



PETER R. DION-KINDEM (SBN 95267)
THE DION-KINDEM LAW FIRM
PETER R. DION-KINDEM, P.C.

2945 Townsgate Road, Suite 200
Westlake Village, CA 91361
Telephone: (818) 883-4900
Email: peter@dion-kindemlaw.com

LONNIE C. BLANCHARD III (SBN 93530)
THE BLANCHARD LAW GROUP, APC
177 East Colorado Boulevard, Suite 200
Pasadena, California 91105
Telephone: (213) 599-8255
Fax: (213) 402-3949
Email: lonnieblanchard@gmail.com

Attorneys for Plaintiffs Archie Shakespeare and Troy Brown

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

Archie Shakespeare and Troy Brown, as
individuals, on behalf of themselves and all others
similarly situated and as private attorneys general
pursuant to the Private Attorneys General Act,

Plaintiffs,

vs.

Ameri-Force Craft Services, Inc., National Steel
and Shipbuilding Company, and Does 1 through
10,
Defendants.

**Case No. 37-2021-00013962-CU-OE-CTL
CLASS ACTION**
(Assigned to the Hon. Katherine Bacal – Dept.
C-69)

**Notice of Motion and Motion for
Preliminary Approval of Class Action
Settlement; Memorandum of Points and
Authorities**

Date: February 10, 2023
Time: 11:00 a.m.
Dept.: C-69

Reservation ID: 2859925

PLEASE TAKE NOTICE that on February 10, 2023 at 11:00 a.m. in Department C-69 of the
above-entitled court located at 330 W Broadway, San Diego, California 92101, Plaintiffs Archie
Shakespeare and Troy Brown will and hereby do move for the following:

1. Preliminary approval of the settlement of this class action on the terms set forth in the Joint Stipulation of Class Action Settlement, a copy of which is attached as ***Exhibit 1*** to the Declaration of Peter R. Dion-Kindem filed herewith;
2. Conditional certification of the following class for settlement purposes only:

All persons who are or have been employed by Ameri-Force Craft Services, Inc. in California as non-exempt employees at any time from April 1, 2017 through the date of preliminary approval.
3. Preliminary appointment of Peter R. Dion-Kindem and the law firm of Peter R. Dion-Kindem, P.C. and Lonnie C. Blanchard III and the law firm of The Blanchard Law Group, APC as class counsel for settlement purposes only;
4. Preliminary appointment of Archie Shakespeare and Troy Brown as the Class Representatives;
5. Appointment of CPT Group as the Claims Administrator; and
6. Entry of an order directing the dissemination of notice in the form and manner set forth in the Joint Stipulation of Class Action Settlement and setting a schedule for a Final Approval hearing on a date calculated in accordance with its provisions.

This Motion is based on this Notice, the supporting Memorandum of Points and Authorities, the Declarations of Peter R. Dion-Kindem, Lonnie C. Blanchard III, Archie Shakespeare, and Troy Brown, the pleadings and papers on file in this action, and any other matter of which the Court may take notice.

Dated: July 19, 2022

THE DION-KINDEM LAW FIRM

BY: _____



PETER R. DION-KINDEM, P.C.

PETER R. DION-KINDEM

Attorneys for Plaintiffs Archie Shakespeare and
Troy Brown

TABLE OF CONTENTS

I.	Introduction.....	7
II.	Summary of the Litigation	8
A.	Named Plaintiffs' Claims	8
B.	Defendant's Denials of Wrongdoing and Liability	10
C.	Discovery and Investigation	11
III.	Summary of Settlement.....	11
A.	Conditional Certification for Settlement	11
B.	Settlement Class Benefit	12
1.	Settlement Amount	12
2.	Net Settlement Amount.....	12
a)	LWDA Payment.....	12
b)	Enhancement Awards to Class Representatives	12
c)	Attorney's Fees and Litigation Costs to Class Counsel.....	13
d)	Claims Administration Expenses	15
3.	Calculation and Distribution of the Net Settlement Amount.....	15
4.	PAGA Payment.....	16
5.	Tax Treatment of Individual Settlement Payments	17
6.	Payment to Class Members.....	17
C.	Release of Claims	18
1.	Released Claims by Class Members Who Do Not Opt Out	18
2.	Release of PAGA Claims.....	18
3.	Released Claims by the Class Representative	19
D.	Settlement Claims Administration	20
1.	Claims Administrator.....	20
2.	Notice to Class Members	21
3.	Settlement Website	22
4.	Challenges to Data Contained in the Class Notice	23
5.	Objecting to the Settlement.....	23
6.	Election Not to Participate in the Class Settlement	24
7.	Defendant's Termination Option	25
IV.	Reasons Why Settlement Should Be Approved.....	25
A.	A Presumption of Fairness is Applicable to this Settlement.	26

B.	There are No Grounds to Doubt the Fairness of the Settlement. -----	27
C.	Risk Analysis - The Settlement Falls within the Range of Possible Approval. ---	27
D.	The Classes should be Preliminarily Certified for Settlement Purposes. -----	28
1.	The class is ascertainable because the class members can be identified by Defendant's own records.	29
2.	The community of interest requirement is present.	29
a)	Commonality.....	30
b)	Numerosity.....	30
c)	Typicality	30
d)	Adequacy of representation of Plaintiff and counsel.....	31
e)	Superiority of Class Action.....	31
V.	Conclusion	32

Table of Authorities

Cases

<i>Amchem Products, Inc. v. Windsor</i> (1997) 521 U.S. 591	32
<i>B.W.I. Custom Kitchen v. Owens-Illinois, Inc.</i> (1987) 191 Cal.App.3d 1341	30, 31
<i>Bell v. Farmers Ins. Exchange</i> (2004) 115 Cal.App.4th 715	12
<i>Boyd v. Bechtel Corp.</i> (N.D. Cal. 1979) 485 F.Supp. 610	27
<i>Bufile v. Dollar Financial Group, Inc.</i> (2008) 162 Cal.App.4th 1193	32
<i>Chavez v. Netflix, Inc.</i> (2008) 162 Cal.App.4th 43	13, 14
<i>Clark v. American Residential Services LLC</i> (2009) 175 Cal.App.4th 785	12
<i>Consumer Cause, Inc. v. Mrs. Gooch's Natural Food Markets, Inc.</i> (2005) 127 Cal.App.4th 387	14
<i>Daar v. Yellow Cab Co.</i> (1967) 67 Cal.2d 695	28, 29
<i>Daniels v. Centennial Group, Inc.</i> (1993) 16 Cal.App.4th 467	30
<i>Dunk v. Ford Motor Co.</i> (1996) 48 Cal.App.4th 1794	26
<i>Earley v. Superior Court</i> (2000) 79 Cal.App.4th 1420	32
<i>Glass v. UBS Financial Services, Inc.</i> (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862	13
<i>Hanlon v. Chrysler Corp.</i> (9th Cir. 1998) 150 F.3d 1011	30
<i>Hogya v. Superior Court</i> (1977) 75 Cal.App.3d 122	32
<i>In re Cellphone Fee Termination Cases</i> (2010) 186 Cal.App.4th 1380	12
<i>In re First Capital Holdings Corp. Fin. Prods. Sec. Litig.</i> , MDL Docket No. 901 All Cases, 1992 U.S. Dist. LEXIS 14337	27
<i>La Sala v. American Sav. & Loan Assn.</i> (1971) 5 Cal.3d 864	25
<i>Marler v. E.M. Johansing, LLC</i> (2011) 199 Cal.App.4th 1450	29, 31
<i>McGhee v. Bank of America</i> (1976) 60 Cal.App.3d 442	31
<i>Miller v. Woods</i> (1983) 148 Cal.App.3d 862	29, 30
<i>Morillion v. Royal Packing Co.</i> (2000) 22 Cal.4th 575	32
<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> (2010) 186 Cal.App.4th 399	12
<i>Officers for Justice v. Civil Service Com'n of City and County of San Francisco</i> (9th Cir. 1982) 688 F.2d 615	26

