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

TIFFANY VON BARDELEBEN,
individually, and on behalf of other members
of the general public similarly situated;

Plaintiff,

v.

AUTOGLASSNOW, LLC, a Delaware
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: 21CV001084

Assigned for All Purposes to:
Honorable Evelio Grillo
Department 21

CLASS ACTION

**PLAINTIFFS' 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**

[Reservation ID: 760053764820]

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

Hearing Date: February 15, 2023
Hearing Time: 10:00 a.m.
Hearing Place: Department 21

Complaint Filed: October 25, 2021
FAC Filed: September 16, 2022
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on February 15, 2023 at 10:00 a.m., or as soon as the
2 matter may be heard, before the Honorable Evelio Grillo in Department 21 of the Alameda County
3 Superior Court (Administration Building) located at 1221 Oak Street Oakland, California 94612,
4 Plaintiffs Tiffany Von Bardeleben and Crystal Campos (“Plaintiffs,” “Plaintiff Von Bardeleben,”
5 and “Plaintiff Campos”) will and hereby do move for an order:

- 6 • Granting Preliminary Approval of the proposed class action settlement described
7 herein and as set forth in the Parties’ Class Action and PAGA Settlement
8 Agreement and Class Notice (“Settlement Agreement,” “Settlement,” or
9 “Agreement”), attached as **Exhibit 2** to the declaration of Douglas Han, including,
10 and not limited to, the means of allocation and distribution of funds;
- 11 • Conditionally certifying the Class for settlement purposes only;
- 12 • Appointing Plaintiffs as the class representatives;
- 13 • Appointing Justice Law Corporation as Class Counsel;
- 14 • Approving the Court Approved Notice of Class Action and PAGA Settlement and
15 Hearing Data for Final Court Approval (“Class Notice”) attached as **Exhibit A** to
16 the [Proposed] Order Preliminarily Approving Class Action Settlement and
17 Setting Hearing for Final Approval of Settlement and Settlement Agreement;
- 18 • Directing the mailing of the Class Notice with a postage-paid return envelope to
19 the Class;
- 20 • Approving the deadlines for the notice and settlement administration process;
- 21 • Approving Phoenix Class Action Administrators as the Administrator; and
- 22 • Scheduling a hearing to consider whether to grant Final Approval of the Settlement
23 Agreement, at which time the Court will also consider whether to grant Final
24 Approval of the requests for the Class Counsel Fees Payment, Class Counsel
25 Litigation Expenses Payment, Class Representative Service Payments,
26 Administration Expenses Payment, and Private Attorneys General Act of 2004
27 (“PAGA”) Penalties.

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

6
7 Dated: January 13, 2023

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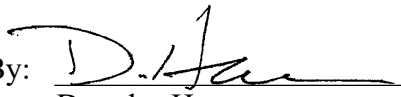
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9 By: 
10 Douglas Han
11 *Attorneys for Plaintiffs*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$400,000 wage-and-hour
3 class action and representative PAGA settlement by Plaintiffs on behalf of themselves and all
4 current and former hourly-paid or non-exempt employees of Defendant Autoglassnow, LLC
5 (“Defendant”) within the State of California at any time during the period from April 15, 2017 to
6 December 31, 2021 (“Class,” “Class Members,” and “Class Period”). At the time of this filing,
7 the number of Class Members confirmed by Defendant is about one hundred thirty-four (134).
8 (Declaration of Douglas Han In Support of Plaintiffs’ Motion For Preliminary Approval of Class
9 Action Settlement (“Han Dec.”), ¶¶ 7-8.)

10 It is requested the Court grant Preliminary Approval because when analyzing the strengths
11 and vulnerabilities of the claims alongside the potential liability exposure, the Settlement is well
12 within the range of reasonableness. Plaintiffs and Class Counsel are convinced the Settlement is
13 in the best interests of the Class Members.

14 **II. BACKGROUND**

15 On October 25, 2021, Plaintiff Von Bardeleben filed a wage-and-hour class action lawsuit
16 in the Superior Court of California, County of Alameda, alleging eight (8) causes of action. (Han
17 Decl., *supra*, at ¶ 9.)

18 On May 31, 2022, Plaintiff Campos provided written notice to the California Labor and
19 Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
20 Labor Code she contends were violated. (Han Decl., *supra*, at ¶ 10; Exhibit 3.)

