in a non-driver position (“Non-Driver”). (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members

and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is 	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant. The Action accuses Defendants of violating California labor laws including failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, unfair and unlawful business practices, and any other claims, including claims for statutory and/or civil penalties. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiffs are represented by attorneys in the Action: Gabriel J. Pimentel and Yesenia L. Rodriguez of Pimentel Law, P.C., 30 N. Raymond Avenue, Suite 211 (“Class Counsel”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired experienced, neutral mediators, and continued their efforts to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$1,100,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement in two installments. Defendant shall pay the first installment of \$900,000.00 within 30-calendar days after the Judgment entered by the Court becomes final (“First Installment”). Defendant shall pay the second installment of \$200,000.00 on the date that is 90-calendar days after the date of Final Approval (“Second Installment”). The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”) in proportionate share within 14 days of receiving the First Installment and again within 14 days of receiving the Second Installment.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$385,000.00 (35% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$50,000.00 for their litigation expenses. To date, Class

Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$30,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$7,500.00 to the Administrator for services administering the Settlement.
- D. Up to \$ 35,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") according to the schedule outlined above by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks, as well as whether they were Drivers or Non-Drivers. Of the Net Settlement Amount, \$25,000.00 will be distributed amongst Non-Drivers, and the remainder will be distributed amongst Drivers.
- 4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Employer-side payroll taxes on the Wage Portion shall be calculated by the administrator and are included in the Gross Settlement Amount. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's

Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions _____ (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators,

successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including claims for failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks (including requiring, suffering, and/or permitting Class Members to work through meal breaks), failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, unfair and unlawful business practices, and any other claims, including claims for statutory and/or civil penalties.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees, whether Participating Class Members or not, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to claims for failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks (including requiring, suffering, and/or permitting Class Members to work through meal breaks), failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, and any other claims, including claims for statutory and/or civil penalties.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments as follows: Each participating Non-Driver Class Member who was employed by Defendants shall receive an Individual Class Payment calculated by (a) dividing \$25,000.00 by the total number of Workweeks worked by all Non-Driver Class Members during the Class Period and (b) multiplying the result by each Participating Non-Driver Class Members

Workweeks. Each Participating Driver Class Member shall have their Individual Class Payment calculated by (a) dividing the Net Settlement Amount (reduced by the \$25,000.00 paid to Non-Driver Class Members) by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Driver Class Member's Workweeks.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$35,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a

simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Josue Arana, et al. v. Statewide Towing and Recovery, Inc., et al.*, Case No.CVRI2000629, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 1 of the Riverside Superior Court, located at 4050 Main Street, Riverside, CA 92501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the

Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via _____. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.riverside.courts.ca.gov/>) and entering the Case Number for the Action, Case No. No.CVRI2000629. You can also make an appointment to personally review court documents in the Clerk's Office at the Riverside Courthouse by calling _____.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

PIMENTEL LAW, P.C.

Gabriel J. Pimentel (GJP@PimentelLaw.com)

Yesenia L. Rodriguez (YLR@PimentelLaw.com)

30 N. Raymond Avenue, Suite 211

Pasadena, CA 91103

626.765.9800

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or

otherwise change your mailing address.

Statewide adv. Arana - Class Action and PAGA Settlement Agreement - 10.3.23

Final Audit Report

2023-10-14

Created:	2023-10-12
By:	Yesenia Rodriguez (YLR@PimentelLaw.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAWP0fU6Y7xX2VO-ZAF6n7UuVj7gxBo9G5

"Statewide adv. Arana - Class Action and PAGA Settlement Agreement - 10.3.23" History