1	<i>Philadelphia Housing Authority v. American Radiator & Standard Sanitary Corp.</i> (E.D. Pa. 1970) 323	
2	F.Supp. 364	26
3	<i>Pressler v. Donald L. Bren Co.</i> (1982) 32 Cal.3d 831	32
4	<i>Richmond v. Dart Industries, Inc.</i> (1981) 29 Cal.3d 462	29, 30, 31
5	<i>Rose v. City of Hayward</i> (1981) 126 Cal.App.3d 926	29
6	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> (2004) 34 Cal.4th 319	32
7	<i>Schneider v. Vennard</i> (1986) 183 Cal.App.3d 1340	29, 31
8	<i>Shaw v. Toshiba America Information Systems, Inc.</i> (E.D. Tex. 2000) 91 F.Supp.2d 942	14
9	<i>Van Vranken v. Atlantic Richfield Co.</i> (N.D. Cal. 1995) 901 F.Supp. 294	13
10	<i>Vasquez v. Superior Court</i> (1971) 4 Cal.3d 800	25

Statutes

11	Code of Civ. Proc. §382	28
12	Code of Civil Procedure § 581(j)	25

Rules

14	FRCP Rule 23	30, 31
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Other Authorities

16	2 Herbert Newberg & Alba Conte, <i>Newberg on Class Actions</i> § 11.41	26
17	5 James Wm. Moore, <i>Moore's Federal Practice</i> ¶ 23.83[1]	8, 26
18	Manual For Complex Litigation (Third) § 30.42	26
19	Manual for Complex Litigation, section 30.4	26

1 **Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class**
2 **Action Settlement**

3 **I. INTRODUCTION**

4 Unless otherwise set forth herein, this Memorandum incorporates by reference the definitions in
5 the Joint Stipulation of Class Action Settlement (“Settlement Agreement”), a copy of which is attached
6 as *Exhibit 1* to the Declaration of Peter R. Dion-Kindem filed herewith.

7 Under the terms of the proposed settlement, Defendant Ameri-Force Craft Services, Inc.
8 (“Defendant”) will pay \$650,000 (“Settlement Amount”). This is a common fund settlement with no
9 reversionary amount to Defendant. The Settlement Amount shall be deemed in satisfaction of the claims
10 against Defendant: (1) all wages, penalties, interest, and/or other amounts to be paid to Class Members;
11 (2) the payment to the Labor and Workforce Development Agency (“LWDA”) pursuant to the Private
12 Attorneys’ General Act (“PAGA”); (3) attorney’s fees and costs of Class Counsel; (4) the service
13 payments to the Class Representatives, if any, approved by the Court; and (5) settlement administration
14 fees. The settlement amount shall not include the employer’s share of withholding taxes.

15 Subject to court approval, the following amounts shall be paid from the Settlement Amount:

- 16 a. An attorney’s fees award to Class Counsel of up to \$216,667 (which is one-third
17 of the Settlement Amount);
18 b. An attorneys’ costs award of up to \$20,000;
19 c. Class representative enhancement awards to Archie Shakespeare and Troy Brown
20 of up to \$10,000 each;
21 d. A PAGA payment of \$30,000, of which 75% (\$22,500) shall be paid to the
22 California Labor Workforce Development Agency and 25% (\$7,500) shall be
23 made available for distribution to the Class Members; and
24 e. Claims Administrator fee not to exceed \$10,500.

25 The net funds remaining after such deductions will be allocated between the class members as
26 discussed below.
27
28

1 The Settlement Agreement contains all the material terms of the settlement, including the manner
2 and form of notice to be given to the Class, the contingencies and conditions to the settlement's final
3 approval, and other necessary and proper terms. By this motion, the Parties request that the Court take
4 the first step of the approval process in granting preliminary approval of class action settlement.

5 In determining whether preliminary approval is warranted, the issue before the Court is whether
6 the settlement is within the range of what might be found fair, reasonable, and adequate, so that notice
7 of the settlement may be given to Class Members and a hearing scheduled to consider final settlement
8 approval. The Court is not required at this point to make a final determination as to the fairness of the
9 settlement. (*See* 5 James Wm. Moore, Moore's Federal Practice ¶ 23.83[1], at 23-336.2 to 23-339 (3d
10 ed. 2002).)

11 Because the settlement meets the criteria for preliminary approval and is well within the range of
12 what might be approved as fair, reasonable, and adequate, Plaintiffs request that the Court enter the
13 proposed Preliminary Approval Order lodged herewith.

14 **II. SUMMARY OF THE LITIGATION**

15 **A. Named Plaintiffs' Claims**

16 On April 1, 2021, Plaintiff Shakespeare filed a Class Action Complaint in the Superior Court of
17 the County of San Diego, California. On April 7, 2021, Plaintiff Shakespeare filed a First Amended Class
18 Action Complaint. On August 23, 2021, Plaintiff Shakespeare filed a Second Amended Class Action
19 Complaint adding Troy Brown as a Plaintiff. On April 25, 2022, Plaintiffs filed the operative Third
20 Amended Complaint.

21 In the Third Amended Complaint, Plaintiffs allege that they and the Class Members and PAGA
22 Members were not paid for time spent waiting for and going through an entrance and/or exit security
23 process prior to, during, or after their shifts, donning or doffing personal protective equipment, having
24 their temperatures checked, and/or traveling between security check points and the location where they
25 worked, among other claims, allegations, and legal theories.

26 In the Third Amended Complaint, Plaintiffs asserted causes of action against Defendant for (1)
27 failure to pay wages for hours worked; (2) wage statement and record-keeping violations; (3) violation of
28

1 Business & Professions Code Section 17203; and (4) recovery of civil penalties pursuant to the PAGA.
2 Plaintiffs sought damages and restitution on their own behalf and on behalf of Class Members and PAGA
3 Members for lost wages, business expenses, interest, penalties, injunctive relief, attorney's fees and costs
4 among other relief. Defendant denies all the allegations in Plaintiffs' Complaint, First Amended
5 Complaint, Second Amended Complaint, Third Amended Complaint and PAGA letters described below
6 and contends that the Court should not certify the class action proposed by Plaintiffs other than for the
7 sole purpose of this Settlement.

8 On April 2, 2021, to satisfy the statutory exhaustion requirements of Labor Code § 2698 *et seq.*,
9 the California Private Attorneys General Act of 2004 (the PAGA), Plaintiff Shakespeare submitted a
10 letter to the Labor Workforce Development Agency setting forth allegations of Defendant's Labor Code
11 violations. On June 16, 2021, Plaintiff Brown submitted a letter to the Labor Workforce Development
12 Agency setting forth allegations of Defendant's Labor Code violations. Defendant denies all the
13 allegations in the PAGA letters.

14 After early meet and confer efforts and formal and informal discovery, the Parties agreed to
15 attempt to resolve this matter through private mediation. In response to discovery and in connection with
16 the mediation, Defendant produced extensive data and documents, including time sheets and time-
17 keeping data, payroll records and data, company policies, and other related documents. Plaintiff also took
18 the deposition of Defendant's PMQ.

19 On May 31, 2022, the Parties attended a mediation session with Jeff Krivis, a mediator with
20 significant experience in wage and hour class actions. The Parties were represented by their respective
21 counsel during the good-faith negotiations facilitated by Mr. Krivis. After many hours of negotiation,
22 Mr. Krivis made a mediator's proposal that the Parties accepted. The Parties signed a Memorandum of
23 Understanding on or about June 3, 2022.

24 Class Counsel have conducted a thorough investigation into the facts of this case and have
25 diligently pursued an investigation of the Class Members' and PAGA Members' claims against
26 Defendant, including reviewing and analyzing hundreds of pages of relevant documents, spreadsheets,
27 researching the applicable law and the potential defenses, reviewing and analyzing thousands of cells of
28

1 electronic pay and time-keeping data and preparing a damage analysis based on same, discussing the
2 case with putative class members, propounding multiple rounds of discovery to Defendant, reviewing
3 Defendant's discovery responses, and taking the deposition of Defendant's representative. Based on their
4 own independent investigation and evaluation, Class Counsel believe that the Settlement is fair,
5 reasonable, and adequate and is in the best interest of the Class considering all known facts and
6 circumstances, including the risk of significant delay, the risk of not obtaining certification, the defenses
7 asserted by Defendant, and potential appellate issues.