21 After engaging in discovery, investigation, and negotiations, the Parties remotely attended
22 mediation on August 18, 2022 with the mediator Lynn Frank. (Han Decl., *supra*, at ¶ 11.) Under
23 the auspices of the mediator, the Parties reached a settlement via a mediator’s proposal. (*Ibid.*)

24 In line with the settlement, Plaintiff Von Bardeleben filed a First Amended Complaint that
25 added violation of Labor Code section 2698, *et seq.* (PAGA) and added Plaintiff Campos as a
26 plaintiff on September 16, 2022. (Han Decl., *supra*, at ¶ 12; Exhibit 4.)

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III. INVESTIGATION/ LITIGATION HISTORY

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

Defendant generally and specifically denies any and all liability or wrongdoing, makes no concessions or admissions of liability, and contends for any purpose other than settlement, this matter is not appropriate for class or representative treatment. (Han Decl., *supra*, at ¶ 13) Furthermore, Defendant asserts several defenses and counterarguments to the claims. (*Ibid.*)

Plaintiffs propounded one (1) set of form interrogatories, one (1) set of special interrogatories, one (1) set of requests for admissions, and one (1) set of requests for production of documents onto Defendant. (Han Decl., *supra*, at ¶ 14) Defendant responded to discovery. (*Ibid.*) Thereafter, the Parties met and conferred, agreed to engage in an informal exchange of information and eventually attended mediation. (*Ibid.*)

Defendant produced hundreds of documents relating to its policies, practices, and procedures. (Han Decl., *supra*, at ¶ 15) As part of Defendant's production, Plaintiffs also reviewed a sampling of time records, pay records, and information relating to the size and scope of the Class and group of Aggrieved Employees. (*Ibid.*) Several putative class members were also interviewed to obtain a better understanding of the alleged day-to-day violations. (*Ibid.*)

Based upon the information provided by Defendant and interviews with putative class members, Plaintiffs contend – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks and pay applicable premium wages; (2) failed to pay employees for all hours worked; (3) failed to factor non-discretionary bonuses into regular rate of pay; (4) failed to reimburse employees for necessary business expenses; (5) failed to issue compliant wage statements; and (6) failed to timely pay wages. (Han Dec., *supra*, at ¶¶ 17-24.)

b. The Parties Were Able to Reach an Agreement on Settlement of the Action

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with experienced wage-and-hour mediator Lynn Frank on August 18, 2022. (Han Decl., *supra*, at ¶ 25.) Under the auspices of the mediator, the Parties reached a settlement via a mediator's proposal, the terms of which were memorialized in the Agreement the Parties now seek Preliminary Approval of. (*Id.* at ¶ 25; Exhibits 2, 5.)

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

2 The Settlement was reached because of arm’s-length negotiations. (Han Decl., *supra*, at
3 ¶ 36.) Though cordial and professional, the settlement negotiations have always been adversarial
4 and non-collusive in nature. (*Ibid.*) At the mediation, the Parties’ counsel conducted extensive
5 arm’s-length settlement negotiations until an agreement was reached. (*Ibid.*)

6 Plaintiffs and Class Counsel believe in the merits of the case but recognize the expense
7 and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶
8 37.) Plaintiffs and Class Counsel also considered the uncertainty and risk of further litigation,
9 potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiffs and
10 Class Counsel believe the settlement set forth in the Agreement is fair, adequate, and reasonable
11 and is in the Class Members’ best interests. (*Ibid.*)

12 **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

13 The Parties investigated and evaluated the factual strengths and weaknesses of the Parties’
14 claims and defenses before reaching the Settlement and engaged in sufficient investigation,
15 research, and discovery. (Han Decl., *supra*, at ¶ 38.) The information produced permitted Class
16 Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This
17 case has reached the stage where “the Parties certainly have a clear view of the strengths and
18 weaknesses of their cases” sufficient to support the Settlement. (Han Dec., *supra*, at ¶ 38; *Boyd*
19 *v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

20 **c. Terms of the Settlement**

21 **i. Deductions from the Settlement**

22 The Parties agreed (subject to the Court’s approval) this action be settled and
23 compromised for the non-reversionary total sum of \$400,000 (“Gross Settlement Amount”)
24 which includes the: (1) Class Counsel Fees Payment of up to \$133,333.33 (1/3 of the Gross
25 Settlement Amount); (2) Class Counsel Litigation Expenses Payment of up to \$20,000; (3) Class
26 Representative Service Payments totaling up to \$20,000; (4) Administration Expenses Payment
27 of up to \$10,000; and (5) PAGA Penalties of \$50,000. (Han Dec., *supra*, at ¶ 26.)

