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

COURTNEY JOHNSON, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

STELVIO TRANSPORT LLC, a Delaware
limited liability company; and DOES 1 through
100, inclusive;

Defendants.

Case No.: 37-2021-00006153-CU-OE-CTL
[Consolidated With Case No. 37-2021-
00009951-CU-OE-CTL]

Assigned for All Purposes to:
Honorable Kenneth J. Medel
Department C-66

CLASS ACTION

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

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

Hearing Date: May 19, 2023
Hearing Time: 9:30 a.m.
Hearing Place: Department C-66

Complaint Filed: February 10, 2021
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on May 19, 2023 at 9:30 a.m., or as soon as the matter
2 may be heard, before the Honorable Kenneth J. Medel in Department C-66 of the San Diego
3 County Superior Court (Hall of Justice) located at 330 West Broadway San Diego, California
4 92101, Plaintiffs Courtney Johnson and Kristen Wells (“Plaintiff Johnson,” “Plaintiff Wells,” and,
5 collectively, “Plaintiffs”) move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Class Action and PAGA Settlement Agreement
8 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **Exhibit 2** to
9 the declaration of Douglas Han, including, and not limited to, the means of
10 allocation and distribution of funds, the allocations for payments under the Labor
11 Code Private Attorneys General Act of 2004 (“PAGA”), Class Counsel Fees
12 Payment, Class Counsel Litigation Expenses Payment, Class Representative
13 Service Payments, and Administration Expenses Payment;
- 14 • Conditionally certifying the Class for settlement purposes only;
- 15 • Appointing Plaintiffs as the class representatives;
- 16 • Appointing Justice Law Corporation as Class Counsel;
- 17 • Approving the Court Approved Notice of Class Action Settlement and Hearing
18 Date for Final Court Approval (“Class Notice”) attached as **Exhibit A** to the
19 Settlement Agreement;
- 20 • Directing the mailing of the Class Notice with a postage-paid return envelope to
21 the Class;
- 22 • Approving the proposed deadlines for the settlement administration process;
- 23 • Approving CPT Group, Inc. as Administrator of the settlement; and
- 24 • Scheduling a hearing to consider whether to grant final approval of the Settlement,
25 at which time the Court will also consider whether to grant final approval of the
26 requests for the Class Counsel Fees Payment, Class Counsel Litigation Expenses
27 Payment, Class Representative Service Payments, and Administration Expenses
28 Payment, and approval of the allocation of the PAGA Penalties.

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

6
7 Dated: January 10, 2023

JUSTICE LAW CORPORATION

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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$350,000 proposed wage-
3 and-hour class action settlement by Plaintiffs on behalf of themselves and all current and former
4 hourly-paid or non-exempt employees of Defendant Stelvio Transport, LLC (“Defendant”) within
5 the State of California at any time during the period from October 22, 2017 to November 14, 2022
6 (“Class,” “Class Members,” and “Class Period”). At the time of this filing, the number of Class
7 Members is estimated to be one thousand nine hundred fifty-nine (1,959), which was confirmed
8 by Defendant. (Declaration of Douglas Han In Support of Plaintiffs’ Motion for Preliminary
9 Approval of Class Action Settlement (“Han Decl.”), ¶¶ 8-9.)

10 **II. BACKGROUND**

11 On December 30, 2020, Plaintiff Wells provided written notice to the California Labor and
12 Workforce Development Agency (“LWDA”) and Defendant. (Han Decl., *supra*, at ¶ 10.)

13 On February 10, 2021, Plaintiff Johnson filed a wage-and-hour class action lawsuit in the
14 Superior Court of California, County of San Diego, alleging eight (8) causes of action. (Han Decl.,
15 *supra*, at ¶ 11.) On March 8, 2021, Plaintiff Wells filed a representative PAGA action in the
16 Superior Court of California, County of San Diego, alleging similar Labor Code violations as those
17 raised in Plaintiff Johnson’s complaint. (*Id.* at ¶ 12.)

