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

DWAYNE WESLEY, individually, and on
behalf of other members of the general
public similarly situated, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act of 2004 ("PAGA");

Plaintiff,

v.

PREMIER EQUIPMENT RENTAL, INC., a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: BCV-20-101858-BCB

Honorable Bernard C. Barmann, Jr.
Division H

CLASS ACTION

**PLAINTIFF'S NOTICE OF MOTION AND
UNOPPOSED 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); and [Proposed] Order filed concurrently
herewith]

Hearing Date: March 29, 2022

Hearing Time: 8:30 a.m.

Hearing Place: Division H

Complaint Filed: August 10, 2020

FAC Filed: February 3, 2022

Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on March 29, 2022, at 8:30 a.m., or as soon as the matter
2 may be heard before the Honorable Bernard C. Barmann, Jr. in Division H of the Kern County
3 Superior Court, located at 1215 Truxtun Avenue, Bakersfield, CA 93301, Plaintiff Dwayne
4 Wesley (“Plaintiff”) will and hereby move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the parties’ Joint Stipulation and Settlement Agreement
7 (“Settlement Agreement,” “Settlement,” or “Agreement”), attached as **“Exhibit**
8 **2”** to the Declaration of Douglas Han, including, and not limited to, the means of
9 allocation and distribution of funds, and the allocations for penalties under the
10 California Labor Code Private Attorneys General Act of 2004 (“PAGA”),
11 Attorneys’ Fees and Costs, Class Representative Enhancement Payment, and
12 Settlement Administration Costs;
- 13 • Conditionally certifying the proposed Class for settlement purposes only;
- 14 • Appointing Plaintiff as the Class Representative;
- 15 • Appointing Justice Law Corporation as Class Counsel;
- 16 • Approving the proposed Notice of Class Action Settlement (“Class Notice”)
17 attached as **“Exhibit A”** to the Settlement Agreement;
- 18 • Directing the mailing of the proposed Class Notice to the proposed Class;
- 19 • Approving the proposed deadlines for the notice and Settlement Administration
20 process;
- 21 • Approving ILYM Group, Inc. (“ILYM Group”), as the Settlement Administrator;
22 and
- 23 • Scheduling a hearing to consider whether to grant Final Approval of the
24 Settlement, at which time the Court will also consider whether to grant Final
25 Approval of the requests for Attorneys’ Fees and Costs, Class Representative
26 Enhancement Payment, and approval of the allocation for PAGA penalties and the
27 Settlement Administration Costs.

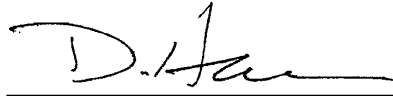
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1 This motion is based upon the following memorandum of points and authorities; the
2 Declaration of Proposed Class Counsel (Douglas Han); the [Proposed] Order filed concurrently
3 with this motion; the pleadings and other records on file with the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

5
6 Dated: February 23, 2022

JUSTICE LAW CORPORATION

7
8 By:



Douglas Han
Shunt Tatavos-Gharajeh
Jason Rothman
Attorneys for Plaintiff

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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 Plaintiff Dwayne Wesley (“Plaintiff”) on behalf of himself
4 and all current and former hourly-paid Premier Equipment Rental, Inc. (“Defendant”) employees
5 who have worked in California at any time between August 10, 2016 and January 1, 2022
6 (“Class Period”). At the time of this filing, Defendant estimates that there are approximately one
7 hundred and six (106) individuals that would be included in this Settlement.

8 It is requested this Court grant Preliminary Approval, as, when analyzing the strengths
9 and vulnerabilities of the class claims along-side Defendant’s potential liability exposure, this
10 proposed settlement of \$350,000 – with an average settlement share amount estimated at
11 \$1,608.49¹ – is well within the “ballpark” of reasonableness.

