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Attorneys for Defendant
National Technical Systems, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

DEREK DOWNEY, ADAM SARDONI,
individually and on behalf of all similarly
situated individuals, on behalf of the general
public, and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

Plaintiffs,

v.

NATIONAL TECHNICAL SYSTEMS,
INC., a California corporation, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 22STCV00946

Assigned to the Hon. Stuart M. Rice, Dept. 1

CLASS ACTION

**JOINT SUPPLEMENTAL BRIEFING FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 30, 2023

Time: 10:00 a.m.

Dept.: SSC-1

Action Filed: May 4, 2021

1 **I. INTRODUCTION**

2 Plaintiffs DEREK DOWNEY and ADAM SARDONI (“Plaintiffs”) and Defendants
3 National Technical Systems, Inc., NTS Technical Systems, NTS Engineering Services, Inc.,
4 Unitek Technical Services, Inc. and National Quality Assurance – USA, Inc. (all together,
5 “Defendants”) (collectively, “the Parties”) hereby respectfully submit this Joint Supplemental
6 Briefing to address the Court’s January 10, 2023 Checklist for Preliminary Approval of Class
7 Action Settlement (the “Checklist”) regarding Plaintiffs’ Unopposed Motion for Preliminary
8 Approval of Class Action Settlement.

9 **II. TOPICS ADDRESSED IN THE COURT’S CHECKLIST**

10 **A. Moving Papers**

11 1. *Dunk/Kullar Analysis*

12 The Court has requested the following: (1) further elaboration as to how many payroll
13 records were reviewed, and if Plaintiffs’ Counsel’s analysis was informed by a data sample, show
14 that the sample is statistically reliable; and (2) further exposure analysis for the unpaid wages and
15 rest break claims. *See Exhibit A* to Supplemental Declaration of Daniel F. Gaines (“Suppl. Gaines
16 Decl.”).

17 In advance of mediation, Plaintiffs’ Counsel obtained and reviewed multiple documents,
18 including (i) Plaintiffs’ employee files and wage statements, (ii) policy documents relating to the
19 employment of Plaintiff and Class Members, and (iii) data relating to the alleged Labor Code
20 violations and the value of the recoverable damages and penalties, including time and payroll data.
21 *See* Suppl. Gaines Decl., ¶ 3. Plaintiff’s Counsel reviewed a 25% sample of Defendants’ payroll
22 records. *Id.* The Declaration of Bennett Berger, Plaintiffs’ expert, confirms that the data sample
23 was statistically reliable. *See* Declaration of Bennett Berger, ¶ 4.

24 Plaintiffs’ unpaid wages claim derives from their meal period claims because they allege
25 that they and Class Members were required to work off-the-clock during meal periods. The
26 damages for the unpaid wages claim are subsumed in the meal period damages. *See* Declaration
27 of Daniel F. Gaines submitted with Motion for Preliminary Approval, ¶ 24. Because Defendants
28 did not keep meal period records, this was Plaintiffs’ strongest claim and drove the settlement. *See*

1 Suppl. Gaines Decl., ¶ 4.

2 Plaintiffs contend that Defendants failed to provide Plaintiffs and Class Members with
3 legally compliant rest periods, or premium wages of one hour's pay in lieu thereof, as required by
4 Labor Code § 226.7 and Wage Order 4-2001. Plaintiffs report that they and other Class Members
5 were routinely not authorized and unable to take an off-duty, 10-minute rest period for every four
6 (4) hours of work or major fraction thereof but were not paid premium wages of one hour's pay for
7 each missed rest period. *See* Suppl. Gaines Decl., ¶ 5. Plaintiffs allege that Defendants' violation
8 rate is theoretically 100%, affecting more than 15,200 pay periods during the Class Period and
9 exposing Defendants to up to \$8,765,000 in theoretical damages. *Id.* However, in Plaintiffs'
10 Counsel's experience, claims for rest periods are very difficult to ascertain and certify, and this was
11 a relatively weak claim, particularly compared to the meal period claims. *Id.* Defendants provided
12 Plaintiffs' Counsel with their perfect rest period policies and argued that their compliant written
13 policy was rigorously enforced among their workforce. *Id.* Because employees needn't record their
14 rest periods under California law, Defendants argue it would be unmanageable to determine which
15 employees were purportedly denied rest periods and when, and it would require thousands of mini-
16 trials to gauge liability on, and damages for, this claim, which they contended would easily defeat
17 certification and make litigating the PAGA claim unmanageable. Risks as to class certification and
18 difficulties of proof easily justify the compromised settlement amount here because it represents a
19 fair middle ground in light of the litigation risks that lied ahead. *Id.*

20 2. *Class Certification*

21 The Court has requested the following: (1) provide evidence that each proposed class
22 representative has agreed to act as same and understands his or her responsibilities.