18 The Parties remotely attended mediation with the mediator Paul Grossman, Esq., on August
19 16, 2022. (Han Decl., *supra*, at ¶ 13.) Under the auspices of the mediator, the Parties reached a
20 global settlement via a mediator’s proposal, which represented the best resolution given
21 Defendant’s current financial condition. (*Ibid.*)

22 In line with the settlement, the Parties filed a Joint Ex Parte Application to Consolidate
23 Cases and designated Plaintiff Johnson’s lawsuit as the lead case, which was granted on September
24 13, 2022. (Han Decl., *supra*, at ¶ 14.) On November 18, 2022, also pursuant to the settlement,
25 Plaintiff Wells provided an amended notice to the LWDA and Defendant. (*Id.* at ¶ 15.)

26 Plaintiffs then filed a First Amended Consolidated Complaint adding a Labor Code section
27 2698, *et seq.* (PAGA) cause of action. (Han Decl., *supra*, at ¶ 16.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Prior to mediation, the Parties conducted significant investigation and discovery of the facts and law both before and after this case was filed. (Han Decl., *supra*, at ¶ 17.) Specifically, Defendant produced hundreds of documents relating to its policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, meal and rest break policies, and payroll, timekeeping, and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiffs also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Plaintiffs to understand the number of workweeks and pay periods within the Class Period and PAGA Period. (*Ibid.*) Class Members who worked for Defendant were also interviewed to obtain a greater understanding of the extent and frequency of the alleged day-to-day violations. (*Ibid.*)

Based upon the information provided by Defendant and interviews with Class Members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) maintained an illegal rounding policy; (4) implemented and maintained an illegal alternative workweek schedule; (5) failed to include non-discretionary bonuses and incentives in employees' regular rate of pay for purposes of overtime compensation, sick leave pay, and premium wages; (6) failed to reimburse employees for necessary business expenses; (7) issued noncompliant wage statements; and (8) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-28.)

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

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with the mediator, Paul Grossman, Esq., on August 16, 2022. (Han Decl., *supra*, at ¶ 29.) Under the continued assistance of the mediator, the Parties eventually reached a settlement via a mediator's proposal, the terms of which were memorialized in the Settlement Agreement of which the Parties now seek Preliminary Approval. (*Id.* at ¶ 29; Exhibit 2.)

///

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

2 The Settlement Agreement was reached because of arm’s-length negotiations. (Han Decl.,
3 *supra*, at ¶ 39.) Though cordial and professional, the settlement negotiations have always been
4 adversarial and non-collusive in nature. (*Ibid.*) At the mediation, both Parties’ counsel conducted
5 extensive arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6 Plaintiffs and Class Counsel recognize the expense and length of continued proceedings
7 necessary to continue the litigation against Defendant through trial and through any possible
8 appeals. (Han Decl., *supra*, at ¶ 40.) Plaintiffs and Class Counsel also considered the uncertainty
9 and risk of further litigation, potential outcome, and difficulties and delays inherent in such
10 litigation as well as Defendant’s current financial condition. (*Ibid.*) Based on the foregoing,
11 Plaintiffs and Class Counsel believe the Settlement Agreement is a fair, adequate, and reasonable
12 settlement, and is in the best interests of the Class Members. (*Ibid.*)

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

14 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties’
15 claims and defenses before reaching the Settlement and engaged in investigation, research, and
16 discovery to support the Settlement. (Han Decl., *supra*, at ¶ 41.) The Settlement was only possible
17 following significant investigation and evaluation of Defendant’s relevant policies and procedures,
18 as well as the data produced for the Class, permitting Class Counsel to engage in a comprehensive
19 analysis of liability and potential damages. (*Ibid.*) Furthermore, this case has reached the stage
20 where “the Parties certainly have a clear view of the strengths and weaknesses of their cases”
21 sufficient to support the Settlement’s reasonableness, adequacy, and fairness. (*Ibid.*; *Boyd v.*
22 *Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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

