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7 LUIS ARELLANO

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

10
11 LUIS ARELLANO, on behalf of himself, all
others similarly situated,

12 *Plaintiff,*

13
14 vs.

15 ELECTRONIC DOCUMENT PROCESSING,
INC., DBA ONE TOUCH LEGAL
16 SERVICES., a California corporation; and
DOES 1-50, inclusive,

17 *Defendants.*
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Case No. BC540315

**DECLARATION OF SHAUN SETAREH
IN SUPPORT OF MOTION FOR FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Information

Date: September 12, 2017
Time: 11:00am
Department: 308
Judge: Hon. Ann I. Jones

DECLARATION OF SHAUN SETAREH

I, SHAUN SETAREH, declare as follows:

1. I am an attorney duly licensed to practice law in the State of California, and an attorney of record for Plaintiff Luis Arellano ("Plaintiff") in his action against Electronic Document Processing, Inc. ("Defendant").

2. Except for those matters stated on information and belief, which I am informed and believe to be true and correct, I have personal knowledge of all matters set forth herein. If called as a witness, I could and would competently testify thereto under oath.

3. I received my undergraduate degree at UCLA in 1996 and my law degree from Loyola Law School in 1999. Since being admitted to the State Bar of California in 1999, I have actively practiced civil litigation for the entirety of that time period.

4. I have been involved as lead or co-lead class counsel in over 100 wage and hour, consumer and antitrust class action cases. The following is a sampling of class actions in which I have been appointed as class counsel:

- a. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-1590 (granted final approval in a case involving claims for failure to provide meal periods to part-time employees engaged in sort operations and failure to pay final wages in a timely manner to terminated employees).
- b. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District of California Case No. 09-CV-8061 (granted final approval in a case involving, among other things, vacation pay forfeitures, failures to provide meal and rest periods, and failures to pay overtime wages based on employee misclassification).
- c. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case involving, among other things, alleged overtime miscalculations and meal and rest period violations).
- d. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California, Case No. 08-CV-4707 (granted final approval in a case involving claims for failure to provide meal periods to employees who worked as drivers delivering goods to 7-11 stores throughout California and failure to pay final wages in a timely manner to terminated employees).
- e. *Spokes v. Lush Cosmetics, LLC*, Los Angeles Superior Court, Case No. BC391397 (granted final approval in a case involving alleged failures to provide meal and rest

1 periods and failure to timely pay all final wages to California sales associates and key
2 holders).

3 f. *Green v. Staples Contract and Commercial, Inc.*, Los Angeles Superior Court, Case No.
4 BC389789 (granted final approval in a case involving claims for unprovided meal and
5 rest periods, inaccurate wage statements, waiting time penalties, and unfair business
6 practices on behalf of truck drivers delivering Staples office supplies in California).

7 g. *Green v. Universal Music Group*, Los Angeles Superior Court, Case No. BC374253
8 (granted final approval in a case involving misclassification claims of current or former
9 IT Support employees, including engineers, server analysts, desktop support, and
10 technical leads).

11 h. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No.
12 11-CV-00526 (granted final approval in a case brought on behalf of customer service
13 representatives and balers for alleged off-the-clock work and meal and rest period
14 violations).

15 i. *Alvarez v. Gary Grace Enterprises, LP*, Marin Superior Court, Case No. CIV 1002553
16 (granted final approval in a case on behalf of hair salon employees for overtime
17 miscalculation and related claims).

18 j. *Calderon v. GreatCall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-
19 CU-OE-CTL (granted final approval in a case on behalf of customer service employees
20 for, among other things, alleged meal and rest period violations and overtime calculation
21 errors).

22 k. *Douglas v. California Credit Union*, Los Angeles Superior Court, Case No. BC445050
23 (granted final approval in a case on behalf of customer service representatives alleging
24 overtime miscalculation claims).

25 l. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No.
26 10-CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal
27 and rest period violations, off-the-clock pre- and post-shift work, and unauthorized wage
28 deductions).

m. *Butler v. Lexxiom, Inc.*, San Bernardino Superior Court, Case No. CIVRS 1001579
(granted final approval in an action on behalf of debt resolution center employees
alleging, among other things, meal and rest period violations and overtime calculation
errors).

n. *Tiwari v. Merrill's Packaging, Inc.*, San Mateo County Superior Court, Case No. 519070