-  Document created by Yesenia Rodriguez (YLR@PimentelLaw.com)
2023-10-12 - 10:34:35 PM GMT- IP address: 68.119.232.88
-  Document emailed to nborjon2@gmail.com for signature
2023-10-12 - 10:35:32 PM GMT
-  Email viewed by nborjon2@gmail.com
2023-10-14 - 2:30:27 AM GMT- IP address: 104.28.85.211
-  Signer nborjon2@gmail.com entered name at signing as Nicholas Borjon
2023-10-14 - 2:41:45 AM GMT- IP address: 104.28.85.211
-  Document e-signed by Nicholas Borjon (nborjon2@gmail.com)
Signature Date: 2023-10-14 - 2:41:47 AM GMT - Time Source: server- IP address: 104.28.85.211
-  Agreement completed.
2023-10-14 - 2:41:47 AM GMT

EXHIBIT 2

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

(Josue Arana, et al. v. Statewide Towing and Recovery, Inc., et al., Case No.CVRI2000629)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Statewide Towing and Recovery, Inc., a California Corporation (“Statewide” or “Defendant”), and Christopher O. Kirk, an individual, (hereafter referred to collectively as “Defendants”) for alleged wage and hour violations. The Action was filed by a former employees of Defendants, Josue Arana and Nicholas Borjon (collectively, “Plaintiffs”) and seeks payment of back wages, penalties, and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants during the Class Period (December 20, 2016 to DATE OF PRELIMINARY APPROVAL); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Defendants during the PAGA Period (August 27, 2019 to DATE OF PRELIMINARY APPROVAL) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Statewide’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors, including whether you were employed in a position as a driver (either a mechanic or intrastate driver, collectively referred to as “Drivers”) or in a non-driver position (“Non-Driver”). (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked ____ workweeks** during the Class Period and **you worked _____ workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiffs and Plaintiffs’ attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members

and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is 	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiffs who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiffs, but every dollar paid to Class Counsel and Plaintiffs reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiffs if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiffs are former employees of Defendant. The Action accuses Defendants of violating California labor laws including failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks, failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, unfair and unlawful business practices, and any other claims, including claims for statutory and/or civil penalties. Based on the same claims, Plaintiffs have also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiffs are represented by attorneys in the Action: Gabriel J. Pimentel and Yesenia L. Rodriguez of Pimentel Law, P.C., 30 N. Raymond Avenue, Suite 211 (“Class Counsel”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

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So far, the Court has made no determination whether Defendants or Plaintiffs are correct on the merits. In the meantime, Plaintiffs and Defendants hired experienced, neutral mediators, and continued their efforts to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiffs and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiffs and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$1,100,000.00 as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement in two installments. Defendant shall pay the first installment of \$900,000.00 within 30-calendar days after the Judgment entered by the Court becomes final (“First Installment”). Defendant shall pay the second installment of \$200,000.00 on the date that is 90-calendar days after the date of Final Approval (“Second Installment”). The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”) in proportionate share within 14 days of receiving the First Installment and again within 14 days of receiving the Second Installment.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiffs and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$385,000.00 (35% of the Gross Settlement) to Class Counsel for attorneys’ fees and up to \$50,000.00 for their litigation expenses. To date, Class

Counsel have worked and incurred expenses on the Action without payment.

- B. Up to \$30,000.00 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiffs will receive other than Plaintiffs' Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$7,500.00 to the Administrator for services administering the Settlement.
- D. Up to \$ 35,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

- 3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") according to the schedule outlined above by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks, as well as whether they were Drivers or Non-Drivers. Of the Net Settlement Amount, \$25,000.00 will be distributed amongst Non-Drivers, and the remainder will be distributed amongst Drivers.
- 4. Taxes Owed on Payments to Class Members. Plaintiffs and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages ("Wage Portion") and 80% ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Employer-side payroll taxes on the Wage Portion shall be calculated by the administrator and are in addition to the Gross Settlement Amount. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiffs and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