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1 **ii. Calculation of Settlement Payments**

2 After all Court-approved deductions from the Gross Settlement Amount, it is estimated
3 \$166,666.67 (“Net Settlement Amount”) will be distributed to Class Member who do not submit
4 valid and timely Requests for Exclusion from the Settlement (“Participating Class Members”),
5 resulting in a gross *average* Individual Class Payment of \$1,243.78. (Han Dec., *supra*, at ¶ 27.)

6 The Administrator will calculate and disburse the Individual Class Payment using the
7 formula set forth in the Settlement Agreement. (Han Dec., *supra*, at ¶ 28.) The Administrator
8 will also calculate and disburse Individual PAGA Payments using the formula set forth in the
9 Settlement Agreement. (*Ibid.*)

10 **iii. The Allocation of 20% to Wages and 80% to Interest and Penalties Is**
11 **Justified Under the Claims of this Action**

12 Individual Class Payments will be allocated as follows: (1) twenty percent (20%) to the
13 settlement of wage claims; and (2) eighty percent (80%) to the settlement of claims for interest
14 and penalties. (Han Dec., *supra*, at ¶ 28.)

15 The allocation of wages, interest, and penalties indicated above was based on the realistic
16 exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages
17 if the case went to trial. (Han Dec., *supra*, at ¶ 57.) Plaintiffs added the realistic exposure for rest
18 break premiums and meal break premiums (\$7,691.87 + \$10,916.68 = \$18,608.55). (*Ibid.*)
19 Plaintiffs then added the \$18,608.55 to the low end realistic exposure for unpaid wages due to
20 off-the-clock work and underpaid overtime wages (\$18,608.55 + \$15,618.17 + \$51,305.96 =
21 \$85,532.68). (*Ibid.*) The realistic exposure of \$85,532.68 Plaintiffs can expect to receive if they
22 were to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-
23 clock work, and underpaid overtime wages represents about twenty-one percent (20.82%%) of
24 the low end total realistic exposure and PAGA penalties ($\$85,532.68 \div \$410,783.74 = 0.2082 \times$
25 $100 = 20.82\%$). (*Ibid.*) Because this represents almost twenty percent (20%) of wages, allocating
26 twenty percent (20%) for the settlement of wage claims and eighty percent (80%) for the
27 settlement of claims for interest and penalties pursuant to the Settlement is appropriate. (*Ibid.*)

28 ///

1 **iv. Notice to the Class**

2 No later than fifteen (15) days after the Court grants Preliminary Approval of the
3 Settlement, Defendant will deliver the Class Data to the Administrator in the form of a Microsoft
4 Excel spreadsheet. (Han Dec., *supra*, at ¶ 29.) No later than fourteen (14) days after receiving the
5 Class Data, the Administrator will send to all Class Members identified in the Class Data, via
6 first-class United States Postal Service (“USPS”) mail, the Class Notice. (*Ibid.*)

7 **v. Distribution of Funds**

8 The Gross Settlement Amount and subsequent payments to be made will be funded and
9 disbursed in the manner and time set forth in the Settlement. (Han Dec., *supra*, at ¶ 30.)

10 Participating Class Members and Aggrieved Employees must cash in their settlement
11 checks within one hundred eighty (180) days after the date of their mailing. (Han Dec., *supra*, at
12 ¶ 31.) Uncashed settlement checks will be canceled after the void date and transmitted to the
13 California Controller’s Unclaimed Property Fund. (*Ibid.*)

14 **vi. Release of Claims**

15 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
16 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
17 Participating Class Members, on behalf of themselves and their respective former and present
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released
19 Parties from the Released Class Claims. (Han Dec., *supra*, at ¶ 32.)

20 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
21 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, all
22 Aggrieved Employees are deemed to release, on behalf of themselves and their respective former
23 and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the
24 Released Parties from the Released PAGA Claims. (Han Dec., *supra*, at ¶ 33.)

