

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
TALIA LUX (SBN 336074)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259
Attorneys for Plaintiff

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

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

Plaintiff,

v.

NATIONAL WAREHOUSE MANAGEMENT,
LLC, a Colorado limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: BCV-22-102213-DRZ

Assigned for All Purposes to:
Honorable David R. Zulfa
Department J

CLASS ACTION

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

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

Hearing Date: February 2, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Department J

Complaint Filed: August 22, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 2, 2023 at 8:30 a.m., or as soon as the matter
2 may be heard, before the Honorable David R. Zulfa of Department J at the Kern County Superior
3 Court (Metropolitan Division Justice Building) located at 1215 Truxtun Avenue, Bakersfield,
4 California 93301, Plaintiff Armoni Lloyd (“Plaintiff”) moves for an order:

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

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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), and the [Proposed] Order filed
3 concurrently with this motion, the pleadings and other records on file with the Court in this matter,
4 and such documentary evidence and oral argument as may be presented at the hearing.

5
6 Dated: December 29, 2022

JUSTICE LAW CORPORATION

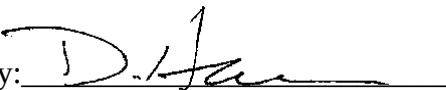
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8 By: 
9 Douglas Han
10 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 Plaintiff seeks preliminary approval of the Settlement Agreement entered by and between
3 Plaintiff, individually and on behalf of the Class. Subject to Court approval, the Parties have
4 agreed to settle this case for a Maximum Settlement Amount of up to \$460,000.

5 Plaintiff seeks to certify the following Class for settlement purposes, consisting of
6 approximately four hundred forty-seven (447) Class Members: all current and former hourly-paid
7 or non-exempt employees of Defendant National Warehouse Management, LLC (“Defendant”)
8 within the State of California at any time during the period from September 11, 2016 to July 19,
9 2022 (“Class,” “Class Members,” and “Class Period”).

10 **II. BACKGROUND**

11 On March 8, 2021, Bryce Covarrubias filed a wage-and-hour class action lawsuit against
12 Defendant in the Superior Court for the State of California, County of Los Angeles (Case No.
13 21STCV09260), alleging eight (8) causes of action. (Declaration of Douglas Han In Support of
14 Plaintiff’s Motion for Preliminary Approval of Class Action Settlement (“Han Decl.”), at ¶ 10.)

15 On January 21, 2022, Plaintiff provided written notice to the Labor and Workforce
16 Development Agency. (Han Decl., *supra*, at ¶ 11.)

17 On April 19, 2022, the Parties participated in mediation before Kelly A. Knight, Esq., a
18 respected mediator of wage and hour class actions, resulting in the settlement of this matter. (Han
19 Decl., *supra*, at ¶ 12.) During mediation, Bryce Covarrubias indicated he did not wish to pursue a
20 class action and decided to settle individually. (*Ibid.*)

21 Plaintiff filed a new lawsuit in Kern County naming him as the class representative and
22 alleging the same claims as the original lawsuit in Los Angeles County. (Han Decl., *supra*, at ¶
23 13.) Specifically, on August 22, 2022, Plaintiff filed a wage-and-hour class action lawsuit against
24 Defendant in the Superior Court for the State of California, County of Kern, alleging nine (9)
25 causes of action (Case No. BCV-22-102213). (*Ibid.*)

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1 **III. INVESTIGATION/ LITIGATION HISTORY**

2 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

3 Before even initiating this matter, the Parties conducted significant investigation and
4 discovery of the facts and law. (Han Decl., *supra*, at ¶ 15.) Defendant produced documents
5 relating to its policies, practices, and procedures. As part of Defendant’s production, Plaintiff also
6 reviewed time records, pay records, and information relating to the size and scope of the Class.
7 (*Ibid.*) Several putative class members were also interviewed learn about the extent and frequency
8 of the alleged violations. (*Ibid.*)

9 Based upon the review of Defendant’s documents and interviews with several hourly paid
10 and non-exempt employees, Plaintiff contends – and Defendant denies – Defendant: (1) failed to
11 provide compliant meal and rest breaks; (2) failed to pay employees for all hours worked; (3)
12 failed to properly calculate and pay overtime wages; (4) failed to reimburse employees for
13 incurring business expenses; and (5) is liable for wage statement and waiting time penalties. (Han
14 Decl., *supra*, at ¶¶ 17-24.)