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

19 **II. BACKGROUND**

20 Defendant is a premier/elite equipment rental company for the oil and gas industry.
21 Premier offers a broad range of equipment, including, but not limited to, telescoping forklifts,
22 light towers, man lifts, air compressors, generators, and pressure washers. Plaintiff alleges that
23 at all times during the Class Period, Defendant’s non-exempt employees work and/or worked on
24 an hourly basis. (Declaration of Douglas Han “Han Dec.” ¶ 8).

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27 _____
28 ¹ \$170,500 (Net Settlement Amount) / 72 (Class Members) = \$1,608.49

1 On August 10, 2020, Plaintiff filed a class action complaint in Kern County Superior
2 Court alleging the following violations under California law: (1) Failure to Pay Overtime Wages
3 Under Labor Code §§ 510 & 1198, (2) Meal Period Liability Under Labor Code § 226.7, (3)
4 Rest-Break Liability Under Labor Code § 226.7, (4) Failure to Pay Minimum Wages Under
5 Labor Code §§ 1194 & 1197, (5) Waiting Time Penalties Under Labor Code §§ 201-203, (6)
6 Failure to Provide Compliant Wage Statements Under Labor Code § 226(a), (7) Failure to
7 Reimburse Expenses Under Labor Code § 2802, and (8) Violation of Business & Professions
8 Code § 17200, *et seq.* (Han Dec. ¶ 9).

9 The Parties agreed to attend mediation on October 29, 2021. At the conclusion of the
10 mediation, the Parties were able to agree to major terms that became the basis for the Settlement
11 Agreement. Following mediation, On February 3, 2022, Plaintiff filed a First Amended Class
12 Action Complaint, including a case of action for Violation of California Labor Code § 2698, *et*
13 *seq.* (Han Dec. ¶ 10).

14 Defendant denies the allegations of the class action in their entirety, denies any liability
15 or wrongdoing of any kind associated with the claims alleged in this action, and further denies
16 that, for any purpose other than settling this action, this matter is appropriate for class treatment.
17 Defendant further contends that it has complied at all times with all applicable California laws,
18 the California Labor Code, the applicable California Wage Order(s), and the Unfair Competition
19 Law. Defendant finally contends that, if this matter were to be litigated further, it would have
20 strong defenses to class certification and on the merits. (Han Dec. ¶ 11).

21 **III. INVESTIGATION/ LITIGATION HISTORY**

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

23 Plaintiff conducted both formal and informal discovery. Plaintiff propounded written
24 discovery and met and conferred regard Defendant's responses. The Parties utilized the Belaire-
25 West opt-out process to obtain the class contact information for ninety-six (96) Class Members.
26 Using the class list, Plaintiff's counsel communicated to multiple Class Members to investigate
27 Plaintiff's allegations. Prior to mediation, Defendant produced documents relating to its policies,
28 practices, and procedures regarding paying non-exempt employees for all hours worked, meal

1 and rest period policies, and payroll and operational policies. As part of Defendant's production,
2 Plaintiff also reviewed time records, pay records, and information relating to the size and scope
3 of the Class, as well as data permitting Plaintiff to understand the number of workweeks in the
4 Class Period. (Han Dec. ¶ 12).

5 Based upon Defendant's informal discovery responses and document production,
6 Plaintiff contends – and Defendant denies – that Defendant did not provide lawful meal and rest
7 periods. Plaintiff asserts that they were pressured to skip meal and rest breaks, delay taking them
8 after their duties were complete or take the on-duty while they were working or traveling to the
9 next destination. (Han Dec. ¶ 13).

10 Also, Plaintiff contends – and Defendant denies – that Defendant required its employees
11 to work off-the-clock. Plaintiff alleges that Class Members were required to arrive at work early
12 to conduct pre-trip inspection and load up vehicles prior to leaving to their delivery locations.
13 Plaintiff also alleges that they were encouraged to clock out but yet continue to work by cleaning
14 up or wrapping for at the end of the day. Plaintiff claimed that this resulted in regular and
15 significant off-the-clock work for each shift. (Han Dec. ¶ 14).