- 1 (granted final approval to settlement on behalf of packaging center employees involving
2 claims for, among other things, meal and rest period violations and unpaid wages).
- 3 o. *Ambriz v. Coca Cola Company*, U.S. District Court, Central District of California, Case
4 No. 2:14-cv-00715-SVW-FFM (granted final approval of settlement in action on behalf
5 of customer service technicians involving claims for unpaid commute time, vacation pay,
6 and other wage claims).
- 7 p. *Bellinghausen v. Tractor Supply Company*, U.S. District Court, Northern District of
8 California, Case No. C 13-02377 JSC (granted final approval in an action on behalf of
9 retail employees for, among other things, meal and rest period violations and wage
10 statement violations).
- 11 q. *Montgomery v. Del Monte Corp., et al*, Kings County Superior Court, Case No. 13C0204
12 (granted final approval of settlement in action on behalf of manufacturing employees
13 involving claims for failure to provide meal and rest periods, failure to pay wages for all
14 hours worked, and other wage claims).
- 15 r. *Adams v. Medical Staffing Network, et al*, Sacramento County Superior Court, Case No.
16 34-2012-00137491-CU-OE-GDS (granted final approval of settlement in action on behalf
17 of temporary staffing employees involving claims for failure to provide meal and rest
18 periods and other wage claims).
- 19 s. *Louise Robinson, et al v. Airgas On-Site Safety Services, Inc., et al*, Los Angeles Superior
20 Court, Case No. BC523502 (granted final approval of settlement in action on behalf of
21 non-exempt employees of a specialty gas distribution company involving claims for
22 failure to pay wages, failure to provide meal periods, and other wage claims).

23 5. As the above shows, I have substantial experience in wage-and-hour class action
24 litigation, including in actions alleging failure to provide meal and/or rest periods, failure to pay wages,
25 failure to provide accurate wage statements, failure to provide timely final wage payments, and other
26 claims. I am knowledgeable about the applicable law, have worked diligently to investigate and identify
27 the potential claims in this action, and will continue to commit my firm's resources to further the
28 interests of the Class.

6. January 13, 2015, the parties participated in a mediation session with Robert J. Kaplan, a
highly respected mediator with extensive experience resolving wage-and-hour class actions. In
connection with the prosecution of this Action and with mediation, Plaintiff obtained discovery
including, among other things, class information, Defendant's relevant policies, Plaintiff's personnel

1 records, and data concerning putative class members including sample time and pay records. My office
2 also drafted a detailed mediation brief and a constructed a damages analysis in anticipation of mediation.

3 7. The parties were ordered to participate in a mandatory settlement conference on August
4 25, 2015. The parties prepared detailed briefs in advance of the mandatory settlement conference. The
5 parties ultimately approved Judge Helen Bendix's settlement proposal made at the mandatory
6 settlement conference.

7 8. Attached hereto as **Exhibit A** is a true and correct copy of the Order granting preliminary
8 approval of the Settlement, dated April 27, 2017.

9 9. When the Court granted preliminary approval of the Settlement on April 27, 2017, it
10 granted conditional class certification and found that the Settlement Class met the requirements for class
11 certification for settlement purposes under Rule of Court 3.769 and found that the Settlement appears to
12 be in the range of reasonableness of a settlement that could ultimately be granted final approval by the
13 Court. (Exh. A, page 1.) As of the filing of this Motion, Class Counsel is unaware of any new decisions
14 from the U.S. Supreme Court, the California Supreme Court, or any lower California appellate courts
15 that mark a serious departure from the law as it existed at the time of preliminary approval so as to cast
16 doubt on any of these determinations. Further, there are no new circumstances or facts that would cast
17 any doubt on any of these determinations.

Risks of Continued Litigation

18 10. Notwithstanding the raw monetary amount of the *potential* exposure, there were risks that
19 continued litigation would entail that make the compromise amount fair, adequate, and reasonable. First,
20 there is the risk that a court would find that, as a matter of law, Defendant's policies were lawful under
21 the Labor Code and the Wage Orders.

22 11. Second, there is the risk that Defendant could show that, despite allegedly flawed
23 policies, they in fact provided meal and rest periods in accordance with the law and provided accurate
24 itemized wage statements.

25 12. Third, even if Plaintiff succeeded on the merits, there also is risk with regard to class
26 certification, including whether, for example, individualized inquiries predominated depending on
27 employee location, differing supervisors, or other factors.

28 13. Defendant has also asserted that it would succeed on good faith defenses regarding the
penalties sought in this case. Lab. Code §§ 203 and 226(e) both require proof of "willful" or "knowing
and intentional" Labor Code violations for liability to be imposed. Thus, the existence of a good faith

1 dispute that could preclude any recovery of wages (even if the plaintiff ultimately prevails) can preclude
2 these penalties from being awarded. (*See Choate v. Celite Corp.* (2013) 215 Cal.App.4th 1460
3 (reversing award of waiting time penalties based on employer's good faith defense notwithstanding that
4 the plaintiffs prevailed on the underlying wage claims).)

5 14. In addition, even to the extent that other penalties sought under the PAGA do not have
6 such scienter requirements, a defendant's good faith defenses could result in a substantially diminished
7 penalty award under Lab. Code 2699(e)(2), which provides that a "a court may award a lesser amount
8 than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of
9 the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or
10 confiscatory." Therefore, because of the legal uncertainty surrounding the underlying claims, the claims
11 for statutory and civil penalties present significant risk that supports the fairness, adequacy, and
12 reasonableness of the Settlement.