8 **B. Defendant's Denials of Wrongdoing and Liability**

9 Nothing contained in the Settlement shall be construed or deemed an admission of liability,
10 culpability, negligence, or wrongdoing on the part of Defendant or Released Parties, and Defendant
11 denies liability therefore. While Defendant believes that this Action meets the prerequisites for
12 certification of a settlement class, the fact that Defendant seeks approval of this Settlement in the form
13 of a class action shall not be construed as an admission that the underlying action was properly brought
14 as a class action or a representative action under California Business and Professions Code section 17200
15 or the PAGA for purposes other than settlement. The Parties have agreed to this Settlement with the
16 intention to avoid further disputes and litigation with the attendant inconvenience and expenses as
17 between themselves. Settlement of the Action, the negotiation and execution of this Joint Stipulation,
18 and all acts performed or documents executed pursuant to or in furtherance of this Joint Stipulation or
19 the Settlement: (1) are not, shall not be deemed to be, and may not be used as, an admission or evidence
20 of any wrongdoing or liability on the part of Defendant; (2) are not, shall not be deemed to be, and may
21 not be used as, an admission or evidence of any fault or omission on the part of Defendant in any civil,
22 criminal, administrative, or arbitral proceeding in any court, administrative agency or other tribunal; and
23 (3) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the
24 appropriateness of these or similar claims for class certification or administration other than for purposes
25 of administering this Settlement. This Settlement shall be inadmissible in evidence in any proceeding,
26 except an action or proceeding to approve, interpret, or enforce the terms of the Settlement.
27
28

C. Discovery and Investigation

Counsel for the Parties, including Class Counsel on behalf of the putative class members, have conducted a formal and informal investigation into the facts of the Action, including extensive review of documents and data provided by Defendant. Such documents include, among other things, policies, handbooks, payroll data, time-keeping data, as well as Plaintiffs' personnel file, time sheets, employment application, and payroll information. Class Counsel also reviewed and analyzed thousands of rows of data evidencing putative class members' time records and payroll information, as well as other information pertinent to their claims.

The discovery, investigation, and information exchange conducted in this matter, as well as the mediation, meetings and discussions between Class Counsel, Defendant's Counsel and company representatives have been adequate to give Plaintiffs and Class Counsel a sound understanding of the merits of their positions and to evaluate the worth of the claims of the Class Members being released by the Settlement Agreement. Plaintiffs and Class Counsel also have considered the uncertainty and risk of further litigation, the difficulty of certifying many of the claims, the potential outcome, and the difficulties and delays inherent in such litigation.

Class Counsel believe that the settlement documented by the Settlement Agreement is fair, reasonable, and adequate and in the best interest of the putative class members based on all known facts and circumstances, including the risk of significant delay, defenses asserted to the merits and the class action status of this action, as well as to the overall issue of liability, and the numerous potential appellate issues.

III. SUMMARY OF SETTLEMENT

The Settlement Agreement includes the following material terms and conditions set forth below.

A. Conditional Certification for Settlement

The Parties have agreed to conditional certification of the following settlement class for settlement purposes:

All persons who are or have been employed by Ameri-Force Craft Services, Inc. in California as non-exempt employees at any time from April 1, 2017 through the date of preliminary approval.

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1 necessary to induce an individual to participate in the suit.”); *Van Vranken v. Atlantic Richfield Co.* (N.D.
2 Cal. 1995) 901 F.Supp. 294, 300 (approving \$50,000 participation award).)

3 Here, the incentive award is lower than awards found to be fair and reasonable in other cases. (*Id.*
4 (holding that incentive award of \$50,000 to each named plaintiff was fair and reasonable); *Glass v. UBS*
5 *Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at *16, *aff’d*
6 (9th Cir. 2009) 331 Fed.Appx. 452 (approving incentive award of \$25,000 for each of four named
7 plaintiffs).)

8 Plaintiffs are former employees of Defendant who have taken extraordinary steps to challenge
9 their former employer’s actions by bringing this action. Plaintiffs did so in the belief that they and the
10 class members were entitled to the relief sought in this case. Plaintiffs’ actions have resulted in a
11 substantial recovery for the class members, and the enhancement awards sought for Plaintiffs are
12 reasonable. Absent the actions taken by Plaintiffs, none of the Class Members would have reaped the
13 rewards of this action. (Dion-Kindem Decl. ¶ 12.)

14 **c) Attorney’s Fees and Litigation Costs to Class Counsel**

15 Defendant agrees not to oppose an award of attorney’s fees to Class Counsel of up to \$216,667
16 of the Settlement Amount, which is one-third of Settlement Amount, to compensate and reimburse Class
17 Counsel for all of the work already performed by Class Counsel in this case and all of the work remaining
18 to be performed by Class Counsel in documenting the Settlement, securing Court approval of the
19 Settlement, administering the Settlement, ensuring that the Settlement is fairly administered and
20 implemented, and obtaining entry of Judgment. (Dion-Kindem Decl., ¶ 13.)

21 These fees shall be in addition to the payment of litigation costs and expenses incurred by Class
22 Counsel, in an amount not to exceed \$20,000, as awarded by the Court. (Dion-Kindem Decl., ¶ 14.) If
23 the Court reduces the attorney’s fees award or litigation costs requested by Class Counsel, the un-
24 awarded amount shall be added into the Net Settlement Amount to be available to the Class Members
25 for distribution.

26 In *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43 [75 Cal.Rptr.3d 413] the court stated “fees
27 based on a percentage of the benefits are in fact appropriate in large class actions when the benefit per
28

1 class member is relatively low....” (*Id.* at p. 63, 75 Cal.Rptr.3d 413.) The Court further stated: “Empirical
2 studies show that . . . fee awards in class actions average around one-third of the recovery.” (*Id.*, citing
3 *Shaw v. Toshiba America Information Systems, Inc.* (E.D. Tex. 2000) 91 F.Supp.2d 942, 972. *See*
4 *Consumer Cause, Inc. v. Mrs. Gooch’s Natural Food Markets, Inc.* (2005) 127 Cal.App.4th 387, 397 [25
5 Cal.Rptr.3d 514, 519], *as modified on denial of reh’g* (Mar. 30, 2005) (the common fund doctrine is
6 “frequently applied in class actions when the efforts of the attorney for the named class representatives
7 produce monetary benefits for the entire class”).)

8 The one-third fee award agreed to be paid by Defendant is also in line with other fee awards in
9 California wage and hour class actions. (*See* Dion-Kindem Declaration, ¶ 15.) Plaintiffs’ Counsel request
10 for attorney’s fees of one-third of the \$650,000 gross settlement is fair and reasonable. In fact, this
11 amount is well-earned, supported by controlling case law, and is within the fee range awarded by courts
12 in similar complex cases. Courts in class actions have awarded one-third of common funds obtained by
13 class counsel in many state and federal court cases. (*See* Dion-Kindem Declaration, ¶ 16.)

14 Class Counsel are being paid entirely on contingency and have not been paid any attorney’s fees
15 since assuming representation of Plaintiffs. The work performed by Class Counsel was extensive. In
16 litigating this case against Defendant, Plaintiffs and Class Counsel faced serious risks, including the risk
17 that Plaintiffs’ theory of liability may ultimately be rejected by the Court or Court of Appeal. Despite the
18 many risks faced by Class Counsel, Class Counsel nevertheless achieved an outstanding result for the
19 Settlement Class. (Dion-Kindem Declaration, ¶ 17.)

20 Class Counsel took on this representation aware of the risks involved and with the full intention
21 of seeing it to the end, including through any appeals. Also, Class Counsel were opposed by attorneys
22 from an experienced and well-qualified defense firm with the resources of a corporate client at its
23 disposal. (Dion-Kindem Declaration, ¶ 18.)

24 Given the highly uncertain current landscape of the legal issues involved, coupled with the
25 ensuing risks of lengthy appeals and risk of no recovery, the excellent result achieved shows that the
26 amounts allocated to both attorney’s fees and costs under the Settlement warrant this Court’s approval.
27 (Dion-Kindem Declaration, ¶ 19.)
28

Class Counsels' requested attorney's fees are also justified under the lodestar method. Using Class Counsels' normal hourly rates, the "lodestar" fees incurred by Class Counsel (excluding paralegal hours for Peter R. Dion-Kindem, P.C. and The Blanchard Law Group, APC), is as follows:

Attorney	Years of Experience	Hours	Rate	Fees
Peter R. Dion-Kindem	42	298.75	\$925	\$276,343.75
Lonnie C. Blanchard III	42	143.25	\$925	\$132,506.25
			Total:	\$408,850.00
			Fees Sought:	\$216,667.00
			Multiplier:	0.53

(Dion-Kindem Decl. ¶¶ 28-32.)

d) Claims Administration Expenses

The Claims Administrator has estimated that the settlement administration expenses will not exceed \$10,500.