24 **i. Deductions from the Settlement**

25 The Parties agreed (contingent upon the Court’s approval) this action be settled and
26 compromised for the non-reversionary total sum of \$350,000 (“Gross Settlement Amount”) which
27 includes: (1) Class Counsel Fees Payment of \$122,500; (2) Class Counsel Litigation Expenses
28 Payment not to exceed \$30,000; (3) Class Representative Service Payments not to exceed \$10,000

to each Plaintiff; (4) Administration Expenses Payment not to exceed \$20,000; and (5) PAGA Penalties of \$20,000. (Han Decl., *supra*, at ¶ 30.)

ii. Calculating Individual Settlement Shares

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$137,500 (“Net Settlement Amount”) will be distributed to Participating Class Members. (Han Decl., *supra*, at ¶ 31.)

Participating Class Members will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 32.) Individual Class Payment will be apportioned twenty percent (20%) as wages and eighty percent (80%) as penalties and interests. (*Ibid.*) The Individual PAGA Payment that is paid to each Aggrieved Employee shall be determined using the formula set forth in the Settlement Agreement. (*Ibid.*)

iii. Notice to the Class

Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Han Decl., *supra*, at ¶ 34.) No later than fourteen (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. (*Ibid.*)

iv. Distribution of Funds

The Settlement will be funded pursuant to the timeline and manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 35.) Uncashed settlement checks will be mailed to the California Controller’s Unclaimed Property Fund in the name of the Participating Class Member and Aggrieved Employee. (*Ibid.*)

v. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release the Released Parties from all claims that were alleged, or reasonably could have been alleged, based

1 on the facts stated in the operative complaints that occurred during the Class Period and ascertained
2 during this matter (Han Decl., *supra*, at ¶ 36.)

3 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
4 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
5 Non-Participating Class Members, who are Aggrieved Employees, are deemed to release, on
6 behalf of themselves and their respective former and present representatives, agents, attorneys,
7 heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA
8 penalties that were alleged, or reasonably could have been alleged, based on the facts stated in the
9 operative complaints and PAGA Notice that occurred during the PAGA Period and ascertained
10 during this matter. (Han Decl., *supra*, at ¶ 37.)

11 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
12 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
13 Plaintiffs and their respective former and present spouses, representatives, agents, attorneys, heirs,
14 administrators, successors, and assigns generally release and discharge Released Parties from all
15 claims, transactions, or occurrences that occurred during the Class Period. (Han Decl., *supra*, at ¶
16 38.) Plaintiffs expressly waive and relinquish the provisions, rights, and benefits, if any, of section
17 1542 of the Civil Code. (*Ibid.*)

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

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

2 Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code
3 violations and are experienced and qualified to evaluate the class claims, settlement versus trial on
4 a fully informed basis, and viability of the defenses. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) This
5 experience instructed Class Counsel on the risks and uncertainties of further litigation and guided
6 their determination to endorse the Settlement.¹ (*Ibid.*)

7 **IV. ARGUMENT**

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

9 California Rules of Court, rule 3.769 requires court approval for class action settlements.²
10 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
11 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
12 preliminary approval of class settlements:

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

16 . . .

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

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

24 ¹ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until
25 the Class Notice has been provided to the Class, and they have had an opportunity to respond. This
26 information will be provided to the Court in conjunction with the Motion for Final Approval of
27 Class Action Settlement.

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

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

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

9 In weighing the strength of the plaintiff’s case, *Kullar* instructs the court is not to “decide
10 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of
11 the attorneys.” (*Kullar v. Foot Locker Retail, Inc.*, *supra*, 168 Cal.App.4th at p. 133.) Finally,
12 *Kullar* does not require an explicit statement of the maximum amount the class could recover if
13 the plaintiff prevailed on all his claims, provided there is a record that allows “an understanding
14 of the amount that is in controversy and the realistic range of outcomes of the litigation.” (*Munoz*
15 *v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) Put differently,
16 “as the court does when it approves a settlement as in good faith under Code of Civil Procedure §
17 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of
18 reasonableness.” (*Kullar*, at p. 133.)