13 15. There was also the risk that if Plaintiff were to prevail, Plaintiff and the class would not
14 be able to collect on any judgment received at trial. Defendant has severe financial difficulties. Based on
15 reviewing the corporate tax returns of Defendant, the personal tax returns of the owner of Defendant and
16 other relevant financial documents, Plaintiff feared that Defendant would go out of business if it had to
17 pay a judgment received at trial. A motivating factor in providing Defendant a discount on potential
18 penalties was that Defendant's financial documents led me to believe that Defendant's business is not
19 profitable. The settlement amount is a fraction of the potential exposure because Plaintiff believes that
20 Defendant does not have additional funds to pay a larger settlement amount. Accordingly, in view of the
21 risk that Plaintiff would be unable to collect on any judgment after trial, the proposed Settlement—
22 which provides Settlement Class Members with assurance of payment—is fair and adequate.

23 16. Each of these factors bore heavily on the negotiations leading to the Settlement. In view
24 of these risks, the Settlement reflects a fair, adequate, and reasonable compromise amount for these
25 claims and warrants preliminary approval. Indeed, while the risks listed herein are far from exhaustive,
26 they show that the Settlement is fair, adequate, and reasonable in view of them.

27 ***Fairness of Distribution***

28 17. The Settlement fairly, adequately, and reasonably compensates Settlement Class
members based on the potential extent of their claims. After applicable tax deductions and withholding,
the NSA will be paid to class members who do not opt out, based on the total number of qualifying
workweeks during the relevant time period. This method for allocating the NSA to class members is fair,
adequate, and reasonable.

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Actual Litigation Costs

18. Attached hereto as **Exhibit B** is a true and correct copy of my firm's costs record for this case, showing total costs incurred of \$7,339.65.

19. Class Counsel's total cost request is lower than the \$10,000 provided under the Settlement Agreement.

Attorneys' Fees

20. The amount of Class Counsel's fee request (\$30,000.00, or one-third of the Settlement fund) is reasonable as a percentage of the settlement fund. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including, but not limited to: *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of settlement fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of settlement fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of settlement fund); *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of settlement fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of settlement fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of settlement fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego County Superior Court, Case No. 37-2009-00103277-CU-OE-CTL (one-third of settlement fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles County Superior Court, Case No. BC456080 (one-third of settlement fund); *Sandoval v. Thrifty Payless, Inc.*, Los Angeles County Superior Court, Case No. BC431249 (one-third of settlement fund); *Tucker v. Maly's West, Inc.*, Los Angeles County Superior Court, Case No. BC483920 (one-third of settlement fund); *Tiwari v. Merrill's Packaging*, San Mateo Superior Court, Case No. 519070 (one-third of settlement fund); *Montgomery v. Del Monte Corp., et al.*, Kings County Case No. 13C0204 (one-third of settlement fund); *Adams v. Medical Staffing Network, et al.*, Sacramento County Case No. 34-2012-00137491-CU-OE-GDS (33% of gross settlement fund).

21. Since taking on this case in February 2013, I personally expended and will continue to expend a significant amount of attorney time on this case, for approximately 40.2 hours. At my billing rate of \$650 per hour, which is reasonable based on the evidence submitted herewith, this results in a

1 total lodestar of \$26,130 for my hours without the use of any multiplier. The work I have done on this
2 case includes, but is not limited to: (i) conferring with Plaintiff to identify and gather information about
3 the claims in this lawsuit; (ii) performing an initial investigation into Plaintiff's claims; (iii) drafting
4 initial pleadings; (iv) conducting formal and informal written discovery; (v) reviewing policy
5 documents, employee handbooks, and payroll and time records from Defendants; (vi) drafting a detailed
6 mediation brief, including a thorough damages analysis, and traveling to and participating in a full-day
7 mediation; (vii) participating in a mandatory settlement conference; (viii) drafting, finalizing, and
8 obtaining approval of the Settlement; and (iv) addressing post-Settlement issues such as the claims
9 administration process. (*Id.*)

10 22. My billing rate of \$650 has been approved by found reasonable in cases including
11 *Bellinghausen v. Tractor Supply Company*, U.S. Dist. Court, Northern District of California, Case
12 No. 3: 13-cv-02377-JSC and *Ambriz v. The Coca Cola Company*, U.S. Dist. Court, Central District of
13 California, Case No. 2: 14-cv-00715-SVM-FFM.