3. Calculation and Distribution of the Net Settlement Amount

Defendant shall provide the Settlement Administrator with the payroll data referenced in Section E of the Settlement Agreement. The Settlement Administrator shall use the data to make the calculations referenced below.

The Net Settlement Fund will be allocated and paid to Participating Class Members on a proportional basis based on the number of pay periods worked by each Participating Class Member as a nonexempt employee of Defendant in California during the Class Period.

Payments made to Participating Class Members shall be allocated between wages and non-wage income as follows: 20% wages and 80% non-wage income. The employee's share of payroll and income taxes and all other applicable deductions or withholding required by law shall be withheld from the portion which is allocated as wages. No withholdings shall be made from the 80% portion of the payments made to Participating Class Members that is allocated to interest, penalties and other amounts.

Because the Maximum Settlement Distribution will not be finally determined until the Court grants Final Approval of this Joint Stipulation, the Parties agree that the Settlement Administrator shall

1 use the following amounts in calculating the estimated Maximum Settlement Distribution for purposes
2 of obtaining the information needed to be included on the Notice Forms:

- 3 a. The proposed payments of \$10,000 to the Representative Plaintiffs;
- 4 b. The proposed payment of \$22,500 to the California Labor & Workforce Development
5 Agency;
- 6 c. The amount of \$216,667 as attorney's fees to Class Counsel;
- 7 d. The amount of \$20,000 as costs to Class Counsel; and
- 8 e. The amount of \$10,500 as expenses of the Settlement Administrator.

9 If the Court's approval of any of the following sums is different than the figures used by the
10 Settlement Administrator in computing the Settlement Shares initially for purposes of sending the Notice
11 Form, the Settlement Administrator shall use the finally approved sums for re-computing the Net
12 Settlement Amount and the Settlement Shares.

13 **4. PAGA Payment**

14 The Parties have agreed to allocate \$30,000 for the resolution of all claims under the PAGA. 75%
15 of the PAGA Payment (\$22,500) will be remitted to the California Labor and Workforce Development
16 Agency. The remaining 25% (\$7,500) will be distributed to the PAGA Members on a proportional basis
17 based on the number of pay periods worked by each PAGA Member during the PAGA Period, and all
18 amounts shall be allocated as penalties and non-wage amounts.

19 The PAGA Payment is subject to review and approval by the Court as part of the settlement
20 process pursuant to Labor Code section 2699(1)(2). This Settlement is contingent on the Court approving
21 the PAGA release and payment. Plaintiffs shall make all appropriate notifications to the California Labor
22 and Workforce Development Agency ("LWDA") to finalize and ensure the PAGA Settlement is binding
23 and a final resolution, including but not limited to submission of the Settlement pursuant to Labor Code
24 section 2699(1)(2).

25 Assuming the conditions precedent have been met, within 10 calendar days after the receipt of
26 the Maximum Gross Settlement Amount from Defendant, the Claims Administrator will remit 75% of
27 the PAGA Payment to the LWDA.
28

1 **5. Tax Treatment of Individual Settlement Payments**

2 Defendant will pay all required Employer Payroll Taxes due on the wages paid to Class Members
3 in addition to the \$650,000.

4 **6. Payment to Class Members**

5 Defendant shall not be obligated to make any settlement payments contemplated by the
6 Settlement Agreement unless and until the San Diego County Superior Court enters the Final Approval
7 Order and until the Final Effective Date, as defined in the Settlement Agreement, has occurred.

8 No later than 15 calendar days after the Final Effective Date, the Claims Administrator will
9 provide counsel for Defendant and Class Counsel with a list of those members of the Class who did not
10 submit timely requests for exclusion and the Gross Individual Settlement Payment for each Participating
11 Class Member on that list and payments and distributions to PAGA Members. The sum of the Gross
12 Individual Settlement Payments due to the individuals on that list shall constitute the “Class Settlement
13 Payment.” The Class Administrator shall also inform Counsel for Defendant of the amount of those
14 Employer Payroll Taxes which are not deductible as a matter of law from wage payments and other
15 deductions due to be transmitted by Defendant to the Claims Administrator based on the wage portion
16 of the Gross Individual Settlement Payments for all the individuals on that list.

17 Defendant will cause the Maximum Gross Settlement Amount and Defendant’s share of
18 Employer Payroll Taxes to be wired to the Claims Administrator no later than 15 calendar days after the
19 Final Effective Date.

20 Within 15 calendar days after the receipt of the Maximum Gross Settlement Amount and
21 Employer Payroll Taxes from Defendant, the Claims Administrator will distribute to every Participating
22 Class Member his or her share of the Settlement Payment and to every PAGA Member his or her share
23 of the PAGA payment. The Claims Administrator shall make appropriate tax reporting and withholdings
24 in accordance with this Agreement and applicable law and regulations.

25 The Claims Administrator will timely remit the employer’s and employee’s portion of the payroll
26 and other taxes associated with the settlement and PAGA payments to the proper authorities as required
27 by law. In addition, the Claims Administrator will timely issue IRS Form W-2 to each Participating Class
28

1 Member that reflects the wage portion of the settlement payment and an IRS Form 1099-MISC to each
2 Participating Class Member and PAGA Member that reflects the non-wage income portion of the
3 settlement payment to the extent required by law.

4 If any Participating Class Member or PAGA Member does not cash his or her check(s) within
5 180 calendar days after issuance, the Claims Administrator shall void the check 15 calendar days after
6 the check-cashing deadline and distribute any remaining funds shall be distributed to National
7 CASA/GAL Association for Children, a nonprofit organization providing services for the benefit of
8 children who have experienced abuse or neglect. Any interest payment required by Code of Civil
9 Procedure Section 384 shall be deducted from the proceeds of any uncashed checks, and in any event
10 shall not increase the Maximum Gross Settlement Amount. The Court shall set a date when the parties
11 shall report to the Court the total amount that was actually paid to Class Members and a plan for
12 distributing any remaining funds pursuant to Section 384. The Parties agree that this obligation shall
13 satisfy and fully discharge Defendant's obligations under California Code of Civil Procedure Section
14 384.

15 Plaintiffs and Plaintiffs' counsel have no interest or relationship with National CASA/GAL
16 (Court Appointed Special Advocates Guardians *ad Litem* for Children.) (Dion-Kindem Decl., ¶ 20;
17 Blanchard Decl., ¶ 6; Brown Decl. ¶ 15; Shakespeare Decl. ¶ 15.)

18 If an appeal has been filed, Defendant will have no obligation to issue any of the checks identified
19 in the Settlement Agreement until such appeal is finally resolved.

20 **C. Release of Claims**

21 **1. Released Claims by Class Members Who Do Not Opt Out**

22 Upon the court's final approval of the class settlement and entry of final judgment, each class
23 member shall be deemed to have released the Released Parties from all "Settlement Class Members'
24 Released Claims."

25 **2. Release of PAGA Claims**

26 Upon the court's final approval of the class settlement and entry of final judgment, the PAGA
27 claims against the Released Parties that arose during the PAGA Period from PAGA Members'
28

1 employment by Defendant and work assignments with Defendant's clients while employed by Defendant
2 shall be deemed released. However, notwithstanding anything otherwise provided in this Release or this
3 Agreement, Shakespeare's PAGA claims against NASSCO on behalf of himself and/or on behalf of any
4 direct employees of NASSCO or persons who were assigned to work at NASSCO by persons or entities
5 other than Defendant shall not be released.