19 **i. The Settlement Amount of \$350,000 Is Fair and Reasonable**

20 The Settlement was possible following significant investigation and evaluation of
21 Defendant’s relevant policies and procedures, as well as the data Defendant produced for the Class,
22 as referenced in Section III above, permitting Class Counsel to engage in a comprehensive analysis
23 of liability and potential damages. (Han Decl., *supra*, at ¶ 41.)

24 The claims are predicated on Defendant’s purported: (1) failure to properly calculate and
25 pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks
26 and pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant
27 wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8)
28

violation of Business & Professions Code section 17200, *et seq.* (Han Decl., *supra*, at ¶ 42.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 43.)

Although Plaintiffs believe the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 44.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*) Plaintiffs discounted the calculations for potential damages.

ii. The PAGA Penalties of \$20,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties in this case include, but are not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246(1), 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 55.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant also maintained, in addition to its strong arguments against the underlying claims, that it had a strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled state. (*Ibid.*; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued without stacking and limited to the initial violation, the PAGA penalties would be limited to **\$147,500** (1,475 employees x \$100 initial violation) on the low end and **\$1,032,500** (1,475 employees x \$100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 56-59.)

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

1 Plaintiffs also recognized the risk any PAGA award could be significantly reduced. (Han
2 Decl., *supra*, at ¶ 60.) Many of the causes of action brought were duplicative of the statutory
3 claims, such as violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512(a), 1194,
4 1197, 1198, 2800, and 2802. (*Ibid.*) Thus, allocating \$20,000 to PAGA civil penalties was
5 reasonable based on a rate of **\$1.00** per pay period [$\$20,000 \div 19,972$ pay periods in PAGA date
6 range], given Defendant's current financial condition and the fact it is also paying an additional
7 \$330,000 in the class settlement.⁴ (*Ibid.*) When PAGA penalties are negotiated in good faith and
8 "there is no indication that [the] amount was the result of self-interest at the expense of other Class
9 Members," such amounts are generally considered reasonable.⁵ (*Ibid.*)

10 Considering Defendant's defenses, its supporting evidence, and its position the case is not
11 suitable for class treatment, the Settlement of \$350,000 is reasonable, adequate, and fair.

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

13 Excluding the civil penalties, which could be completely discretionary, the total estimated
14 potential exposure, assuming certification and prevailing at trial, would be about **\$7,287,727.05**
15 on the low end and **\$7,497,887.84** on the high end. (Han Decl., *supra*, at ¶ 61.)

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

26 ⁵ (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist.
27 LEXIS 33900 at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, "[T]rial
28 court did not abuse its discretion in approving a settlement which does not allocate any damages
to the PAGA claims".)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$631,040.34	70%	60%	\$75,724.84
Meal Break Premiums	\$193,798.98	60%	60%	\$31,007.84
Overtime/Minimum Wage: Off-the-Clock Work	\$420,055.89 to \$630,216.68	60%	50%	\$84,011.18 to \$126,043.34
Overtime/Minimum Wage: Rounding	\$77,807.33	30%	40%	\$32,679.08
Overtime/Minimum Wage: Alternative Workweek Schedule	\$978,678.55	40%	70%	\$176,162.14
Overtime/Minimum Wage: Regular Rate	\$241,462.36	30%	50%	\$84,511.83
Unreimbursed Business Expenses	\$196,208	20%	70%	\$47,089.92
Wage Statement Penalty	\$1,991,250	70%	65%	\$209,081.25
Waiting Time Penalty	\$2,557,425.60	70%	65%	\$268,529.69
MAXIMUM TOTAL EXPOSURE	\$7,287,727.05 to \$7,497,887.84⁶			\$1,008,797.77 to \$1,050,829.93⁷