16 Further, Plaintiff contends – and Defendant denies – that Defendant's wage statements do
17 not itemize all hours worked, as the wage statements' total hours worked was underreported;
18 Defendant did not factor in overtime compensation, meal and rest premium wages, or the off-the-
19 clock work stemming from the on-call incentive or bonuses. Plaintiff contends – and Defendant
20 denies – based on these contentions served as the basis for an independent and derivative
21 violation of the wage statement claim. (Han Dec. ¶ 15).

22 Moreover, Plaintiff asserts – and Defendant denies – that Defendant failed to reimburse
23 necessary business-related expenses incurred by employees. Specifically, employees were
24 required to use their personal cell phones for work related purposes and were not reimbursed for
25 a reasonable percentage of the use. (Han Dec. ¶ 16).

26 Additionally, Plaintiff contends – and Defendant denies – that Defendant failed to
27 provide employees with timely wages within 72 hours of their resignation or immediately after
28 their termination. (Han Dec. ¶ 17).

1 Finally, Plaintiff contends – and Defendant denies – that Defendant failed to properly
2 calculate the overtime by including incentive pay such as safety bonuses into the regular rate of
3 pay. (Han Dec. ¶ 18).

4 Defendant denies Plaintiff’s allegations in their entirety. First, Defendant argues that it
5 has ample evidence to show that Plaintiff and the class were afforded ample opportunity and
6 discretion to take legally-compliant meal and rest breaks. Defendant argues it maintained
7 policies pertaining to meal and rest break premiums. Second, Defendant argues that it did not
8 pressure or force its employees to work off-the-clock for which they were not compensated, nor
9 did it discourage overtime pay. Defendant also argues that it provided its employees wage
10 statements in compliance with Section 226(a). Lastly, Defendant asserts that it reimbursed its
11 employees for all reasonable business-related expenses. Defendant thus denies that Plaintiff and
12 the settlement class can recover on any of the derivative claims asserted including waiting time
13 penalties, wage statements, and PAGA. (Han Dec. ¶ 19).

14 Per the above, the Parties took staunchly conflicting positions concerning Defendant’s
15 policies and procedures and their effect on the putative class members.

16 **b. The Parties Attended Mediation Which Resulted in the Settlement**
17 **Agreement**

18 The Parties agreed to go to mediation with experienced wage and hour mediator, Hon.
19 Howard Broadman (Ret.). The mediation took place on October 29, 2021, and while the case did
20 not settle on that date, ultimately the parties were able to reach an agreement on settlement, the
21 terms of which were memorialized in a “Settlement Agreement” (referred to herein as the
22 “Settlement Agreement” or “Settlement”) that the Parties seek preliminary approval of in the
23 instant motion. (Han Dec. ¶ 20; Ex. 2).

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

25 **i. Deductions from the Settlement**

26 The Parties have agreed (subject to and contingent upon the Court’s approval) that this
27 action be settled and compromised for the non-reversionary total sum of \$350,000 (“Maximum
28 Settlement Amount” or “MSA”) which includes, subject to Court approval: (a) Attorneys’ Fees

of up to \$140,000 (40% of the MSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement and securing Court approval; (b) Costs Payment for actual litigation costs not to exceed \$15,000; (c) Class Representative Enhancement Payment to the named Class Representative in a sum not to exceed \$10,000 in consideration for a general release of claims, for initiating and prosecuting the class action complaint, serving as the Class Representative, work performed, and risks undertaken for the payment of attorneys' fees and costs in the event they had been unsuccessful in her matter; (d) Settlement Administration Payment to ILYM Group, Inc. ("ILYM Group"), not to exceed \$7,000; and (e) LWDA payment of \$7,500 (which is 75% of the \$10,000 allocated to the PAGA Payment). (Han Dec. ¶ 21).

ii. Calculation of the Settlement Shares to Class Members

After all Court-approved deductions from the MSA, it is estimated that \$170,500 ("Net Settlement Amount" or "NSA"), less all applicable employee taxes, will be distributed to Class Members – with an average settlement share estimated at \$1,608.49. Subject to the terms and conditions of the Settlement, the Settlement Administrator will calculate, and issue Individual Settlement Payment based on the following formula:

The Net Settlement Amount will be divided by the aggregate total number of Workweeks, resulting in the Workweek Value. Each Class Member's "Individual Settlement Payment" will be calculated by multiplying each individual Class Member's total number of Workweeks by the Workweek Value. If any Class Member received a settlement during the lawsuit, their portion of the Individual Settlement Payment will be reduced by the amount received.