- 5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's

Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendants have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendants.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions _____ (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Defendant has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators,

successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint, including claims for failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks (including requiring, suffering, and/or permitting Class Members to work through meal breaks), failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, unfair and unlawful business practices, and any other claims, including claims for statutory and/or civil penalties.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement, all Aggrieved Employees will be barred from asserting PAGA claims against Defendant, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees, whether Participating Class Members or not, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice, including but not limited to claims for failure to indemnify for necessary expenditures, failure to pay minimum wages, failure to pay overtime wages, failure to pay the correct applicable overtime rate, failing to authorize and permit meal breaks (including requiring, suffering, and/or permitting Class Members to work through meal breaks), failure to authorize and permit rest periods, failure to timely pay final wages at termination, failure to timely pay wages, willful failure to pay wages, failure to properly maintain required records, failure to provide accurate itemized wage statements, and any other claims, including claims for statutory and/or civil penalties.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments as follows: Each participating Non-Driver Class Member who was employed by Defendants shall receive an Individual Class Payment calculated by (a) dividing \$25,000.00 by the total number of Workweeks worked by all Non-Driver Class Members during the Class Period and (b) multiplying the result by each Participating Non-Driver Class Members

Workweeks. Each Participating Driver Class Member shall have their Individual Class Payment calculated by (a) dividing the Net Settlement Amount (reduced by the \$25,000.00 paid to Non-Driver Class Members) by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Driver Class Member's Workweeks.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$35,000.00 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendants' Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a

simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Josue Arana, et al. v. Statewide Towing and Recovery, Inc., et al.*, Case No.CVRI2000629, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiffs and Defendants are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiffs are requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 1 of the Riverside Superior Court, located at 4050 Main Street, Riverside, CA 92501. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiffs, and the

Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via _____. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiffs have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<https://www.riverside.courts.ca.gov/>) and entering the Case Number for the Action, Case No. No.CVRI2000629. You can also make an appointment to personally review court documents in the Clerk's Office at the Riverside Courthouse by calling _____.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

PIMENTEL LAW, P.C.

Gabriel J. Pimentel (GJP@PimentelLaw.com)

Yesenia L. Rodriguez (YLR@PimentelLaw.com)

30 N. Raymond Avenue, Suite 211

Pasadena, CA 91103

626.765.9800

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or

otherwise change your mailing address.

EXHIBIT 3



CASE ASSUMPTIONS

Class Members	85
Opt Out Rate	1%
Opt Outs Received	1
Total Class Claimants	84
Subtotal Admin Only	\$6,500.00

Not-to-Exceed Total \$6,500.00

For 85 Members

Pricing Good for Scope of Estimate Only

August 29, 2023

Case: Arana v. Statewide Towing & Recovery, Inc., Opt-Out wLanguage

Phoenix Contact: Jodey Lawrence
Contact Number: 949.566.1455
Email: Jodey@phoenixclassaction.com

Requesting Party: Viktoria Baklan
Firm: Pimentel Law, P.C.
Contact Number: (626) 765-6505
Email: vab@pimentellaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **85** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$125.00	2	\$250.00
Programming Database & Setup	\$125.00	2	\$250.00
Toll Free Setup*	\$103.92	1	\$103.92
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$50.00	2	\$100.00
Total			\$735.92

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	2	\$250.00
Data Merge & Duplication Scrub	\$0.50	85	\$42.50
Notice Packet & Opt-Out Form	\$2.00	85	\$170.00
Estimated Postage (up to 2 oz.)*	\$0.87	85	\$73.95
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
Total			\$1,736.45

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	2	\$110.00
Skip Tracing Undeliverables	\$1.25	9	\$10.63
Remail Notice Packets	\$2.00	9	\$17.00
Estimated Postage	\$0.87	9	\$7.40
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$195.02

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	2	\$270.00
Non Opt-Out Processing	\$100.00	1	\$100.00
Case Associate	\$55.00	2	\$110.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	2	\$21.25
Case Manager	\$85.00	2	\$170.00
Total			\$671.25