15 **b. The Parties Attended Mediation Which Led to the Settlement Agreement**

16 The Parties remotely attended mediation on April 19, 2022. (Han Decl., *supra*, at ¶ 25.)
17 Under the auspices of mediator Kelly A. Knight, Esq., the Parties reached an agreement on
18 settlement, the terms of which were memorialized in the Settlement Agreement which the Parties
19 seek preliminary approval. (*Id.* at ¶ 25; Exhibit 2.)

20 **c. Terms of Proposed Settlement**

21 **i. Deductions from the Settlement**

22 Under the terms of the Settlement Agreement, Defendant will pay a Maximum Settlement
23 Amount of up \$460,000, and the Net Settlement Amount will be calculated by deducting the
24 following amounts from the Maximum Settlement Amount: (1) attorneys’ fees up to \$174,800;
25 (2) attorneys’ costs not to exceed \$15,000; (3) Class Representative Enhancement Payment of
26 \$5,000; (4) Claims Administration Costs not to exceed \$10,000; and (e) PAGA Payment up to
27 \$15,000. (Han Decl., *supra*, at ¶ 26.)

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1 **ii. Calculation of the Individual Settlement Payments**

2 To receive Individual Settlement Payments, all Class Members will be required to submit a
3 timely and valid Claim Form by the Response Deadline. (Han Decl., *supra*, at ¶ 27.)

4 Individual Settlement Payments will be calculated and apportioned from the Net Settlement
5 Amount using the formula set forth in the Settlement Agreement. (Han Decl., *supra*, at ¶ 28.) All
6 Individual Settlement Payments will be allocated fifteen percent (15%) as wages and eighty-five
7 percent (85%) as interest and penalties. (*Ibid.*) The Claims Administrator will also calculate the
8 twenty-five percent (25%) portion of the PAGA Payment to PAGA Aggrieved Employees using
9 the formula set forth in the Settlement Agreement. (*Ibid.*)

10 **iii. Release of Claims**

11 Upon the Effective Date, Plaintiff and Settlement Class Members will be deemed to have
12 fully, finally, and forever released, settled, compromised, relinquished, and discharged with respect
13 to all the Released Parties any and all Released Claims for any period during the Released Claims
14 Period. (Han Decl., *supra*, at ¶ 32.)

15 As a condition of the Settlement, Plaintiff shall provide a separate general release against
16 the Released Parties. (Han Decl., *supra*, at ¶ 33.) Plaintiff expressly waives and relinquishes any
17 rights or benefits available to them under the provisions of section 1542 of the Civil Code. (*Ibid.*)

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

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1 **IV. ARGUMENT**

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

3 California Rules of Court, rule 3.769 requires court approval for class action settlements.¹
4 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
5 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
6 preliminary approval of class settlements:

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

10 . . .

11 (c) Any party to a settlement agreement may serve and file a written notice
12 of motion for preliminary approval of the settlement. The settlement
13 agreement and proposed notice to class members must be filed with the
14 motion, and the proposed order must be lodged with the motion.

15 Courts act within their discretion in approving settlements fair, non-collusive, and consider
16 “all the normal perils of litigation as well as the additional uncertainties inherent in complex class
17 actions.” (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. sub
18 nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass’n* (1981) 452 U.S. 905.)

19 The approval process of any class action settlement is done in two steps: (1) an earlier
20 conditional review by the court; and (2) a later detailed review after the period during which notice
21 is distributed to class members for their comment or objections. (Conte & Newberg, *Newberg on*
22 *Class Actions* (4th ed. 2002 supp.) § 11.24.) This procedure, which is commonly utilized by
23 federal and state courts, assures class members of the protection of procedural due process
24 safeguards, and enables a court to fulfill its role as the guardian of the interests of the class.

25 Preliminary approval does not require a court to make a final determination the settlement
26 is fair, reasonable, and adequate. That decision is made only at the final approval stage, after notice
27 of the settlement has been given to the class members, and they have had an opportunity to voice
28 their views of the settlement or to exclude themselves from the settlement. (See Cal. Rules of

¹ The California Supreme Court authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; see *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, therefore, the Parties cite Federal Rule 23 and federal case law in addition to California law.