6 **3. Released Claims by the Class Representative**

7 As of the date the Final Approval Order is entered by the Court and except as to such rights or
8 claims as may be created by this Settlement, to the maximum extent allowed by law, the Class
9 Representatives will be deemed to have released claims as follows:

10 Except for the excluded claims of Shakespeare against NASSCO as set forth below, in
11 addition to the Settlement Class Members' Released Claims described above, in
12 exchange for the consideration recited in this Agreement, including but not limited to the
13 Class Representative Service Award, Shakespeare and Brown each releases, acquits, and
14 discharges and covenants not to sue any of the Releasees for any claim, whether known
15 or unknown, which he has ever had, or hereafter may claim to have, arising on or before
16 the date he signs this Agreement, including without limitation to, any claims relating to or
17 arising out of any aspect of his relationship with Defendant, or the termination of that
18 relationship, any claims for unpaid compensation, wages, reimbursement for business
19 expenses, penalties, or waiting time penalties under the California Labor Code, the
20 California Business and Professions Code, the federal Fair Labor Standards Act, 29
21 U.S.C. section 201, *et seq.*, or any state, county or city law or ordinance regarding wages
22 or compensation; any claims for employee benefits, including without limitation, any
23 claims under the Employee Retirement Income Security Act of 1974; any claims of
24 employment discrimination on any basis, including without limitation, any claims under
25 Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, 42 U.S.C. section
26 1981, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1991, the
27 Family and Medical Leave Act of 1993, the California Government Code, or any other
28 state, county or city law or ordinance regarding employment discrimination. Shakespeare
and Brown each acknowledges and agrees that the foregoing general release is given in
exchange for the consideration provided to him under this Agreement by Defendant.
However, this release shall not apply to claims for workers' compensation benefits,
unemployment insurance benefits, pension or retirement benefits, or any other claim or
right that as a matter of law cannot be waived or released.

Shakespeare and Brown each expressly waives any rights or benefits available to him
under the provisions of Section 1542 of the California Civil Code, which provides as
follows:

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

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
2 DEBTOR OR RELEASED PARTY.

3 Shakespeare and Brown each understands fully the statutory language of Civil Code section 1542
4 and, with this understanding, nevertheless elects to, and does, assume all risks for claims that have arisen,
5 whether known or unknown, which they ever had, or hereafter may claim to have, arising on or before
6 the date of their signatures to the Settlement Agreement, and specifically waives all rights they may have
7 under California Civil Code section 1542.

8 Notwithstanding anything otherwise provided in this Release and any other releases contained in
9 this Agreement do not include: a) the release of any claims of Shakespeare against NASSCO as more
10 fully described elsewhere in the Joint Stipulation; and b) his individual claims for wrongful termination
11 which are the subject of a separate action -- the settlement amount of which claims shall be negotiated
12 separately and shall not be part of the Gross Settlement Fund of the settlement of this action.

13 **D. Settlement Claims Administration**

14 The parties have agreed to retain CPT Group, a company with substantial class action
15 administration experience, as the administrator in this case. The Administrator has estimated that the
16 settlement administration expenses will not exceed \$10,500. (Dion-Kindem Decl., ¶ 21.)

17 **1. Claims Administrator**

18 The Claims Administrator shall perform the following duties in connection with administration
19 of the Settlement: (1) using the data provided by Defendant to prepare the Class Notice for each Class
20 Member; (2) address verification measures; (3) mailing the Class Notice to Class Members; (4) tracking
21 non-delivered Class Notices and taking reasonable steps to re-send them to Class Members' current
22 addresses; (5) setting up a settlement website which contains copies of all papers and orders filed in
23 connection with preliminary and final approval, including the final Settlement Agreement, Complaint,
24 and Final Judgment; (6) tracking and timely reporting to Class Counsel and Counsel for Defendant about
25 the received requests for exclusion; (7) calculating and paying the amounts due to each Participating
26 Class Member and PAGA Members pursuant to the Settlement; (8) calculating the amount of Employer
27 Payroll Taxes and informing Defendant of the amount to transmit to the Claims Administrator for payroll
28 taxes which are not as a matter of law deductible from wage payments; (9) paying the applicable

1 employee and Employer Payroll Taxes and deductions; (10) resolving disputes (if any) by Class
2 Members/PAGA Members regarding the number pay periods or other matters, after timely notice to and
3 consultation with Class Counsel and Counsel for Defendant; (11) transmitting funds to resolve the PAGA
4 claim to the State of California as designated; (12) issuing payments to Class Counsel and the Class
5 Representatives and associated tax forms; and (13) issuing any payments to the *cy pres* recipient. The
6 Claims Administrator (along with any of its agents) shall represent and warrant that it will: (a) provide
7 reasonable and appropriate administrative, physical and technical safeguards for any personally
8 identifiable information (“PII”) which it receives from Defendant; (b) not disclose the PII to Plaintiffs or
9 any party or third parties, including agents or subcontractors, without Defendant’s consent or as required
10 by law; (c) not disclose or otherwise use the PII other than to carry out its duties as set forth herein; and
11 (d) promptly provide Defendant with notice if PII is subject to unauthorized access, use, disclosure,
12 modification, or destruction.

13 All disputes relating to the Claims Administrator’s performance of its duties will be referred to
14 the Court, if necessary, which will have continuing jurisdiction over this Settlement until all payments
15 and obligations contemplated by this Settlement have been fully carried out.

16 **2. Notice to Class Members**

17 Within 30 calendar days after the Court enters its Preliminary Approval Order, Defendant will
18 provide to the Claims Administrator a database that lists, for each Class Member and PAGA Member,
19 the individual’s name, Social Security Number, last known address and telephone number, and number
20 of pay periods worked by each settlement class member as a nonexempt employee of Defendant in
21 California during the Class Period and the PAGA Period. This database will be drawn from Defendant’s
22 payroll records and will be in a format acceptable to the Claims Administrator. The data provided to the
23 Claims Administrator, Defendant, and Class Counsel will remain confidential and will not be disclosed
24 to anyone other than Class Counsel except as required by law, by applicable tax authorities, pursuant to
25 Defendant’s express written consent, or by order of the Court.

26 Upon receipt of the database from Defendant, the Claims Administrator will run the addresses
27 through the United States Postal Service (“USPS”)’s National Change of Address database. Upon receipt
28

1 of the updated addresses, the Claims Administrator will apply address updates prior to mailing settlement
2 notices via First-Class Mail.

3 Within 15 calendar days after Defendant provides the Claims Administrator the information, the
4 Claims Administrator will mail, by first-class mail, the Class Notice to all Class Members at their last
5 known address unless modified by any updated address information that the Claims Administrator
6 obtains in the course of administration of the Settlement.

7 The Claims Administrator will use standard devices, including the National Change of Address
8 database or equivalent, to obtain forwarding addresses prior to mailing and will use appropriate skip
9 tracing to take appropriate steps to maximize the probability that the Class Notice will be received by all
10 Class Members. Class Members to whom the Class Notice is resent after having been returned
11 undeliverable to the Claims Administrator shall have 10 calendar days thereafter, or until the response
12 deadline has expired, whichever is later, to mail, fax or email the request for exclusion, an objection,
13 and/or submit a challenge to the wage statement calculation. Class Notices that are re-sent shall inform
14 the recipient of this adjusted deadline. If a Class Member's Class Notice is returned to the Claims
15 Administrator more than once as non-deliverable, no additional Class Notice shall be sent.

16 The Claims Administrator shall provide regular reports to Class Counsel and Defendant's
17 Counsel as to the mailings of Class Notice and the receipt of requests for exclusion and objections prior
18 to the close of the period in which claims can be made.

19 **3. Settlement Website**

20 The Claims Administrator will create a settlement website which shall contain copies of all papers
21 and orders filed in connection with preliminary and final approval, including the final Settlement
22 Agreement and Third Amended Complaint. These documents will be posted not later than the mailing
23 of the Class Notice and will remain posted until the date of final approval. Unless otherwise ordered by
24 the court, to comply with California Rules of Court, Rule 3.771, the Claim Administrator will also post
25 on its website the Final Approval Order and Judgment for no more than 60 days after entry of Final
26 Approval Order. Alternatively, to comply with California Rules of Court, Rule 3.771, the settlement
27 checks shall include the following language on the check: "A Court has approved settlement of the class
28

1 action and PAGA representative actions and entered judgment for claims asserted against Defendant
2 Ameri-Force Craft Services, Inc. in *Shakespeare, et al. v. Ameri-Force Craft Services, Inc., et al.*, San
3 Diego County Superior Court, Case No. 37-2021-00013962-CU-OE-CTL.”

4 **4. Challenges to Data Contained in the Class Notice**

5 The Class Notice mailed to the Class Members will include the Class Member’s and/or PAGA
6 Member’s estimated Gross Individual Settlement Payment and PAGA Payment and the number of pay
7 periods worked during the Class Period and PAGA Period.