The precise number of Workweeks worked per Class Member will not be known until the Defendant has tabulated them, following preliminary approval. Under no circumstances will any portion of the \$350,000 settlement revert to Defendant. (Han Dec. ¶ 22).

iii. Notice to the Class

Within ten (10) business days after entry of the preliminary approval order, Defendant shall deliver to the Settlement Administrator the Class List necessary to calculate each Class Member's individual Settlement Share. Within ten (10) business days after receiving the Class

1 List, ILYM Group shall mail copies of the Class Notice to all Class Members via regular First-
2 Class U.S. Mail. The Notice advises the Class of their rights to participate in the settlement and
3 how and when to object or request exclusion from the settlement. Class Members are not
4 required to submit a claim form to receive payment. (Han Dec. ¶ 24). The proposed Notice is
5 attached as Exhibit A to the Settlement Agreement, which is Exhibit 2 to the Declaration of
6 Douglas Han.

7 **iv. Distribution of Funds**

8 Within fifteen (15) business days after the Effective Date, Defendant shall transfer the
9 Maximum Settlement Amount by wiring the funds into a Qualified Settlement Fund (“QSF”) set
10 up and controlled by ILYM Group. (Han Dec. ¶ 25).

11 ILYM Group shall pay the Individual Settlement Payment, Class Representative
12 Enhancement Payment, Attorneys’ Fees, Costs Payment, PAGA Payment, and Settlement
13 Administration Payment within thirty (30) calendar days after the funding of the Settlement.
14 (Han Dec. ¶ 26).

15 Any checks issued to Participating Class Members shall remain valid and negotiable for
16 one hundred and twenty (120) days from the date of their issuance. If the checks are not cashed
17 within one hundred and twenty (120) calendar days after the checks are mailed, ILYM Group
18 will pay the amount of the uncashed Individual Settlement Share to a mutually agreeable *cy pres*
19 recipient. This *cy pres* recipient shall either be a Court Appointed Special Advocates (CASA) or
20 an organization supporting victims of cancer. (Han Dec. ¶ 27).

21 **v. Release of Claims**

22 Upon final approval of the Settlement by the Court, and except as to such rights as may
23 be created by the Settlement Agreement, each Participating Class Member fully release and
24 discharge and their past, present and/or future, direct and/or indirect, owners, officers, directors,
25 members, managers, employees, agents, representatives, attorneys, insurers, partners, investors,
26 shareholders, administrators, parent companies, subsidiaries, affiliates, divisions, predecessors,
27 successors, assigns, and joint venturers, if any (“Released Parties”) from all causes of action and
28 factual or legal theories that were alleged in the operative complaints or that could have been

1 alleged against Defendant based on the facts contained in the operative complaints, including,
2 but not limited to, all of the following claims for relief: (a) failure to pay all regular wages,
3 minimum wages and overtime wages due; (b) failure to provide proper meal and rest periods,
4 and to properly provide premium pay in lieu thereof; (c) failure to provide complete, accurate or
5 properly formatted wage statements; (d) waiting time penalties; (e) failure to reimburse business
6 expenditures, (f) unfair business practices that could have been premised on the claims, causes of
7 action or legal theories of relief described above or any of the claims, causes of action or legal
8 theories of relief pleaded in the operative complaint; (g) all claims under the California Labor
9 Code Private Attorneys General Act of 2004 that could have been premised on the claims, causes
10 of action or legal theories described above or any of the claims, causes of action or legal theories
11 of relief pleaded in the operative complaint; (h) any other claims or penalties under the
12 California Labor Code or other wage and hour laws which were pleaded or could have been
13 pleaded in the Action; and (i) all damages, penalties, interest and other amounts recoverable
14 under said claims, causes of action or legal theories of relief. (Han Dec. ¶ 28). In addition to the
15 foregoing, Plaintiff will provide Defendant with a full release.