14 23. Class Counsel's lodestar is \$60,700.00. Our firm's internal timekeeping system, MyCase,
15 also states that my associates have spent additional time on the case:

Attorney	Year Admitted to the Bar	Billing Rate	Total Hours Billed	Total
Shaun Setareh	1999	\$650	40.2	\$26,130
Thomas Segal	2002	\$625	10	\$6,250
Tuvia Korobkin	2009	\$550	16.1	\$8,855
Neil Larsen	2011	\$450	7.1	\$3,195
Farrah Grant	2013	\$400	34.4	\$13,760
Alice Kim	2013	\$400	5	\$2,000
Stacey Shim	2015	\$300	1.7	\$510

16 24. The fee award is justified here because Class Counsel achieved a very favorable result for
17 the Settlement Class in an extremely risky case while bearing substantial burdens of representation on a
18 contingency basis (including fronting all of the costs herein), and the fees requested are in line with fees
19 routinely awarded to Class Counsel and other plaintiffs' counsel in other class action cases. Class
20 Counsel negotiated a substantial recovery for Class Members, in the face of serious defense challenges.
21 The wage-and-hour issues here are a developing area of case law, and recent class action practice has
22 shown that obtaining class certification is quite difficult, especially in cases with the potential to involve
23 debate as to whether differences between individual Class Members pertain to the fact of liability versus
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1 the extent of damages. Class Counsel has borne the entire risk and cost of this litigation on a pure
2 contingency basis, and these risks were substantial given that wage-and-hour cases routinely require a
3 great expenditure of attorney time and money, with uncertain outcome. There is the possibility of class
4 certification being denied, or of Defendant obtaining individual settlement agreements with Class
5 Members prior to trial, which would reduce the number of Class Members. There is also the possibility
6 of Defendant obtaining summary judgment in its favor on some or all of the causes of action alleged in
7 the litigation. In addition, this hard-fought litigation took a considerable deal of time and effort that
8 Class Counsel could have spent on other cases.

9 25. My firm's previous experience in litigating wage-and-hour class actions also supports the
10 reasonableness of the fee request. This previous experience in similar matters was integral in evaluating
11 the strengths and weaknesses of the case against Defendant and the reasonableness of the Settlement.
12 Practice in the narrow field of wage-and-hour litigation requires skill and knowledge concerning the
13 rapidly evolving substantive state and federal law, state and federal procedure, as well as the procedural
14 law of class action litigation. Because it is reasonable to compensate my firm commensurate with our
15 skill, reputation, and experience, a fee award of one-third of the gross Settlement fund is reasonable.

16 26. Several additional factors also show that the amount of Class Counsel's fee request is
17 fair, adequate, and reasonable, which include, but are not necessarily limited to: the impact of the
18 litigation on Class Counsel's ability to obtain and perform other work, the applicability of fee-shifting
19 statutes to the claims asserted, and the Class's overwhelmingly positive reaction to the request. There
20 are currently only one valid exclusion from the Settlement, and zero objections to the Settlement have
21 been filed. This amount (one-third of the gross fund) is also less than the amount that I would receive if I
22 individually represented each Class Member under my regular contingency fee agreement, which
23 authorizes fees of up to 40% of the ultimate recovery.

24 ***Incentive Award to Plaintiff***

25 27. The proposed \$1,000 incentive award and \$4,000 general release award to Plaintiff is
26 reasonable and warrants final approval. Plaintiff has devoted considerable time to this case. Plaintiff
27 spent considerable time assisting Class Counsel and otherwise working in the interests of the Class
28 towards moving this case to successful resolution. Among the ways in which Plaintiff has assisted in the
prosecution and advancement of this case are: (i) providing Class Counsel with documents and

1 information about his work experience; (ii) communicating with Class Counsel throughout the litigation;
2 (iii) traveling to and participating in a full-day mediation, (iv) traveling to and participating in a
3 mandatory settlement conference; (v) carefully reviewing the Settlement; and (vi) keeping abreast of
4 developments in the case. The incentive award also is in recognition of the considerable monetary risk
5 Plaintiff undertook on behalf of the Class to be personally liable for all costs incurred regardless of the
6 success of the litigation or of class certification, as well as the personal risk he took of potential
7 disclosure to future employers that he sued a former employer, and actual disclosure to his former co-
8 workers that he filed this lawsuit. Based on my extensive experience as plaintiffs' counsel in similar
9 wage-and-hour class actions, the proposed \$1,000 enhancement award, and proposed \$4,000 payment
10 for a general release of claims, is reasonable and should be preliminarily approved. This modest
11 payment is thus appropriate and justified as part of the overall Settlement.

12 I declare under the penalty of perjury of the laws of the State of California that the foregoing is
13 true and correct to the best of my knowledge. Executed August 18, 2017 at Beverly Hills, California.