8 Class Members will have the opportunity to challenge the information pre-printed on their
9 individualized Class Notice, including the number of pay periods worked during the Class Period and
10 PAGA Period, by submitting a written challenge in connection with the Class Notice within the time
11 period provided. All challenges must be postmarked, or if emailed or faxed, the “sent” date must be no
12 later than 45 calendar days after the initial date of mailing of the Class Notice. Class Members to whom
13 the Class Notice is resent after having been returned undeliverable to the Claims Administrator shall
14 have 10 calendar days thereafter, or until the response deadline has expired, whichever is later, to mail,
15 fax or email a challenge to the gross earnings calculation.

16 Timely challenges will be resolved without hearing by the Claims Administrator after
17 consultation with Class Counsel and Counsel for Defendant. The Claims Administrator will evaluate the
18 evidence submitted by the Class Member and will make a final determination based on its evaluation of
19 all the evidence presented. All determinations will be made no later than 15 calendar days within receipt
20 of the challenge.

21 **5. Objecting to the Settlement**

22 The Class Members will have 45 calendar days after the date on which the Claims Administrator
23 mails the Class Notice to object to the Settlement by serving on the Claims Administrator a written
24 objection to the Settlement that must be postmarked, or if emailed or faxed, the “sent” date must be on
25 or before the 45-day deadline. Class Members to whom the Class Notice is re-sent after having been
26 returned undeliverable to the Claims Administrator shall have 10 calendar days thereafter, or until the
27 response deadline has expired, whichever is later, to mail, fax or email an objection.
28

1 Any Class Member who has properly elected not to participate in the Settlement may not submit
2 an objection to the Settlement.

3 A Class Member who does not serve a written objection in the manner and by the deadline
4 specified above will be deemed to have waived any objection and will be foreclosed from making any
5 objections to the Settlement whether by appeal or otherwise. If a Class Member submits an objection and
6 a request for exclusion, the objection shall be disregarded, and the exclusion will be honored and the
7 Class Member will be excluded from the Class.

8 The Claims Administrator shall provide the Parties a copy of any objection received within one
9 day of receipt. Counsel for the Parties shall file any objections and any response thereto at least seven
10 calendar days before the Final Approval Hearing.

11 **6. Election Not to Participate in the Class Settlement**

12 For a Class Member to request exclusion validly and effectively from this Settlement, the Class
13 Member must submit to the Claims Administrator a request for exclusion from the Settlement according
14 to the procedures set forth in the Class Notice. If additional information is required, the Claims
15 Administrator will communicate with the Class Member. To be valid, the request for exclusion must be
16 postmarked, or if emailed or faxed, the “sent” date must be no later than 45 calendar days after the date
17 of mailing of the Class Notice. Class Members to whom the Class Notice is re-sent after having been
18 returned undeliverable to the Claims Administrator shall have 10 calendar days thereafter, or until the
19 response deadline has expired, whichever is later, to mail, fax or email the request for exclusion. No
20 request for exclusion will be accepted if postmarked for delivery to the Claims Administrator after the
21 deadline indicated.

22 Any Class Member who does not properly and timely submit a request for exclusion will
23 automatically be bound by all terms and conditions of the Settlement, including its release of claims, if
24 the Settlement is approved by the Court and will be bound by the Final Approval Order, regardless of
25 whether the Class Member has objected to the Settlement.

26 A Class Member who properly and timely submits a request for exclusion will not be bound by
27 the Settlement and will remain free to contest any claim brought by Plaintiffs that would have been barred
28

1 by the Settlement, and nothing in this Settlement will constitute or be construed as a waiver of any
2 defense which Defendant has or could assert against such a claim. PAGA Members cannot opt out of
3 settlement of the Released PAGA Claims.

4 Plaintiffs may not opt-out of the Settlement Class.

5
6 **7. Defendant's Termination Option**

7 If 5% or more of the Class Members submit requests not to participate in the Settlement,
8 Defendant will have the exclusive right in their sole discretion to rescind the Settlement, and all actions
9 taken in its furtherance will be null and void. Defendant must exercise this right within 10 days after the
10 date on which the Claims Administrator first informs Defendant that at least 5% of the potential Class
11 Members have made requests to be excluded from the Settlement. Defendant shall pay for all
12 administrative costs if Defendant voids the settlement. Neither Party nor their counsel shall encourage
13 any class member to opt out of the settlement.

14 **IV. REASONS WHY SETTLEMENT SHOULD BE APPROVED**

15 Class Counsel believes that the provision of the payments under the Settlement Agreement
16 adequately compensates the Class Members for the harm they allegedly suffered for the claims being
17 released considering the risks of litigation. There are numerous risks in continuing with this litigation,
18 including the possibility of being unable to: (1) certify a class for purposes of litigation, (2) demonstrate
19 that Defendant in fact committed the wrongful acts alleged, and (3) prove that the Class Members were
20 damaged as a proximate result of Defendant's wrongful acts.

21 While California law requires final judicial approval of class action settlements, there is no
22 express requirement for preliminary approval of such settlements. (*See* Code of Civil Procedure § 581(j).)
23 California courts, however, have adopted the procedures and standards developed by federal courts for
24 such review and approval. (*See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 820 [94 Cal.Rptr. 796,
25 484 P.2d 964]; *La Sala v. American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 872 [97 Cal.Rptr. 849, 489
26 P.2d 1113].) As demonstrated by these decisions, California courts rely upon federal decisions and law
27 to determine the criteria to be applied in granting preliminary approval of a proposed settlement.
28

1 Preliminary approval does not require the Court to make a final determination that the settlement
2 is fair, reasonable, and adequate. Rather, that decision is made only at the final approval stage, after
3 notice of the settlement has been given to the class members and they have had an opportunity to voice
4 their views of the settlement or to exclude themselves from the settlement. (*See* 5 James Wm. Moore,
5 *Moore’s Federal Practice* 23.83[1], at 23-336.2 to 23-339 (3d ed. 2001).) Thus, in considering a potential
6 settlement, the Court need not reach any ultimate conclusions on the issues of fact and law which underlie
7 the merits of the dispute and need not engage in a trial on the merits. (*Officers for Justice v. Civil Service*
8 *Com’n of City and County of San Francisco* (9th Cir. 1982) 688 F.2d 615.) Preliminary approval is
9 merely the prerequisite to giving notice so that “the proposed settlement . . . may be submitted to members
10 of the prospective class for their acceptance or rejection.” (*Philadelphia Housing Authority v. American*
11 *Radiator & Standard Sanitary Corp.* (E.D. Pa. 1970) 323 F.Supp. 364, 372, *adhered to* (E.D. Pa. 1971)
12 322 F.Supp. 834, *aff’d and modified sub nom. Ace Heating & Plumbing Co. v. Crane Co.* (3d Cir. 1971)
13 453 F.2d 30.)

14 Preliminary approval of the settlement should be granted if there are no “grounds to doubt its
15 fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or
16 segments of the class, or excessive compensation for attorneys, and appears to fall within the range of
17 possible approval.” (Manual for Complex Litigation, section 30.41, at 236-37 (3d ed. 1995).) This
18 proposed settlement satisfies the standard for preliminary approval because it is within the range of
19 possible approval and there are no grounds to doubt its fairness.

20 **A. A Presumption of Fairness is Applicable to this Settlement.**

21 There is a presumption that a proposed settlement is fair and reasonable when it is the result of
22 arms-length negotiations. (*See* 2 Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 11.41 at
23 11-88 (3d ed. 1992); Manual For Complex Litigation (Third) § 30.42.) Indeed, a trial court is directed to
24 operate under a presumption of fairness when, *inter alia*, the settlement is the result of arms-length
25 negotiations, there has been investigation and discovery that are sufficient to permit counsel and the court
26 to act intelligently, and counsel are experienced in similar litigation. (*See Dunk v. Ford Motor Co.* (1996)
27 48 Cal.App.4th 1794, 1800–01 [56 Cal.Rptr.2d 483], *as modified* (Sept. 30, 1996).)
28

1 The proposed settlement herein is the product of many hours of arms-length negotiations between
2 Plaintiffs' counsel and Defendant's counsel, which negotiations included a formal, full-day mediation
3 session with Jeff Krivis, a well-known mediator. The information exchanged by the Parties is sufficient
4 to reliably assess the merits of the Parties' respective positions and to compromise the issues on a fair
5 and equitable basis. Plaintiffs' counsel has done an extensive investigation, including legal research,
6 reviewing extensive documentation and payroll records and analyzing same. In addition, the parties are
7 represented by counsel with significant experience in class action litigation, including employment
8 litigation.