16 **IV. ARGUMENT**

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

18 Rule 3.769 requires court approval for class action settlements.² “Before final approval,
19 the court must conduct an inquiry into the fairness of the proposed settlement.” (California Rules
20 of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval
21 of class settlements:

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

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

4 ...

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

9 Courts act within their discretion in approving settlements that are fair, not collusive, and
10 take into account “all the normal perils of litigation as well as the additional uncertainties
11 inherent in complex class actions.” *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.
12 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n*
13 (1981) 452 U.S. 905.

14 **b. The Settlement Is Fair, Reasonable, and Adequate**

15 In deciding whether to approve a proposed class action settlement under Code of Civil
16 Procedure § 382, the Court must find that a proposed settlement is “fair, adequate and
17 reasonable.” *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class
18 action settlement is presumed fair under the following circumstances: (1) the parties reached
19 settlement after arms-length negotiations; (2) investigation and discovery were sufficient to
20 allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation;
21 and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co., supra*, at 1802. As the
22 following shows, all of these elements are present here, and the Court’s grant of preliminary
23 approval is therefore requested.

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

25 The Settlement was reached as a result of arms-length negotiations. Though cordial and
26 professional, the settlement negotiations have been, at all times, adversarial and non-collusive.
27 At the mediation, Counsel for the Parties conducted extensive arm’s length settlement
28 negotiations until an agreement was ultimately reached by the Parties, The terms of the
Settlement are memorialized in the Settlement Agreement. (Han Dec. ¶ 29, Ex. 2).

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1 Plaintiff believes in the merits of her case, but also recognizes the inherent risks of
2 litigation and understand the benefit of the Class receiving settlement funds immediately as
3 opposed to risking continued litigation in achieving class certification, the merits of the case
4 before and after trial, the damages awarded, and/or an appeal that can take years to litigate. (Han
5 Dec. ¶ 30).

6 **d. The Settlement Is the Result of Thorough Investigation and Discovery**

7 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses
8 before reaching the proposed settlement, and performed sufficient investigation, research and
9 discovery to support the settlement. The settlement was only possible following discovery and
10 evaluation of Defendant’s policies and procedures, as well as the data produced for the putative
11 class, which permitted Class Counsel to engage in a comprehensive analysis of liability and
12 potential damages. This litigation has reached the stage where “the Parties certainly have a clear
13 view of the strengths and weaknesses of their cases” sufficient to support the Settlement. *Boyd v.*
14 *Bechtel Corp.* (N.D. Cal. 1979) 485 F. Supp. 610, 617.

15 **i. Counsel for Both Parties Are Experienced in Similar Litigation**

16 Both Plaintiff’s counsel and Defendant’s counsel are particularly experienced in wage
17 and hour employment law and class actions. Plaintiff’s counsel has significant experience in
18 litigating unpaid wages, unprovided meal period, and unprovided rest period class actions. (Han
19 Dec. ¶¶ 4-7; Exhibit 1).

20 Plaintiff’s counsel has prosecuted numerous cases on behalf of employees for California
21 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to
22 evaluate settlement versus trial on a fully informed basis and to evaluate the viability of the
23 defenses. This experience instructed Plaintiff’s counsel on the risks and uncertainties of further
24 litigation and guided their determination to endorse the proposed Settlement.³ (Han Dec. ¶ 4-7;
25 Exhibit 1).

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

1 **ii. The Proposed Settlement is a Reasonable Compromise of Claims**

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

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

18 As the following subsections show, the Parties’ investigation and discovery revealed
19 plenty of reasons to discount claims and agree to this settlement.