1 Court, rule 3.769(g).) In considering a potential class settlement, the court also need not reach any
2 ultimate conclusions on the issues of fact and law which underlie the merits of the dispute and
3 need not engage in a trial on the merits. (See *City of Detroit v. Grinnell Corporation* (2d Cir. 1974)
4 495 F.2d 448, 456; *Officers for Justice v. Civil Service Commission of City and County of San*
5 *Francisco* (9th Cir. 1982) 688 F.2d 615, 625.) Neither formal notice nor a hearing is required for
6 the trial court to grant provisional class certification and preliminary approval; the court may grant
7 such relief upon an informal application by the settling parties and may conduct any necessary
8 hearing in court or in chambers, at the court’s discretion. (Conte & Newberg, *supra*, § 11.25.)

9 **b. Preliminary Approval of the Proposed Settlement Is Appropriate**

10 To grant preliminary approval of a class action settlement, the trial court must preliminarily
11 determine whether the settlement is fundamentally fair, adequate, and reasonable. (*Dunk v. Ford*
12 *Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) The court has broad powers to determine whether a
13 proposed settlement is fair under the circumstances of the case. (*Id.* at p. 1801.) To make this
14 fairness determination, courts must consider several relevant factors, including “the strength of the
15 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of
16 maintaining class action status through trial, the amount offered in settlement, the extent of
17 discovery completed and the stage of the proceedings, [and] the experience and views of counsel
18 [.]” (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1800.) “The list of factors is not
19 exclusive and the court is free to engage in a balancing and weighing of the factors depending on
20 the circumstances of each case.” (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,
21 245.) Furthermore, courts give “proper deference to the private consensual decision of the
22 parties[.]” (*Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1027 (citation omitted).)

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

24 The Settlement was reached through arm’s-length negotiations. (Han Decl., *supra*, at ¶
25 35.) Though cordial and professional, the settlement negotiations were always adversarial and non-
26 collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive arm’s-length
27 settlement negotiations until the Parties finally reached an agreement on settlement. (*Ibid.*)

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1 Plaintiff and Class Counsel believe in the merits of this case and their ability to prove the
2 allegations. (Han Decl., *supra*, at ¶ 36.) But Plaintiff and Class Counsel also recognizes the
3 inherent risks of ongoing litigation. (*Ibid.*) Plaintiff and Class Counsel also understand the benefit
4 of the Class receiving settlement funds immediately instead of risking continued litigation, merits
5 of the case being decided at trial, damages awarded, and an appeal. (*Ibid.*)

6 **d. The Settlement Agreement Is Fair, Reasonable, and Adequate**

7 In deciding whether to approve a proposed class action settlement under Code of Civil
8 Procedure section 382, the Court must find a settlement is “fair, adequate and reasonable.” (*Dunk*
9 *v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) The burden is on the proponent of the
10 settlement to show that it is fair and reasonable. (*Wershba v. Apple Computer, Inc.*, *supra*, 91
11 Cal.App.4th at p. 245.) A presumption of fairness exists if: (1) the settlement is reached through
12 arm’s-length bargaining; (2) investigation and discovery are sufficient to allow counsel and the
13 court to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of
14 objectors is small. (*Ibid.*; *Dunk v. Ford Motor Co.*, at p. 1802; *7-Eleven Owners for Fair*
15 *Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151.)

16 The Settlement was calculated using information and data uncovered through investigation
17 and exchange of information pursuant to discovery and in the context of formal mediation. (Han
18 Decl., *supra*, at ¶ 37.) The Settlement considers the potential risks and rewards inherent. (*Ibid.*)

19 Assuming all the requested payments are approved and paid in the full, the Net Settlement
20 Amount is estimated to be \$240,200. (Han Decl., *supra*, at ¶ 38.) Even at the final approval stage,
21 “[a]n allocation formula need only have a reasonable, rational basis [to warrant approval],
22 particularly if recommended by experienced and competent counsel.” (*Ibid.*; *In re American Bank*
23 *note Holographics, Inc., Securities Litigation* (S.D.N.Y. 2001) 127 F.Supp.2d 418, 429-430.)