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16 SHAUN SETAREH
17 Declarant
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EXHIBIT “A”



Arellano v. Electronic Document Processing, Inc., dba One Touch Legal Services

MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

Date of Hearing: April 27, 2017

Department: 308

Case No.: BC540315

RULING:

- (1) The settlement appears to be in the range of reasonableness of a settlement that could ultimately be granted final approval by the Court;
- (2) Grant conditional class certification;
- (3) Appoint Setareh Law Group as Class Counsel;
- (4) Appoint Luis Arellano as Class Representative;
- (5) Approve the notice; and
- (6) Set the scheduled matters as indicated below.

PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

As a “fiduciary” of the absent class members, the trial court’s duty is to have before it sufficient information to determine if the settlement is fair, adequate, and reasonable. (*7-Eleven Owners for Fair Franchising v. The Southland Corp.* (2000) 85 Cal.App.4th 1135, 1151, citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801, 1802 (“*Dunk*”).)

California Rules of Court, rule 3.769 governs settlements of class actions. Any party to a settlement agreement may submit a written notice for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion. California Rules of Court, rule 3.769(c).

In determining whether to approve a class settlement, the court’s responsibility is to “prevent fraud, collusion or unfairness to the class” through settlement and dismissal of the class action because the rights of the class members, and even named plaintiffs, “may not have been given due regard by the negotiating parties.” (*Consumer Advocacy Group, Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal.App.4th 46, 60.)

FAIRNESS OF THE SETTLEMENT AGREEMENT

In an effort to aid the Court in the determination of the fairness of the settlement, *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244-245 (“*Wershba*”), discusses factors that the Court should consider when testing the reasonableness of the settlement.

A presumption of fairness exists where: 1) the settlement is reached through arm's length bargaining; 2) investigation and discovery are sufficient to allow counsel and the Court to act intelligently; 3) counsel is experienced in similar litigation; and 4) the percentage of objectors is small. (*Wershba* at 245, citing *Dunk* at 1802.) The test is not the maximum amount plaintiff might have obtained at trial on the complaint but, rather, whether the settlement is reasonable under all of the circumstances. (*Wershba* at 250.)

In making this determination, the Court considers all relevant factors including "the strength of [the] plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the class members to the proposed settlement.'" (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128 ("*Kullar*"), citing *Dunk* at 1801.)

"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. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242 ("[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators."))

TERMS OF SETTLEMENT AGREEMENT

The class is defined as, "all process servers employed by Defendant in California at any time from March 24, 2010, through the Preliminary Approval Order Date." (¶1.1)

Defendant represents there are no more than 80 class members. (*Ibid.*)

If the class size exceeds 88, Plaintiff will have the unilateral right to void this agreement. (¶13.2)

For purposes of settlement only, the parties stipulate to class certification. (¶1)

The Gross Settlement Amount is \$90,000, non-reversionary. (¶1.13)

Beginning 30 days after the Effective Date, Defendant will deposit \$5,000 and will continue to deposit \$5,000 every 30 days for 18 months to fund the GSA. (¶7.5.1) If Defendant defaults on 2 consecutive installments, Plaintiff will have the option to withdraw from the agreement after meeting and conferring with defense counsel. (*Ibid.*)

The Net Settlement Amount (\$37,000) is the Gross minus:

- Up to \$30,000 (1/3) for attorney fees (¶3.1);
- Up to \$10,000 for attorney costs (¶3.2);

- Up to \$5,000 for an incentive award to the class representative (¶3.3);
- Estimated \$5,000 for claims administration costs (¶3.4); and
- \$3,000 (75% of \$4,000 PAGA payment) to LWDA (¶3.6).
- Defendant's share of taxes (¶8.3).

There is no claims process. (¶2.1)

The deadline for opting out is 60 days. (¶1.17)

If more than 7 class members opt out, Defendant may void the agreement. (¶13.1)

The deadline for objecting is 30 days. (¶6.5)

Settlement payments will be calculated by dividing the Net by the total number of workweeks worked by class members (¶1.27), and multiplying that amount by the workweeks worked by each Participating Class Member (¶2.2). The amounts allocated to class members who opt out will be returned to the NSA. (¶1.27, as amended)

Payments to class members will be allocated 1/3 to wages, 1/3 to penalties and 1/3 to interest. (¶¶ 8.1, 8.2)

Funds from any checks that remain uncashed after 180 days will be remitted to the California Unclaimed Property Fund. (¶7.7, as amended)

The claims administrator is CPT Group. (¶1.22)

Participating class members will release certain claims, as discussed below.

ANALYSIS OF SETTLEMENT AGREEMENT

A. Does a Presumption of Fairness Exist?

1. Was the Settlement reached through arm's-length bargaining? Yes. The parties mediated with Robert Kaplan on August 4, 2015. (Declaration of Shaun Setareh, ¶7.) Although the parties negotiated extensively, they were not able to reach a settlement. (Id. at ¶9.) The parties were ordered to a mandatory settlement conference with Judge Helen Bendix on August 25, 2015, and ultimately agreed to her settlement proposal. (Id. at ¶10.) Settlement is the result of arms'-length negotiations between experienced counsel, assisted by Judge Bendix. (Id. at ¶24.)
2. Were investigation and discovery sufficient to allow counsel and the Court to act intelligently? Yes. Through informal discovery, Defendant produced its policies, Plaintiff's personnel records, tax returns, and data pertaining to class members, including a sample of time and pay records. (Id. at ¶7.)