20 **1. The Settlement Is Fair and Reasonable**

21 The proposed settlement was only possible following significant discovery and
22 evaluation of Defendants’ relevant policies and procedures, as well as the data they produced for
23 the putative Class as referenced in Section II above, which permitted Class Counsel to engage in
24 a comprehensive analysis of liability and potential damages. (Han Dec. ¶ 31).

25 This discovery and investigation resulted in Plaintiff’s central theories of liability, which
26 are predicated on Plaintiff’s claims that Defendant failed to pay all wages owed, including
27 minimum and overtime wages, failed to provide meal and rest periods, including meal and rest
28

1 premiums, failed to pay all wages at termination, failed to reimburse expenses, failed to maintain
2 records, and failed to provide accurate wage statements. (Han Dec. ¶ 32).

3 Defendant vehemently denies Plaintiff's theories of liability and contends, as stated
4 above, that all meal and rest periods were provided in compliance with California law, that all
5 wages were properly paid to class members, and that it provided wage statements in compliance
6 with Labor Code § 226, and complied with all other legal obligations. Defendant argues that if
7 litigation were to continue, it feels confident that it would prevail. (Han Dec. ¶ 33).

8 Although Plaintiff believes the case is suitable for certification on the claimed basis that
9 there are company-wide policies that Plaintiff contends violate California law and uniformly
10 affect the putative class members, uncertainties with respect to certification are always present.
11 As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class
12 certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On*
13 have reached different conclusions with respect to certification of wage and hour claims.⁴ (Han
14 Dec. ¶ 34).

15 Although remaining confident in the strengths of her claims, all these factors led Plaintiff
16 to discount the following calculations of potential damage claims.

17 **2. The Settlement Amount of \$350,000 is Reasonable**

18 In addition to being able to discover the strengths and vulnerabilities associated with
19 Plaintiff's claims, in preparing for mediation, Defendant provided Plaintiff with a sampling of
20 time and pay records and information regarding the estimated number of workweeks worked by
21 putative class members and the average hourly rate for class members. (Han Dec. ¶ 35). Based
22 on this information, Plaintiff calculated that there were approximately 6,040 workweeks worked
23 by putative class members. Plaintiff was also able to determine that the average hourly rate for
24 class members was \$22.00. (*Id.*)

25 ///

26 ⁴ (*See, e.g., Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class and ordering
27 summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but
28 rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.*, 148 Cal. App. 4th 1440 (affirming
decertification of class); *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).

Specifically, Plaintiff claims – and Defendant denies – that Defendant’s employees regularly performed off-the-clock work without compensation for pre-shift and post-shift work. Off-the-clock time regularly caused Plaintiff and putative class members to work more than eight hours per day and forty hours per week. While a reasonable estimate of an individual’s potential damages would vary depending on the amount of time actually worked off-the-clock, based on interviews with class members, Plaintiff estimates that approximately 10 minutes of work was conducted off-the-clock. Defendant’s potential exposure for this claim is \$113,964.31 (31,206 shifts x .166 x \$22.00). (Han Dec. ¶ 36).

Plaintiff claims – and Defendant denies – that Defendant’s employees were not authorized and permitted compliant meal periods because of the pressures of the job. Plaintiff’s expert calculated unique violations which are defined as shifts with at least one of the following: 1) recorded 1st meal break after the end of the 5th hour for shifts greater than 5 hours, 2) 1st meal break less than 30 minutes for shifts greater than 5 hours, 3) no 1st meal break for shifts greater than 5 hours, or 4) no 2nd meal break for shifts greater than 10 hours. Crediting the meal period premiums paid, Plaintiff’s expert calculated the meal period premium at \$292,117.00. (Han Dec. ¶ 37).

Additionally, Plaintiff claims – and Defendant denies – that Defendant’s employees were not authorized and permitted compliant rest periods. Plaintiff’s investigative efforts revealed that approximately 65% of the rest breaks were either not provided or non-compliant. While rest break claims are difficult to certify, if proven, Defendant faces the rest period premium exposure at \$434,060. (Han Dec. ¶ 38).