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	2	\$270.00
Disbursement Review	\$135.00	2	\$270.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$100.00	2	\$200.00
Check Run Setup & Printing	\$125.00	2	\$250.00
Mail Class Checks *	\$1.75	84	\$147.26
Estimated Postage	\$0.64	84	\$53.86
Total			\$1,381.12

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$100.00	2	\$200.00
Remail Undeliverable Checks (Postage Included)	\$1.50	17	\$25.25
Case Associate	\$55.00	2	\$110.00
Reconcile Uncashed Checks	\$75.00	2	\$150.00
Conclusion Reports	\$125.00	1	\$125.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$125.00	2	\$250.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$750.00	1	\$750.00
Total			\$1,780.25

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$6,500.00



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

CASE NAME: ARANA V. STATEWIDE TOWING & RECOVERY, INC

Date: September 13, 2023

All-In Settlement

Requesting Attorney: Viktoria Baklan

Class Size: 85

Plaintiff or Defense: Plaintiff

Opt-Out Rate: 1.5%

Firm Name: Pimental Law, P.C.

No. of Checks Issued: 84

Telephone: (323) 821-1039

Postage Total: \$139.86

Email: vab@pimentellaw.com

Grand Total: \$10,867.44

DISCOUNTED FLAT FEE: \$10,000.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
TOTAL			\$245.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA and Further Skip Trace if Necessary. CPT will Mail a Full-Length Notice & 1-Page Exclusion Form.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
XML Lex ID Skip Trace	\$0.85	9	\$7.65
Print & Mail Notice Packets	\$1.00	85	\$85.00
First-Class Postage (up to 1 oz.)*	\$0.66	85	\$56.10
TOTAL			\$473.75

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 5% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 70% of the Undeliverable Notice Packets are Remaild.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	4	\$2.00
Skip Trace for Best Address	\$1.00	4	\$4.00
Print & Remail Notice Packets	\$1.00	3	\$3.00
First-Class Postage (up to 1 oz.)	\$0.66	3	\$1.98
TOTAL			\$70.98

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	1	\$2.55
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.66	1	\$0.66
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$319.71

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	17	\$51.00
		TOTAL	\$351.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	84	\$8.37
		TOTAL	\$443.37

DISTRIBUTION SERVICES

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	84	\$209.31
First-Class Postage (up to 1 oz.)*	\$0.66	84	\$55.26
		TOTAL	\$2,254.57

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remaild Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	10	\$1,500.00
Update Undeliverable Checks Database	\$0.50	7	\$3.50
Skip Trace for Best Address	\$1.00	7	\$7.00
Remail Undeliverable Checks	\$2.50	6	\$15.00
First-Class Postage (up to 1 oz.)	\$0.66	6	\$3.96
Re-Issue Checks as Required	\$5.00	5	\$25.00
First-Class Postage (up to 1 oz.)	\$0.66	5	\$3.30
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$4,597.76

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	18	\$2.70
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Check Reissues for Winter/Spring QTR	\$5.00	2	\$10.00
First-Class Postage (up to 1 oz.)	\$0.66	2	\$1.32
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.64	1	\$8.64
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$2,111.30

GRAND TOTAL \$10,867.44

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) Resources. Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.

- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.

Confidentiality. Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.

- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law; Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Case Name: Josue Aran v. Statewide Towing & Recovery, Inc.

August 29, 2023

Requesting Attorneys Name:

Viktoria Baklan

E-Mail:

vab@pimentellaw.com

ILYM Contact:

Lisa Mullins

E-Mail:

Lisa@ilymgroup.com

Contact Number:

714.878.8836

ESTIMATE FOR ADMINISTRATION SOLUTIONS

ASSUMPTIONS	
Total Number of Class Members	85
Estimated Mail Returned as Undeliverable	20%
NCOA	Yes
Certified Spanish Translation	No
Case Duration (Year(s))	1

Activity	Rate Type	Unit Cost	Volume	Amount
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CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	1	\$150.00
Programming of Class Database	Hourly	\$175.00	1	\$175.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$325.00