23 Plaintiffs direct the Court's attention to Declarations of Derek Downey and Adam Sardoni,
24 submitted concurrently herewith.

25 ***B. Settlement Agreement***

26 1. *Release of Claims*

27 The Court indicated that the scope of any release given by class members must be defined
28 with precision and clarity. Any released claims not presented directly in the operative complaint

1 should be based on the facts alleged in the operative complaint. Specifically, the Court highlighted
2 five concerns with the release of claims: (1) the class release purports to release “federal” claims
3 without providing for an opt in mechanism for FLSA claims, (2) the release purports to have Class
4 Members release PAGA claims, which should be removed, (3) the settlement should indicate the
5 point in time at which the release will be deemed effective as to the absent class members, (4) the
6 Parties should attach copies of Plaintiffs’ general releases for the Court to review, and (5) the Court
7 will not typically enjoin absent class members from filing or prosecuting any claims, suits or
8 administrative proceedings (including filing claims with the California Division of Labor Standards
9 Enforcement and the Labor and Workforce Development Agency) encompassed within the
10 Released Claims. *See Exhibit A* to Suppl. Gaines Decl.

11 As requested, the Parties have agreed to modify the language of the Settlement Agreement
12 relating to the release of claims so that it is precise and clear as to the claims to be released by the
13 class and PAGA group members. *See Exhibit B* (a true and correct copy of the Parties’ First
14 Amended Joint Stipulation of Class Action Settlement and Release Between Plaintiffs, on Behalf
15 of Themselves and all Others Similarly Situated and Aggrieved, and Defendant [the “Amended
16 Settlement” or “Amended Settlement Agreement”]) and *Exhibit C* (a true and correct copy redlining
17 the changes made between the original Settlement Agreement and the Amended Settlement [the
18 “Redlined Amended Settlement Agreement”]) to Suppl. Gaines Decl., at ¶¶ 28, 33, and 34.

19 The Amended Settlement Agreement includes an opt-in mechanism for FLSA Claims. *See*
20 Amended Settlement Agreement and Redlined Amended Settlement Agreement, ¶ 34.

21 The release purporting to have Class Members release PAGA Claims has been revised to
22 remove such claims being released by Class Members. Only PAGA Members will release PAGA
23 Claims. *See* Amended Settlement Agreement and Redlined Amended Settlement Agreement, ¶ 33.

24 The release will only be deemed effective as to the absent class members upon the Effective
25 Date and subject to Defendants’ full payment of the Maximum Settlement Amount. *See* Amended
26 Settlement Agreement and Redlined Amended Settlement Agreement, ¶¶ 28, 33, 73, and 74.

27 As to Plaintiffs’ general releases, they are attached as **Exhibit D** to the Suppl. Gaines Decl.

28 Finally, the Amended Settlement Agreement removes reference to enjoining absent Class

Members from filing or prosecuting any claims, suits or administrative proceedings (including filing claims with the California Division of Labor Standards Enforcement and the Labor and Workforce Development Agency) encompassed within the Released Claims. *See* Amended Settlement Agreement and Redlined Amended Settlement Agreement, ¶ 75h.

2. Notice Administration

The Court has requested that the Class Notice (1) indicate the specific amount the class member will receive, and how that amount was calculated, (2) indicate the specific amount of the PAGA payment the class member will receive, and how that amount was calculated, (3) include the terms of the release(s), and (4) ensure that the notice makes it clear that the class members may appear and orally object without first having submitted a written objection or notice of intent to appear. *See* **Exhibit A** to Suppl. Gaines Decl.

Plaintiffs direct the Court’s attention to the Amended Class Notice (attached as **Exhibit A** to the Amended Settlement Agreement) and the Redlined Amended Class Notice (attached as **Exhibit E** to Suppl. Gaines Decl.).

The Amended Class Notice includes: (1) the specific projected amount the class member will receive, and how that amount was calculated [*see* Amended Class Notice at § E]; (2) the specific projected amount of the PAGA payment the PAGA member will receive, and how that amount was calculated [*see Id.*]; and (3) the terms of the release(s) [*see Id.* at § D]. The terms of releases were updated in the Amended Class Notice to reflect the changes made in the Amended Settlement Agreement.

Plaintiffs further revised the Amended Class Notice to make clear that Class Members may appear orally and object without first having submitted a written objection or notice of intent to appear. *See* Amended Class Notice and Redlined Amended Class Notice at “Option 2 – Object to the Settlement.” *See also* Amended Settlement Agreement and Redlined Amended Settlement Agreement, ¶ 63.