3. Is counsel experienced in similar litigation? Yes. (Id. at ¶¶ 20-22.)

4. What percentage of class has objected? This cannot be determined until the fairness hearing. See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 14:139.18 (“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”)

B. Is the settlement fair, adequate and reasonable?

1. Strength of Plaintiffs’ case. “The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Kullar* at 130.) Here, based on Class Counsel’s damage modeling, the meal period claim, rest period claim, and unpaid time due to piece rate were each valued at \$174,300.50, for a total of \$522,901.50. (Setareh Declaration, ¶24.) Weighed against the strength of the claims are the risks of litigation and the potential that Defendant could prevail on some of its defenses. For example, Defendant may be able to show that its policies are legal, or that it did in fact provide meal and rest periods, or that any violations were in good faith. (Id. at ¶¶ 26-29.) There was also the risk that Plaintiff and the class would not be able to collect on any judgment. (Id. at ¶31.) The \$90,000 non-reversionary settlement represents recovery of approximately 17% of the maximum value of the claims.

2. Risk, expense, complexity and likely duration of further litigation. Further litigation carried the possibility of non-certification and unfavorable rulings on the merits on the above legal issues.

3. Risk of maintaining class action status through trial. It would have been Plaintiff’s burden to maintain the class action through trial.

4. Amount offered in settlement. As indicated above, Defendants have offered to pay a gross settlement amount of \$90,000. After taking the requested deductions, \$37,000 will remain for distribution to class members. If all class members participate, the average settlement payment will be \$463. [$\$37,000 \text{ net} \div 80 \text{ class members} = \462.50]

5. Extent of discovery completed and the stage of the proceedings. As stated above, it appears that Class Counsel has completed sufficient discovery in order to make an informed decision.

6. Experience and views of counsel. As indicated above, Class Counsel is experienced in class actions, including cases involving wage and hour violations. Class Counsel endorses the settlement as fair and adequate, and one that reasonably compensates class members based on the potential value of the claims. (Setareh Declaration, ¶33.)

7. Presence of a governmental participant. This factor is not applicable here.

8. Reaction of the class members to the proposed settlement. The class members' reactions will not be known until they receive notice and are afforded an opportunity to object or opt-out. This factor becomes relevant during the fairness hearing.

SCOPE OF RELEASE

Upon Defendant's payment of the final settlement amount, the claims to be released by the Class Members who do not opt out include, all claims under state, federal or local law arising from their employment with Defendant that were or otherwise could have been brought under the facts pleaded in the operative Complaint in this Action against Defendant [and related entities and persons] arising out of or relating to work performed during the Class Period, including but not limited to the following:

- (a) any and all claims regarding unpaid wages, interest, or penalties for off-the-clock work, commissions, piece-rate payments, discretionary or non-discretionary bonuses, premium pay, unpaid straight time wages, unpaid overtime wages, unpaid minimum wages, inaccurate payroll and/or time record-keeping records, inaccurate, incomplete, or incorrect pay instruments/stubs and/or wage/earnings statement, payment of wages, unfair competition, and PAGA penalties, related to the alleged Labor Code violations asserted in the operative Complaint; any claim for failure to properly pay all wages upon termination; any claim for failure to indemnify or otherwise failure to reimburse business expenses; any claim for failure to pay minimum wage; any claim for failure to keep or maintain accurate records; unlawful deductions; failure to timely pay wages owed;
- (b) any and all claims regarding meal and rest period premiums . . . ;
- (c) any and all claims regarding waiting time penalties . . . ;
- (d) any and all claims for injunctive relief, restitution, breach of contract or company policy, fraudulent business practices brought under B&P Code related to the above;
- (e) any and all claims or causes of action for penalties, interest, and/or attorneys' fees and costs related to the above; and
- (f) by cashing their Settlement Payments, Class Members will also release any and all claims under the FLSA that could have been asserted upon the allegations in the operative Complaint. Such cashing of Settlement Payments shall be deemed an 'opt in' for purposes of releasing claims under the FLSA and Class Members will be apprised of same in the Class Notice.