Based on this analysis, the realistic recovery for this case is **\$1,008,797.77** on the low end and **\$1,050,829.93** on the high end. (Han Decl., *supra*, at ¶ 71.) The Gross Settlement Amount of \$350,000 is approximately thirty-three percent (33.31%) of the maximum realistic exposure at trial, which is a reasonable settlement given Defendant’s current financial condition. (*Ibid.*)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re Tableware Antitrust Litig.* (N.D.Cal. 2007) 484 F.Supp.2d 1059, 1079.) “The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved.” (*City of Detroit v. Grinnell Corporation* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Ceullar Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, “[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or

⁶ (Han Decl., *supra*, at ¶¶ 45-54.)

⁷ (*Id.* at ¶¶ 62-70.)

speculative measure of what might have been achieved by the negotiators”). Nevertheless, this settlement is in line with the realistic exposure had Plaintiffs prevailed at trial and provides a significant recovery for the Class Members.

d. Conditional Certification of the Class Is Appropriate

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

The Class is ascertainable and numerous as to make it impracticable to join all Class Members, and there are common questions of law and fact that predominate over any questions affecting any individual Class Member. (Han Decl., *supra*, at ¶ 72.) Plaintiffs contend, as former hourly-paid, non-exempt employees of Defendant, their claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Also, Plaintiffs assert the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

i. The Proposed Class Is Ascertainable and Sufficiently Numerous

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

This case involves about one thousand nine hundred fifty-nine (1,959) Class Members. (Han Decl., *supra*, at ¶ 73.) Thus, the Class is sufficiently numerous. (*Ibid.*; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and former employees” is sufficiently numerous].)

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

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

11 **1. Common Issues Predominate**

12 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
13 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
14 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) In
15 other words, courts determine whether the elements necessary to establish liability are susceptible
16 to common proof, even if the class members must individually prove their damages. (*Brinker*
17 *Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are
18 regularly granted class certification when the plaintiff can present evidence of common policies.
19 (See, e.g., *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-
20 O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v.*
21 *Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016
22 U.S.Dist.LEXIS [court certified class of dancers on state law claims].)

23 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Decl., *supra*, at ¶ 74.) Plaintiffs contend all Class Members were subject to the same
25 or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

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2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiffs are former employees of Defendant and allege they and Class Members were employed by the same company and injured by Defendant's common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 75.) Plaintiffs seek relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiffs' claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate class representatives. (Han Decl., *supra*, at ¶ 76.) Plaintiffs conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs spent time in meetings and conferences with Class Counsel to provide them with a complete understanding of their work environments and requirements. (*Ibid.*) Plaintiffs have no interests adverse to those of the other Class Members. (*Ibid.*)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. Because several Class Members are also current employees, Plaintiffs believe fear of retaliation further supports class-wide relief.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement

1 after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel
2 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
3 percentage of objectors is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) All
4 these elements are present here.

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

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

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

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

15 **V. CONCLUSION**

16 Plaintiffs submit the Settlement is in the Class's best interests. Under the applicable class
17 action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class
18 should be conditionally certified for settlement purposes, and Class Notice should be approved.

19
20 Dated: January 10, 2023

JUSTICE LAW CORPORATION

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22 By: 
23 Douglas Han
24 Attorneys for Plaintiffs
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PROOF OF SERVICE
1013A(3) CCP

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On January 10, 2023, I served the foregoing document described as

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

for the following case: **Johnson v. Stelvio Transport LLC**
LWDA/Court Case No.: **LWDA Case No.: CM-817451-20**
Court Case No.: 37-2021-00006153-CU-OE-CTL
San Diego County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on January 10, 2023, at Pasadena, California.



Mariah Anderson