Further, Plaintiff claims – and Defendant denies – that Defendant failed to accurately record hours worked by putative class members while working off-the-clock making it likely that Defendant issued wage statements in violation of *California Labor Code* section 226(a) in that the wage statements would also fail to state the accurate number of hours worked. Plaintiff calculates Defendant’s potential exposure as to this claim to be approximately \$125,050 (41 employees (1 pay period x \$50 initial violation) + (30 pay periods x \$100 subsequent violations). (Han Dec. ¶ 39).

1 Plaintiff also claims – and Defendant denies – that Plaintiff and the Class Members were
2 not fully reimbursed for business expenses. Specifically, Plaintiff contends that employees were
3 required to use their personal cell phones for work purposes, justifying damages pursuant to
4 Labor Code § 2802. Potential exposure is difficult to assess due to the variable nature of phone
5 usage and costs. However, assuming that Plaintiff's claims are representative of the entire class,
6 the exposure would be \$22,301 [(\$192 (average per person cost of yearly cell phone usage) x
7 6,040 (number of workweeks) / (52 weeks)]. (Han Decl., ¶ 40).

8 If Plaintiff can prove the failure to pay all wages owed, as well as the underpaid overtime
9 due to the regular rate issue, she is then entitled to waiting time penalties in the amount of 30
10 day's worth of wages. Plaintiff calculates Defendant's maximum potential exposure as to this
11 claim to be approximately \$332,640 (30 days x 8 hours x \$22.00 x 63).

12 Defendant argues that if litigation continues, it will show that non-exempt employees
13 were provided with compliant meal and rest periods. Defendant argues that meal periods were
14 provided in lawful timeframes and that employees were specifically instructed that they were
15 prohibited from performing any work during meal periods. Defendant argues that to determine
16 when meal periods were taken each shift and whether work was being conducted during meal
17 periods, an individual inquiry of each employee regarding how long their shift was and when
18 they took a meal period which would show that individualized issues predominate. Defendant
19 also argues that if employees performed any off-the-clock work during their meal periods, it
20 violated company policy and unknown to Defendant. Defendant argues it pays for all time
21 worked as recorded by employees. Likewise, Defendant argues that its rest period practices
22 conform to California law, and those class members are provided with rest periods in compliant
23 time frames. As no records of rest periods exist, Plaintiff would have to ask each class member
24 when they took a rest period during any given shift, and individual issues would also
25 predominate as to this claim. Defendant contends that under *Brinker*, it is not required to police
26 its employees to ensure they take meal and rest breaks. If these breaks were not taken, Defendant
27 argues this was due to the employees' decisions not to take the breaks. (Han Dec. ¶ 42).

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1 Accordingly, taking into consideration Defendant's defenses, its supporting evidence, and
2 its position that the action is not suitable for class treatment, the settlement amount of \$350,000 –
3 with an average settlement share amount estimated at \$1,608.49 – is a great settlement.

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

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

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

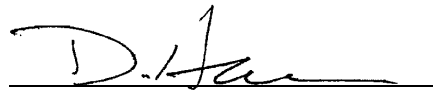
12 The proposed Notice meets all of these requirements. The proposed Notice advises the
13 Class of their rights to participate in the Settlement, how and when to object to or request
14 exclusion from the Settlement, and the date, time, and location of the final approval hearing. *See*
15 Han Dec. Ex. A to Ex 2.

16 **V. CONCLUSION**

17 Plaintiff respectfully submits that the proposed settlement is in the best interests of the
18 class, as it is fair, adequate, and reasonable, and one that should ultimately be granted final
19 approval. Under the applicable class action criteria and guidelines, the proposed settlement
20 should be preliminarily approved by the Court, the class should be conditionally certified for
21 purposes of settlement only, and the Notice of Class Action Settlement should be approved.

22 Dated: February 23, 2022

JUSTICE LAW CORPORATION

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24 Douglas Han
25 Attorneys for Plaintiff
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