The class representative will also acknowledge that he has read Section 1542 of the Civil Code, which provides [statute language omitted]. The class representative voluntarily waives any rights described in Section 1542 only as to the Released Claims. (§15.2, as amended)

CONDITIONAL CLASS CERTIFICATION

A. Standards

A detailed analysis of the elements required for class certification is not required, but it is advisable to review each element when a class is being conditionally certified. (*Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 620, 622-627.) The trial court can appropriately utilize a different standard to determine the propriety of a settlement class as opposed to a litigation class certification. Specifically, a lesser standard of scrutiny is used for settlement cases. (*Dunk* at 1807, fn. 19.) Because a settlement eliminates the need for a trial, when considering whether to certify a settlement class, the court is not faced with the case management issues present in certification of a litigation class. (*Global Minerals & Metals Corp. v. Superior Court* (2003) 113 Cal.App.4th 836, 859.) Finally, the Court is under no “ironclad requirement” to conduct an evidentiary hearing to consider whether the prerequisites for class certification have been satisfied. (*Wershba* at 240.)

B. Analysis

1. Numerosity. There are approximately 80 class members. (Setareh Declaration, ¶13.) Thus, numerosity has been sufficiently established.

2. Ascertainability. The class is defined as, “all process servers employed by Defendant in California at any time from March 24, 2010, through the Preliminary Approval Order Date.” (Settlement Agreement, ¶1.1) This class definition “is precise, objective and presently ascertainable.” (*Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905, 919.) Class members are identifiable based on a review of Defendants’ records. (Settlement Agreement, ¶6.2.2)

3. Community of interest. “The community of interest requirement involves 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.’” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.) As for the first factor, the class members share common questions of law and fact because class members “were subject to the same job duties and employment policies.” Further, the class members’ claims arise from Defendants’ alleged common pattern and practice of . Lastly, the named Plaintiffs can adequately represent the class because their interests in this action do not appear to be antagonistic to the interests of the class.

4. Adequacy of class counsel. As indicated above, Class Counsel is experienced in class actions, including cases involving wage and hour violations.

5. Superiority. Given the relatively small size of the individual claims, a class action appears to be superior to separate actions by the class members.

Since the elements of class certification have been met, the class may be conditionally certified at this time.

NOTICE TO CLASS

A. Standard

California Rules of Court, rule 3.769(e) provides: "If the court grants preliminary approval, its order must include the time, date, and place of the final approval hearing; the notice to be given to the class; and any other matters deemed necessary for the proper conduct of a settlement hearing." Additionally, rule 3.769(f) states: "If the court has certified the action as a class action, notice of the final approval hearing must be given to the 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."

B. Form of Notice

The proposed notice is attached to the Settlement Agreement as Exhibit A. The information provided in the proposed notice includes a summary of the litigation, the nature and terms of the settlement, the proposed deductions from the gross settlement amount, the procedures for participating in, opting out of, or objecting to the settlement, and the time, date, and location of the final approval hearing. The Court finds the notice acceptable.

C. Method of Notice

Within 7 calendar days of the preliminary approval of the settlement, Defendants will provide a class list to the claims administrator. (§6.2.2) Within 3 working days of receiving the class list, the claims administrator will update addresses using the NCOA. (§6.2.3) Within 30 days of preliminary approval, the claims administrator will mail notice to all class members. (§§1.16, 6.2.4) The claims administrator will perform a skip trace on returned mail and re-mail within 3 business days. (§6.2.5) Class members receiving re-mailed notice will have the later of 15 days from re-mailing or the original opt out deadline to request exclusion. (Ibid.) The proposed means of providing notice appears to provide the best possible means for giving actual notice to the putative class members.

D. Cost of Notice

The cost of settlement administration is estimated at \$5,000. This amount appears reasonable. However, prior to the time of the final fairness hearing, the settlement administrator must submit a declaration attesting to the total costs incurred and anticipated to be incurred to finalize the settlement for approval by the Court.

ATTORNEY FEES AND COSTS

California Rules of Court, rule 3.769(b) states: “Any agreement, express or implied, that has been entered into with respect to the payment of attorney fees or the submission of an application for the approval of attorney fees must be set forth in full in any application for approval of the dismissal or settlement of an action that has been certified as a class action.”

Ultimately, the award of attorney fees is made by the Court at the fairness hearing, using the lodestar method with a multiplier, if appropriate. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.* (2000) 82 Cal.App.4th 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4th 1122, 1132-1136.) In common fund cases, the Court may utilize the percentage method, cross-checked by the lodestar. (*Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503.) Despite any agreement by the parties to the contrary, “the court has an independent right and responsibility to review the attorney fee provision of the settlement agreement and award only so much as it determined reasonable.” (*Garabedian v. Los Angeles Cellular Telephone Company* (2004) 118 Cal.App.4th 123, 128.)

The question of whether class counsel is entitled to \$30,000 will be addressed at the fairness hearing when class counsel brings a noticed motion for attorney fees.

Counsel should also be prepared to justify any costs sought by detailing how such costs were incurred.