3. Responses to Notice

The Court has requested that the Class Notice (1) indicate the deadline to submit disputes to workweeks and confirm that the deadline is reasonable and that class members who receive re-

1 mailed notices will be given an extension, and (2) remove language indicating that the class
2 members may only be heard at final approval if they have complied with all objection procedures
3 or that they must use specific language to request exclusion, or, if a specific procedure is sought,
4 explain why it is necessary. *See Exhibit A* to Suppl. Gaines Decl.

5 The Amended Class Notice indicates the deadline to submit disputes to workweeks. *See*
6 Amended Class Notice at § E and “Option 1 – Do Nothing and Participate in the Settlement,”
7 “Option 2 – Object to the Settlement,” and “Option 3 – Exclude Yourself from the Settlement.”
8 The blanks in the Amended Class Notice will be filled in to reflect a deadline of 45 calendar days
9 from the initial mailing of the Notice Packet by the Settlement Administrator, unless the 45th day
10 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the
11 next day on which the U.S. Postal Service is open, and unless the Court requires a longer Response
12 Deadline, in which case the Court-imposed period shall apply. *See* Amended Settlement
13 Agreement, ¶ 37. The Response Deadline will be extended fifteen (15) calendar days for any Class
14 Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day
15 falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the
16 next day on which the U.S. Postal Service is open. *Id.*

17 The Amended Class Notice indicates that “the Court will hear from any Class Member who
18 attends the final approval motion and asks to speak regarding his or her objection, regardless of if
19 he or she submitted a valid Notice of Objection or Notice of Intent to Appear.” *See* Amended Class
20 Notice and Redlined Amended Class Notice at “Option 2 – Object to the Settlement.” Class
21 Members need not use specific language to request exclusion. *Id.* at “Option 3 – Exclude Yourself
22 from the Settlement.”

23 ***C. Exhibits to the Motion***

24 The Court has requested that Plaintiffs provide proof of submission of the proposed
25 settlement agreement to the LWDA. *See Exhibit A* to Suppl. Gaines Decl.

26 Plaintiff directs the Court’s attention to **Exhibit F** to the Suppl. Gaines Decl., which
27 includes the original Settlement Agreement (submitted on December 16, 2022) and the Amended
28 Settlement Agreement and these supplemental papers (submitted on May 17, 2023).

1 **III. CONCLUSION**

2 Accordingly, the Parties respectfully request that this Court grant preliminary approval of
3 the Amended Settlement Agreement.

4 Dated: May 17, 2023

GAINES & GAINES
A Professional Law Corporation

6 By: *Daniel F. Gaines*
7 DANIEL F. GAINES
8 ALEX P. KATOFISKY
9 Attorneys for Plaintiffs and Proposed Class
 Counsel

10 Dated: May 17, 2023

JACKSON LEWIS, P.C.

11 By: *Nicky Jatana*
12 NICKY JATANA
13 MICHAEL D. THOMAS
14 PAUL J. COHEN
15 Attorneys for Defendant

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of Ventura State of California. I am over the age of 18 and not a party to the
3 action; my business address is 4550 East Thousand Oaks Boulevard, Suite 100 Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On May 19, 2023, I served the foregoing documents described as **(1) JOINT SUPPLEMENTAL BRIEFING**
6 **FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, (2) SUPPLEMENTAL**
7 **DECLARATION OF DANIEL F. GAINES IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY**
8 **APPROVAL OF CLASS ACTION SETTLEMENT, and (3) DECLARATION OF BENNETT BERGER IN**
9 **SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION**
10 **SETTLEMENT** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes
11 addressed as follows:

12 **Paul J. Cohen, Esq.**
13 **Nicky Jatana, Esq.**
14 **Michael D. Thomas, Esq.**
15 **JACKSON LEWIS P.C.**
16 **725 South Figueroa Street, Suite 2500**
17 **Los Angeles, CA 90017-5408**

18 On the above date:

19 _____ (BY ☐ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
20 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing
21 correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of
22 business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage
23 meter date is more than one day after date of deposit for mailing in affidavit.

24 _____ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or
25 other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized
26 carrier or driver authorized by the express carrier to receive documents.

27 X (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
28 transmission of Case Anywhere on the counsel of record listed above pursuant to the Court Order Authorizing
29 Electronic Service on March 29, 2022.

30 X (ONLINE TO THE LWDA): I caused the above-described documents to be delivered to the Labor Workforce
31 Development Agency via online process at the PAGA Filing website in accordance with the procedure imposed by the
32 LWDA.

33 I certify that the above document was printed on recycled paper.

34 I declare under penalty of perjury that the foregoing is true and correct.

35 Executed on May 19, 2023, at Westlake Village, California.

36 Amelia Booth
37 AMELIA BOOTH