24 Class Counsel believe the Settlement is fair, reasonable, and adequate, and is in the best
25 interest of the Class Members. (Han Decl., *supra*, at ¶ 39.) Although the recommendations of
26 Class Counsel are not conclusive, the Court can consider their them if Class Counsel appear to be
27 competent, have experience with this type of litigation, and significant discovery and investigation
28 have been completed. (*Ibid.*; Conte & Newberg, *supra*, § 11.47.)

f. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be approximately **\$6,444,961.43** on the low end and **\$6,847,415.24** on the high end. (Han Decl., *supra*, at ¶ 55.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$1,192,929.42	75%	65%	\$104,381.32
Meal Break Premiums	\$2,298,349.01	65%	65%	\$281,547.75
Overtime/Minimum Wage: Off-the-Clock Work	\$804,413.21 to \$1,206,867.02	60%	60%	\$128,706.11 to \$193,098.72
Overtime/Minimum Wage: Regular Rate	\$25,425.79	30%	50%	\$8,899.03
Unreimbursed Business Expenses	\$382,984	30%	80%	\$53,617.76
Wage Statement Penalty	\$1,448,000	65%	65%	\$177,380
Waiting Time Penalty	\$292,860	65%	65%	\$35,875.35
MAXIMUM TOTAL EXPOSURE	\$6,444,961.43 to \$6,847,415.24⁴			\$790,407.32 to \$854,799.93⁵

Based on this analysis, the realistic recovery for this case is **\$790,407.32** on the low end and **\$854,799.93** on the high end. (Han Decl., *supra*, at ¶ 63.) Thus, the Maximum Settlement Amount of \$460,000 is about six percent (6.72%) of the realistic exposure on the high end and around fifty-four percent (53.81%) on the low end, which is a reasonable settlement. (*Ibid.*)

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

⁴ (Han Decl., *supra*, at ¶¶ 41-48.)

⁵ (*Id.* at ¶¶ 56-62.)

1 consensual settlements. The proposed settlement is not to be judged against a hypothetical or
2 speculative measure of what might have been achieved by the negotiators”).)

3 **g. Conditional Certification of the Class Is Appropriate**

4 The requisites for establishing conditional class certification are met. Code of Civil
5 Procedure section 382 “authorizes class actions ‘when the question is one of a common or general
6 interest, of many persons, or when the parties are numerous, and it is impracticable to bring them
7 all before the court.” (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)
8 California courts certify class actions where the plaintiff identifies “both [1] an ascertainable class
9 and [2] a well-defined community of interest among class members.” (*Ibid.*)

10 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

11 “Ascertainability is required in order to give notice to putative class members as to whom
12 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
13 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs by
14 describing a set of common characteristics sufficient to allow a member of that group to identify
15 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
16 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
17 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

18 This case involves about four hundred forty-seven (447) Class Members, confirmed by
19 Defendant. (Han Decl., *supra*, at ¶ 64.) Thus, this Class is sufficiently numerous. (*Ibid.*)

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

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

certification appropriate.” (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692)

The “common issues” requirement “involves analysis of whether the proponent’s ‘theory of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v. Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).) Furthermore, the commonality inquiry centers on the “reasonableness” of the defendant’s labor policies as applied to the potential class. (*Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1534.)

Plaintiff asserts common issues of fact and law predominate as to each of the claims they alleged. (Han Decl., *supra*, at ¶ 65.) All hourly-paid and non-exempt employees who worked for Defendant within the State of California at any time during the Class Period were subject to the same or similar employment practices, policies, and procedures as described above. (*Ibid.*)

Plaintiff is a former employee of Defendant and alleges he and the Class Members were employed by the same company and injured by Defendant’s common policies and practices described above. (Han Decl., *supra*, at ¶ 66.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Thus, Plaintiff’s claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

h. The Settlement Is the Result of Thorough Investigation and Discovery

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses before reaching the Settlement and engaged in sufficient investigation, research, and discovery to support the settlement. (Han Decl., *supra*, at ¶¶ 15-16, 35-37.) The settlement was only possible following discovery and an evaluation of Defendant’s policies and practices and data produced for the putative class, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Id.* at ¶ 68.) The case is at the stage where “the Parties certainly have a clear view of the strengths and weaknesses of their cases” sufficient to support the Settlement. (*Ibid.*; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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1 **i. Request for Attorneys’ Fees**