PROPOSED SCHEDULE OF SETTLEMENT PROCEEDINGS

The following schedule is proposed by the Court:

Preliminary Approval Hearing – April 27, 2017

Deadline for Serving Notices to Class Members – May 29, 2017 (30 days after preliminary approval)

Deadline for Requests for Exclusion and Objections – Opting Out = July 28, 2017 (60 days after the deadline to serve notices to class members), Objecting = June 28, 2017 (30 days after the deadline to serve notices to class members)

Deadline for Class Counsel to File Motion for Final Approval of Settlement and Motion for Attorney Fees and Response to any Objections – August 18, 2017

Final Fairness Hearing and Final Approval – September 12, 2017 at 11:00 a.m.

EXHIBIT “B”

3:35 PM

08/17/17

Accrual Basis

Law Office of Shaun Setareh, APC

Find Report

All Transactions

Type	Date	Num	Name	Memo	Account	C	Amount
General Journal	08/17/2017	8-082		Postage	One Touch Legal		23.41
General Journal	08/17/2017	8-082		Photocopies and prints	One Touch Legal		302.50
General Journal	08/17/2017	8-082		Westlaw	One Touch Legal		406.00
Check	05/05/2017	1739	Farrah Grant	Case reimbursement 4/27/17	One Touch Legal		22.54
Check	05/03/2017	1730	File and Serve Express	Inv.# 201704695799301, case # BC540315	One Touch Legal		11.00
Check	05/02/2017	1720	Online Legal Courier	Inv.# 10742, case # BC540315	One Touch Legal		32.95
Check	04/05/2017	1661	File and Serve Express	Inv.# 201703695799301, case # BC540315	One Touch Legal		22.00
Credit Card Charge	04/04/2017		Superior Court of Ca, County of LA	Case# BC540315	One Touch Legal		26.25
Check	03/31/2017	1658	Online Legal Courier	Inv.# 10642, case # BC540315	One Touch Legal		34.96
Check	03/02/2017	1601	Online Legal Courier	Inv.# 10347	One Touch Legal		124.25
General Journal	06/05/2016	8-050		LA Superior Court	One Touch Legal		9.75
General Journal	06/05/2016	8-050		LA Superior Court	One Touch Legal		59.75
General Journal	02/09/2016	8-029		LA Superior Court	One Touch Legal		11.00
Check	11/19/2015	4570	File and Serve Express	August 26, 2015	One Touch Legal		19.95
Check	10/07/2015	4489	Online Legal Courier	Filing	One Touch Legal		19.95
Check	10/07/2015	4489	Online Legal Courier	Document Delivery	One Touch Legal		35.00
Check	05/28/2015	4320	File and Serve Express		One Touch Legal		69.00
Credit Card Charge	03/04/2015		Rapid Legal, Inc.		One Touch Legal		5,195.00
Check	12/31/2014	4082	Judicate West	Mediation Fee: #A200367-25	One Touch Legal		14.25
Bill	07/23/2014	07/23/...	Chase Card Services		One Touch Legal		109.44
Check	07/17/2014	10257	Neil M Larsen	P/E: 07/13/2014	One Touch Legal		13.95
Credit Card Charge	07/04/2014		One Legal LLC		One Touch Legal		66.95
Credit Card Charge	06/30/2014		One Legal LLC		One Touch Legal		131.15
Credit Card Charge	06/18/2014		One Legal LLC		One Touch Legal		66.95
Credit Card Charge	06/10/2014		One Legal LLC		One Touch Legal		66.95
Credit Card Charge	04/29/2014		Los Angeles Superior Court	Filing Fee	One Touch Legal		435.00
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2 ☐ **BY FACSIMILE MACHINE**

3 I transmitted from a facsimile transmission machine whose telephone number is (310)
4 888-0109 to the above-identified recipient and fax telephone number. The above-described
5 transmission was reported as complete without error by a transmission report issued by the
6 facsimile transmission machine upon which the said transmission was made immediately
following the transmission.

7 ☐ **PERSONAL SERVICE**

8 I delivered the foregoing document by hand delivery to the addressee named above.

9 ☐ **BY CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

10 I deposited such envelope in the mail at Beverly Hills, California. The envelope was
11 mailed Certified/Return Receipt Requested with postage thereon fully prepaid. I am readily
12 familiar with the practice of Setareh Law Group for collection and processing of
13 correspondence for mailing with the United States Postal Service. It is the practice that
14 correspondence is deposited with United States Postal Service the same day it is submitted for
mailing with postage thereon fully prepaid at Beverly Hills, California. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or postage
meter date is more than one day after date of deposit for mailing in affidavit.

15 ☒ **STATE** I declare under penalty of perjury under the laws of the State of California that
16 the above is true and correct.

17 ☐ **FEDERAL** I declare under penalty of perjury under the laws of the United States of
18 America that I am employed in the office of a member of the bar of this court at whose direction
the service was made.

19 Executed on August 18, 2017, at Beverly Hills, California.

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Angel Reyes