9 The arms-length negotiations have produced a result that Class Counsel believes to be in the
10 Settlement Class's best interests considering the costs and risks of continued litigation. The opinion of
11 experienced counsel supporting the settlement is entitled to considerable weight. (*See., e.g., In re First*
12 *Capital Holdings Corp. Fin. Prods. Sec. Litig.*, MDL Docket No. 901 All Cases, 1992 U.S. Dist. LEXIS
13 14337, at *8 (C.D. Cal. June 10, 1992) (finding belief of counsel that the proposed settlement represented
14 the most beneficial result for the class to be a compelling factor in approving settlement); *Boyd v. Bechtel*
15 *Corp.* (N.D. Cal. 1979) 485 F.Supp. 610, 622 (recommendations of plaintiffs' counsel should be given a
16 presumption of reasonableness).)

17 **B. There are No Grounds to Doubt the Fairness of the Settlement.**

18 Under the terms of the settlement, Defendant has agreed to make a cash payment to the Settlement
19 Class Members for the return of the release of the claims at issue.

20 **C. Risk Analysis - The Settlement Falls within the Range of Possible Approval.**

21 Based on the analysis of the data and information provided by Defendant, the potential unpaid
22 wage claim based on unpaid time spent undergoing the security entrance and exit process, temperature
23 check, and donning and doffing is approximately \$85,000, assuming a complete victory. This was
24 calculated based on the actual hourly pay rates of the employees and assumes two minutes of unpaid
25 time per shift worked.

1 The maximum recovery under the Section 203 claim for Defendant's terminated employees
2 (assuming Defendant could not establish a good faith defense) is approximately \$39,000 based on
3 Defendant's representation that there were 16 terminated employees.

4 The "soaking wet" 226(e) wage statement penalty claim (assuming Plaintiff could establish a
5 "knowing and intentional" violation, which Defendant disputes) is approximately \$325,150, which is
6 based on 6,530 pay periods at \$50 per pay period, with a cap of \$4,000 per employee. (Dion-Kindem
7 Declaration, ¶ 22.)

8 The extensive discovery and information exchange conducted in this matter, as well as
9 discussions between counsel, have been adequate to give the Representative Plaintiffs and Class Counsel
10 a sound understanding of the merits of their positions and to evaluate the worth of the claims of the Class.
11 (Dion-Kindem Declaration, ¶ 23.)

12 Considering the risk of not obtaining certification and the risk of not prevailing, Class Counsel
13 believe the proposed \$650,000 settlement is reasonable and provides the certainty of a payment to class
14 members. When measured against the risk of obtaining nothing, such settlement is reasonable and in the
15 interests of the class members. In so concluding, Class Counsel have considered the uncertainty and risk
16 of further litigation, the potential outcome, and the difficulties and delays inherent in such litigation.
17 Based on the foregoing, the Representative Plaintiffs and Class Counsel believe the settlement is a fair,
18 adequate and reasonable settlement, and is in the best interests of the Class Members. (Dion-Kindem
19 Declaration, ¶ 24.)

20 **D. The Classes should be Preliminarily Certified for Settlement Purposes.**

21 Class certification is authorized when "the question is one of a common or general interest, of
22 many persons, or when the parties are numerous, and it is impracticable to bring them all before the
23 court." (Code of Civ. Proc. § 382.) Under California law, there are two certification prerequisites: (1) the
24 existence of an "ascertainable class," and (2) "a well-defined community of interest in the questions of
25 law and fact involved affecting the parties to be represented." (*Daar v. Yellow Cab Co.* (1967) 67 Cal.2d
26 695, 704 (citation omitted).) In addition, California courts utilize the procedures prescribed by the
27 Federal Rules of Civil Procedure in class actions filed in California. (*See Schneider v. Vennard* (1986)
28

1 183 Cal.App.3d 1340, 1345–46 [228 Cal.Rptr. 800]; *Daar, supra*, 67 Cal.2d at 695; *Vasquez v. Superior*
2 *Court* (1971) 4 Cal.3d 800.)

3 In *Marler v. E.M. Johansing, LLC* (2011) 199 Cal.App.4th 1450, 1459 [132 Cal.Rptr.3d 691,
4 698], the Court enunciated the applicable criteria for the maintenance of a class action.

5 “Class actions are statutorily authorized ‘when the question is one of a common or
6 general interest, of many persons, or when the parties are numerous, and it is
7 impracticable to bring them all before the court....’ (Code Civ. Proc., ‘ 382.)” (*Ghazaryan*
8 *v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1530, 87 Cal.Rptr.3d 518.) “In
9 order to maintain a class action, certain prerequisites must be met, specifically, ‘the
10 existence of an ascertainable class and a well-defined community of interest among the
11 class members. [Citation.] The community of interest requirement embodies three
factors: (1) predominant common questions of law or fact; (2) class representatives with
claims or defenses typical of the class; and (3) class representatives who can adequately
represent the class.” (*Kennedy v. Baxter Healthcare Corp.* (1996) 43 Cal.App.4th 799,
808, 50 Cal.Rptr.2d 736.)

12 **1. The class is ascertainable because the class members can be identified by**
13 **Defendant’s own records.**

14 Ascertainability issues concern (1) the class definition, (2) the size of the class, and (3) the means
15 of identifying class members. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873 [196 Cal.Rptr. 69].)
16 “Class members are ‘ascertainable’ where they may be readily identified without unreasonable expense
17 or time by reference to official records.” (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932 [179
18 Cal.Rptr. 287].) Here, the identity of the class members is easily ascertainable from the Defendant’s own
19 records. (Dion-Kindem Decl. ¶ 25.)

20 **2. The community of interest requirement is present.**

21 The existence of a community of interest turns on whether common questions of law and fact are
22 sufficiently pervasive to permit adjudication in a class action rather than in a multiplicity of separate
23 mini-trials. This requirement is satisfied if (1) there are predominant questions of law or fact common to
24 the class, (2) the plaintiff’s claims are typical of those of the class, and (3) the plaintiff is an adequate
25 representative. (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 470 [174 Cal.Rptr. 515, 629
26 P.2d 23].) The adequacy issue also encompasses questions concerning the competency of counsel in
27 litigating class claims.
28

1 **a) Commonality**

2 Common issues predominate when they would be “the principal issues in any individual action,
3 both in terms of time to be expended in their proof and of their importance.” (*Vasquez, supra*, 4 Cal.3d
4 at 810; FRCP Rule 23(a).) Common questions need only be “sufficiently pervasive to permit adjudication
5 in a class action rather than in a multiplicity of suits.” (*Id.*) Commonality is easily satisfied if there is one
6 issue common to class members. (*See Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019.)
7 Here, common issues include:

- 8 • Whether the Class Members were paid for all hours worked including time that Plaintiffs
9 alleged that they were subject to the control of Defendant;
10 • Whether the Class Members were provided with accurate wage statements that complied
11 with Section 226(a); and
12 • Whether the Class Members were properly paid all wages owing upon termination.

13 **b) Numerosity**

14 California law requires the class to be so numerous that utilization of the class action procedure
15 will inure to the benefit of the judicial system. (*See Richmond v. Dart Indus., Inc.* (1981) 29 Cal. 3d 462,
16 470.) Numerosity is satisfied because there are over 800 class members. (Dion-Kindem Decl. ¶ 26.)

17 **c) Typicality**

18 Typicality requires only that the named plaintiff’s interests in the action be significantly similar
19 to those of other class members. (*See Richmond, supra*, 29 Cal.3d at 470-75.) A named plaintiff’s claims
20 are typical if they arise from the same event, practice, or course of conduct that gives rise to the claims
21 of other class members, and if his or her claims are based on the same legal theories. (*See Miller v. Woods*
22 (1983) 148 Cal.App.3d 862, 874.) Indeed, when the same underlying conduct affects the named plaintiff
23 and the class sought to be represented, the typicality requirement is met irrespective of any varying fact
24 patterns that may underlie individual claims. (*See Daniels v. Centennial Group, Inc.* (1993) 16
25 Cal.App.4th 467, 473 [21 Cal.Rptr.2d 1] (named plaintiff’s interests must only be significantly similar
26 to other class members).) As the court in *B.W.I. Custom Kitchen v. Owens-Illinois, Inc.* (1987) 191
27 Cal.App.3d 1341 [235 Cal.Rptr. 228], explained:
28

1 [I]t has never been the law in California that the class representative must have identical
2 interests with the class members. The only requirements are that common questions of
3 law and fact predominate and that the class representative be similarly situated. (*Id.* at
4 1347 (citation omitted, emphasis omitted.)