2 The Settlement provides for Class Counsel to apply to the Court for an award of attorneys’
3 fees of thirty-eight percent (38%) of the Maximum Settlement Amount. (Han Decl., *supra*, at ¶
4 69.) The Notice Packet will provide the Class Members with information as to the amounts
5 allocated toward the attorneys’ fees. (*Ibid.*)

6 Trial courts have “wide latitude” in assessing the value of attorneys’ fees, and their
7 decisions will “not be disturbed on appeal absent a manifest abuse of discretion.” (*Lealao v.*
8 *Beneficial Cal., Inc.* (2000) 82 Cal.App.4th 19, 41.) It is long settled the “experienced trial judge is
9 the best judge of the value of professional services rendered in his court[.]” (*Ketchum v. Moses*
10 (2001) 24 Cal.4th 1122, 1132.) California law provides attorney fee awards should be equivalent to
11 fees paid in the legal marketplace to compensate for the result achieved and risk incurred. (See
12 *Lealao*, at p. 47.) In *Lealao*, the court held when an action leads to a recovery that can be
13 “monetized” with a reasonable degree of certainty, the trial court should “ensure that the fee
14 awarded is within the range of fees freely negotiated in the legal marketplace in comparable
15 litigation.” (*Id.* at p. 50.) In cases where class members present claims against a maximum
16 settlement fund and the settlement agreement provides the defendant agrees to paying the attorneys
17 a percentage of the same, use of the percentage method is appropriate. (*Id.* at p. 32.)

18 Considering the facts and circumstances surrounding this case, Class Counsel’s application
19 for attorneys’ fees is well within the range of reasonableness. Historically, courts have awarded
20 fees as high as fifty percent (50%) of the settlement fund, depending on the circumstances of the
21 case. (Conte & Newberg, *supra*, § 14.03; see also *In re Ampicillin Antitrust Litigation* (D.D.C.
22 1981) 526 F.Supp. 494 [awarding attorneys’ fees in the amount of 45% of the \$7.3 million
23 settlement fund]; *Beech Cinema, Inc. v. Twentieth-Century Fox Film Corp.* (S.D.N.Y. 1979) 480
24 F.Supp. 1195 [awarding approximately 53% of the settlement fund as attorney fees].) California
25 Courts routinely approve attorneys’ fees “averag[ing] around one-third of the recovery.” (*Chavez*
26 *v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 [lower court found 20-40% range of
27 contingency fee in marketplace was appropriate in class actions]; see also *Estrada v. Dr.*
28 *Pepper/Seven-Up*, Los Angeles County Superior Court, Case No. BC262247 (May 2005) (wage

and hour); *Moore v. IKEA*, Los Angeles Superior Court, Case No. BC263646 (Sept. 2006) (wage and hour).) Class Counsel have borne all the risks and costs of litigation and will not receive any compensation until recovery is obtained. (Han Decl., *supra*, at ¶ 69.) Considering the amount requested, work performed, and risks incurred, the requested fees is reasonable. (*Ibid.*)

j. Counsel for Both Parties Are Experienced in Similar Litigation

Both Parties' counsel are experienced in wage-and-hour employment law and class actions. Class Counsel have significant experience in litigating unpaid wages, non-compliant meal and rest breaks, and unfair business practices class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations and are experienced and qualified to evaluate the class claims and the Settlement's benefits. (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further litigation and guided their determination to endorse the proposed settlement.⁶ (*Ibid.*)

k. Notice to the Class Complies with California Rules of Court, Rule 3.769(f)

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

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

The Notice Packet advises the Class Members of their right to participate in the Settlement, how and when to object to or request exclusion from the Settlement, and the date, time, and location of the Final Approval Hearing. (Han Decl., *supra*, at ¶ 71.) The Notice Packet will include the Claim Form that will provide pertinent employment information. (*Id.* at ¶ 72.) The Claim Form will state the estimated gross amount of each Class Member's Individual Settlement Payment and provide detailed instructions on how to properly complete the Claim Form and timely submit it to the Claims Administrator. (*Ibid.*)

⁶ The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Notice Packet has been provided to the Class and they have had an opportunity to respond. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