PROJECT MANAGEMENT & NOTICING				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	1	\$120.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Opt-Outs, Disputes, & Objections	Hourly	\$70.00	1	\$70.00
Report Processing	Hourly	\$70.00	1	Waived
NCOA	Flat Rate	\$75.00	1	\$75.00
Toll-Free Customer Support	Flat Fee	\$125.00	1	\$125.00
Status Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$460.00

NOTIFICATION/MAILING				
Fulfillment of Notice	Per Piece	\$1.00	85	\$85.00
USPS First Class 1oz Postage	Per Piece	\$0.63	85	\$53.55
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.50	5	\$7.65
Storage, Photocopies, Deliveries	Flat Fee	\$162.60	1	\$162.60

Subtotal \$308.80

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	1	\$150.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	1	\$125.00
1st Check Stub & Release - Print & Mail (W-2/1099)	Per Check	\$1.00	85	\$85.00
USPS First Class 1oz Postage	Per Piece	\$0.63	85	\$53.55
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.50	5	\$7.65
Preparation of Taxes	Hourly	\$120.00	2	\$240.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

**Additional Bank fees may apply*

Subtotal \$2,161.20

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	1	\$120.00
Process Unclaimed Funds to State Controller	Flat Rate	\$250.00	1	\$250.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$595.00

TOTAL CASE ESTIMATE: \$3,850.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 4

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
4 not a party to the within action. My business address is 30 N. Raymond Ave., Suite 211, Pasadena,
5 CA 91103.

6 On November 29, 2023, I served the foregoing document described as **PLAINTIFFS'**
7 **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF**
8 **SETTLEMENT** on the interested parties in this action as follows:

9 ☐ By placing true copies enclosed in a sealed envelope addressed to each addressee as
10 follows:

11 ☒ Electronically to from my email address, YLR@PimentelLaw.com on the persons
12 identified below at the following electronic service address: athompson@kdvlaw.com;;
13 abenakote@kdvlaw.com; elange@kdvlaw.com

14 Kaufman, Dolowich Voluck
15 Allyson Thompson
16 Amir Benakote
17 11755 Wilshire Blvd., Ste. 2400
18 Los Angeles, CA 90025

*Counsel for Defendants Statewide Towing
and Recovery, Inc. and Christopher O. Kirk*

19 ☐ BY MAIL:

20 ☐ I deposited each envelope in the mail at Pasadena, California, with postage thereon
21 fully prepaid.

22 ☐ I enclosed the documents in an envelope or package provided by an overnight delivery
23 carrier and addressed to the persons at the addresses above. I placed the envelope or
24 package for collection and overnight delivery at an office or regularly utilized drop box
25 of the overnight delivery carrier.

26 ☒ STATE I declare under penalty of perjury under the laws of the State of
27 California that the foregoing is true and correct.

28 Yesenia L. Rodriguez

Executed on November 29, 2023 at Pasadena, California.

Reschedule a Reservation

Reservation
Reservation ID: 197170367161
Reservation Type: Motion for Preliminary Approval of Class Action Settlement
Case Number: CVRI2000629
Case Title: ARANA vs STATEWIDE TOWING AND RECOVERY, INC.
Filing Party: NICHOLAS BORJON (Plaintiff)
Location: Historic Court House - Department 1
Date/Time: November 2nd 2023, 8:30AM
Status: RESERVED
Number of Motions: 1

Motions to Reschedule
Motion for Preliminary Approval of Class Action Settlement <u>Reschedule To:</u> Date: 12/19/2023 8:30 AM Location: Historic Court House - Department 1

Fees			
Description	Fee	Qty	Amount
Reschedule Fee	20.00	1	Chat

Description	Fee	Qty	Amount
Credit Card Percentage Fee (2.75%)	0.55	1	0.55
TOTAL			\$20.55
Payment			
Amount: \$20.55	Type: Visa		
Account Number: XXXX6555	Authorization: 02682G		
 Print Receipt	 Reserve Another Hearing	 View My Reservations	