5 In this case, Plaintiffs' class claims are like those of the settlement class that Plaintiffs seek to
6 represent.

7 **d) Adequacy of representation of Plaintiff and counsel**

8 To maintain a class action, the representative plaintiff must adequately protect the interests of the
9 class. (*See Marler v. E.M. Johansing, LLC, supra*, 199 Cal.App.4th at 1459.) Adequacy of representation
10 consists of two components. First, there must be no disabling conflicts of interest between the class
11 representative and the class. Second, the class representative must be represented by counsel who are
12 competent and experienced in the kind of litigation to be undertaken. (*McGhee v. Bank of America* (1976)
13 60 Cal.App.3d 442, 450 [131 Cal.Rptr. 482].)

14 No conflicts, disabling or otherwise, exist between the named plaintiffs and the Class Members
15 because the named plaintiffs have been damaged by the same alleged conduct and has the incentive to
16 fairly represent all Class Members' claims to achieve the maximum possible recovery. (Dion-Kindem
17 Decl. ¶ 27, Blanchard Decl. ¶ 7; Brown Decl. ¶ 8; Shakespeare Decl. ¶ 8.) Indeed, Plaintiffs stand in the
18 same shoes as the Class members with the same incentives to maximize the overall recovery. (*See*
19 *Richmond, supra*, 29 Cal.3d at 473.)

20 Moreover, the adequacy requirement is met for purposes of settlement. Class Counsel are
21 experienced attorneys who have litigated numerous wage and hour actions and have been appointed as
22 lead counsel in numerous wage and hour class actions. (Blanchard Decl. ¶¶ 3-5; Dion-Kindem
23 Declaration ¶¶ 5-10.)

24 **e) Superiority of Class Action**

25 The Court must also consider whether a class action is the superior method of adjudication. (*See*
26 *Schneider, supra*, 183 Cal.App.3d at 1347; FRCP Rule 23(a).) The California Supreme Court has
27 "repeatedly emphasized the importance of the class action device for vindicating the rights asserted by
28 large groups of persons." (*Richmond, supra*, 29 Cal.3d at 469 (recognizing that class actions are useful

1 for fashioning effective and inclusive group remedies).) The class device is even more appropriate to
2 adjudicate the rights of large numbers of similarly situated victims who lack the sophistication, financial
3 wherewithal, or individual incentive to sue on their own. Courts regularly certify class actions to resolve
4 wage and hour claims. (See *Pressler v. Donald L. Bren Co.* (1982) 32 Cal.3d 831, 837 [187 Cal.Rptr.
5 449, 654 P.2d 219]; see also *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 340 [17
6 Cal.Rptr.3d 906, 923, 96 P.3d 194, 209]; *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 579–80
7 [94 Cal.Rptr.2d 3, 995 P.2d 139], as modified (May 10, 2000); *Earley v. Superior Court* (2000) 79
8 Cal.App.4th 1420 [95 Cal.Rptr.2d 57], as modified (Apr. 26, 2000).) In this arena, the class action
9 mechanism allows claims of many individuals to be resolved at the same time, eliminates the possibility
10 of repetitious litigation and affords small claimants with a method of obtaining redress for claims which
11 otherwise would be too insignificant to warrant individual litigation. (*Sav-On, supra*, 34 Cal.4th at p.
12 340.) Moreover, the issues slated for contest are primarily common issues involving common evidence.
13 It would not be efficient or fair to relegate these complaints to multiple trials. (*Bufile v. Dollar Financial*
14 *Group, Inc.* (2008) 162 Cal.App.4th 1193, 1208 [76 Cal.Rptr.3d 804, 815].)

15 Accordingly, the settlement classes meet all criteria for certification and should be certified for
16 purposes of effectuating this settlement. (See *Hogya v. Superior Court* (1977) 75 Cal.App.3d 122 [142
17 Cal.Rptr. 325] (if the action satisfies the statutory criteria, the court must certify the class); *Dunk*, 48
18 Cal.App.4th at 1807 n.19 (a lesser standard of scrutiny applies when evaluating these criteria for
19 settlement purposes and courts should take settlement into account in evaluating class certification);
20 *Amchem Products, Inc. v. Windsor* (1997) 521 U.S. 591, 619 [117 S.Ct. 2231, 2248, 138 L.Ed.2d 689]
21 (because the Court is certifying this action for settlement purposes only, it need not determine whether
22 the class would be manageable for litigation purposes).)

23 V. CONCLUSION

24 In determining whether preliminary approval is warranted, the issue before the Court is whether
25 the settlement is within the range of what might be found fair, reasonable, and adequate, so that notice
26 of the settlement may be given to Class Members and a hearing scheduled to consider final settlement
27 approval. Because the settlement meets the criteria for preliminary approval and is well within the range
28

1 of what might be approved as fair, reasonable, and adequate, Plaintiffs request that the Court
2 preliminarily approve the Settlement Agreement.

3 Dated: July 19, 2022

4 THE DION-KINDEM LAW FIRM

5 BY: 

6 PETER R. DION-KINDEM, P.C.

7 PETER R. DION-KINDEM

8 Attorneys for Plaintiffs Archie Shakespeare and
9 Troy Brown
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1 **PROOF OF SERVICE**

2 I am over the age of 18 and not a party to the within action. My business address is 2945
3 Townsgate Road, Suite 200, Westlake Village, CA 91361. On July 19, 2022, I served the following
4 document(s) described as:

5 **Notice of Motion and Motion for Preliminary Approval of Class Action Settlement;**
6 **Memorandum of Points and Authorities**

7 on interested parties in this action addressed as follows:

8 *See attached service list*

9 **(By Mail)** I deposited such envelope with postage thereon fully prepaid in the United States
10 mail at a facility regularly maintained by the United States Postal Service at Los Angeles,
11 California.

12 xxx **(By Email)** Based on a court order, Rules of Court, or an agreement of the parties to accept
13 electronic service, I caused the documents to be sent to the person(s) at the email addresses set
14 forth above.

15 **(By Overnight Delivery)** I enclosed the documents in an envelope or package provided by an
16 overnight delivery carrier and addressed to the persons at the address(es) identified above. I
17 placed the envelope or package for collection and overnight delivery at an office or a regularly
18 utilized drop box of the overnight delivery carrier.

19 **(By Personal Service)**

20 By personally delivering copies to the person served.

21 I delivered such envelope by hand to the offices of the addressee pursuant to Code of
22 Civil Procedure Section 1011.

23 I declare under penalty of perjury under the laws of the State of California that the above is true
24 and correct. Executed on July 19, 2022.

25 

26 Kale M. Eaton

Service List

Aaron A. Buckley
Sierra Spitzer
Amy Dickey
Paul, Plevin, Sullivan & Connaughton LLP
101 West Broadway, Ninth Floor
San Diego, CA 92101-8285

*Attorneys for Defendant Ameri-Force
Craft Services, Inc.*
Telephone: 619-237-5200
Facsimile: 619-615-0700
Email: abuckley@paulplevin.com
sspitzer@paulplevin.com
adickey@paulplevin.com

E. Joseph Connaughton
Evan Pena
Paul, Plevin, Sullivan & Connaughton LLP
101 West Broadway, Ninth Floor
San Diego, CA 92101-8285

Attorneys for Defendant NASSCO
Telephone: 619-237-5200
Facsimile: 619-615-0700
Email: jconnaughton@paulplevin.com
epena@paulplevin.com

Norman B. Blumenthal (SBN 68687)
A.J. Bhowmik (SBN 248066)
Blumenthal, Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037-3107
Telephone: 858-551-1223
Email: norm@bamlawca.com
aj@bamlawca.com

Attorneys for Plaintiffs
Telephone: 858-551-1223
Email: norm@bamlawca.com
aj@bamlawca.com

Jeff Holmes (SBN 100891)
Holmes Law Group, APC
1613 Chelsea Rd, Ste 238
San Marino, CA 91108-2419
Telephone: 310-396-9045
Email: jeffholmesjh@gmail.com

Attorneys for Plaintiffs
Telephone: 310-396-9045
Email: jeffholmesjh@gmail.com