1 The notice procedure provided by the Settlement fulfills the requirement of neutrality.
2 (Conte & Newberg, *supra*, § 8.39.) “Sufficient information about the case should be provided to
3 enable class members to make an informed decision about their participation.” (Manual for
4 Complex Litigation, Fourth (2004) § 21.311.) The Notice Packet summarizes the proceedings to
5 date and the terms and conditions of the Settlement in a coherent manner. The Notice Packet
6 recognizes the Court has not granted final approval and apprises the Class Members of how-to
7 object. The Notice Packet satisfies all due process requirements and complies with the standards of
8 fairness, completeness, and neutrality. (Cal. Rules of Court, rule 3.766; Conte & Newberg, *supra*,
9 §§ 8.21 and 8.39; Manual for Complex Litigation, *supra*, §§ 21.311 and 21.312; see *Cartt v.*
10 *Superior Court* (1975) 50 Cal.App.3d 960.) Thus, the Court should approve the Notice Packet.

11 **I. Proposed Deadlines for the Notice Process**

12 At this preliminary approval stage, Plaintiff also seeks approval of the proposed deadlines
13 for the notice and claims administration process. (Han Decl., *supra*, at ¶ 73; Conte & Newberg,
14 *supra*, § 11.26.) The notice process entails the mailing of the Notice Packet to all known and
15 reasonably ascertainable Class Members based on Defendant’s payroll records. (Han Decl., at ¶
16 73.) The proposed deadlines for the administration process are well within the range of reasonable.

17 The Settlement will be funded pursuant to the timeline and manner set forth in the
18 Settlement. (Han Decl., *supra*, at ¶ 31.) Any checks issued by the Claims Administrator to
19 Claimants will be negotiable for at least one hundred twenty (120) calendar days, and any
20 uncashed settlement checks will be sent to a California State Controller. (*Ibid.*) Any remaining or
21 unclaimed funds from the Net Settlement Amount above fifty percent (50%) shall remain the
22 property of and be refunded to the Defendant. (*Ibid.*)

23 **m. Appointment of the Class Representative and Approval of the Class** 24 **Representative Enhancement Payment**

25 A named plaintiff is eligible for payment that reasonably compensates him for undertaking
26 and fulfilling a fiduciary duty to represent absent class members. (*Cellphone Termination Fee*
27 *Cases* (2010) 186 Cal.App.4th 1380, 1393; *Bell v. Farmers Ins. Exchange* (2004) 115 Cal.App.4th
28 715, 726 [upholding “service payments” to named plaintiffs for their efforts in bringing the case];

1 *Stevens v. Safeway, Inc.* (C.D.Cal. Feb. 25, 2008, No. CV 05-01988 MMM (SHx)) 2008
2 U.S.Dist.LEXIS 17119 [\$20,000.00 and \$10,000.00 to two class representatives]; *In Re Janney*
3 *Montgomery Scott LLC Financial Consultant Litig.* (E.D.Pa. July 16, 2009) 2009 U.S.Dist.LEXIS
4 60790 [\$20,000.00 each to three class representatives].)

5 Plaintiff has proven to be an adequate class representative. (Han Decl., *supra*, at ¶ 67.)
6 Plaintiff conducted himself diligently and responsibly in representing the Class, understands his
7 fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff also
8 spent time in meetings and conferences with counsel to provide counsel with a complete
9 understanding of his work environment and workplace requirements. (*Ibid.*) Furthermore, Plaintiff
10 does not have any interests adverse to those of other Class Members. (*Ibid.*; see *Sav-On Drug*
11 *Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 340.)

12 Thus, the Class Representative Enhancement Payment is fair and reasonable compensation
13 for Plaintiff's efforts in: (1) bringing the matter; (2) assisting Class Counsel; (3) regularly
14 conferring with Class Counsel; and (4) reviewing the Settlement. (Han Decl., *supra*, at ¶ 74.)

15 **V. CONCLUSION**

16 Plaintiff submits the Settlement is in the best interests of the Class. Under the applicable
17 class action criteria, the Settlement should be preliminarily approved, Class should be
18 conditionally certified for settlement purposes, and Notice Packet should be approved.

19
20 Dated: December 29, 2022

JUSTICE LAW CORPORATION

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

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On December 29, 2022, I served the foregoing document described as

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

for the following case: **Lloyd v. National Warehouse Management, LLC**
LWDA/Court Case No.: **LWDA Case No.: CM- 863996-22**
Court Case No.: BCV-22-102213
Kern County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on December 29, 2022, at Pasadena, California.


Flor Gonzalez