25 Effective on the date when Defendant fully funds the entire Gross Settlement Amount and
26 funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments,
27 Plaintiffs and his or her respective former and present spouses, representatives, agents, attorneys,
28 heirs, administrators, successors, and assigns generally, release and discharge Released Parties

1 from all claims, transactions, or occurrences that occurred during the Class Period. (Han Dec.,
2 *supra*, at ¶ 34.) Plaintiffs also expressly waive and relinquish the provisions, rights, and benefits,
3 if any, of section 1542 of the Civil Code. (*Ibid.*)

4 With regard to class action releases, “[A] court may release not only those claims alleged
5 in the complaint and before the court, but also claims which ‘could have been alleged by reason
6 of or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
7 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scopes of the releases
8 in this case are acceptable because they are limited to the scope of the allegations in the
9 Complaint. Moreover, the released claims are ““based on *the identical factual predicate* as that
10 underlying the claims in the settled class action.”” (*Ibid.*) In other words, the released claims do
11 not ““go beyond the scope of the allegations in the operative complaint”” (*Ibid.*)

12 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

13 The Parties’ counsel are experienced in wage-and-hour, employment law and class
14 actions. (Han Dec., *supra*, at ¶¶ 2-6; Exhibit 1.) Class Counsel have prosecuted numerous cases
15 on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel’s experience
16 guided their determination to endorse the Settlement.¹ (*Ibid.*)

17 **IV. ARGUMENT**

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

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

23 ¹ The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
24 number of objectors – is not determinable until the Class Notice has been provided to the Class
25 Members, and they have had an opportunity to respond. This information will be provided to the
26 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

27 ² The California Supreme Court authorized California’s trial courts to use Federal Rule 23
28 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, the Parties cite 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 in
2 a class action, or as to a party, requires the approval of the court after
3 hearing.

4 . . .

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

13 **b. The Settlement Is a Reasonable Compromise of Claims**

14 Understanding the sum in controversy is an important factor in if the settlement “of the
15 class members’ claims is reasonable in light of the strengths and weaknesses of the claims and
16 the risks of the particular litigation.” (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th
17 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th
18 399, 409.) The most important factor is “the strength of the case for plaintiffs on the merits,
19 balanced against the amount offered in settlement.” (*Kullar*, at p. 129; see also *Munoz*, at p. 409.)

20 In weighing the strength of the case, *Kullar* instructs the court is not to “decide the merits
21 of the case or to substitute its evaluation of the most appropriate settlement for that of the
22 attorneys.” (*Kullar v. Foot Locker Retail, Inc., supra*, 168 Cal.App.4th at p. 133.) *Kullar* does not
23 require an explicit statement of the maximum amount the class could recover if plaintiff prevailed
24 on all his claims, provided there is a record allowing “an understanding of the amount that is in
25 controversy and the realistic range of outcomes of the litigation.” (*Munoz v. BCI Coca-Cola*
26 *Bottling Co. of Los Angeles, supra*, 186 Cal.App.4th at p. 409.) In other words, “as the court does
27 when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court
28 must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness.”
(*Kullar*, at p. 133.)

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1 **i. The Gross Settlement Amount of \$400,000 Is Fair and Reasonable**

2 The Settlement Agreement was only possible following significant investigation and
3 evaluation of the relevant policies and procedures and the data produced for the putative class,
4 permitting Class Counsel to engage in a comprehensive analysis of liability and potential
5 damages. (Han Dec., *supra*, at ¶ 38.)

6 The claims are predicated on Defendant's alleged: (1) failure to properly calculate and
7 pay overtime wages; (2) failure to provide meal and rest breaks and pay applicable premiums; (3)
8 failure to pay minimum wages; (4) failure to timely pay wages; (5) failure to issue compliant
9 wage statements; (6) failure to reimburse business expenses; (7) violation of Labor Code sections
10 2698, *et seq.* (PAGA); and (8) violation of Business & Professions Code sections 17200, *et seq.*
11 (Han Dec., *supra*, at ¶ 39.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 40.)

12 While Plaintiffs believe the case is suitable for certification, uncertainties with respect to
13 certification are present. (Han Dec., *supra*, at ¶ 41.) As the California Supreme Court ruled in
14 *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter
15 of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have
16 reached different conclusions concerning certification of wage-and-hour claims.³ (*Ibid.*) These
17 factors led to discounting the calculations of potential damages.

18 **ii. The PAGA Penalties of \$50,000 Is Reasonable**

19 The provisions of the Labor Code potentially triggering PAGA penalties include, but are
20 not limited to, Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7,
21 246, 432.5, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han
22 Dec., *supra*, at ¶ 50.) Defendant asserted, regardless of the results of the underlying causes of
23 action, PAGA penalties are not mandatory but permissive and discretionary. (Han Dec., *supra*,

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

at ¶ 50. Defendant maintained it had a strong argument it would be unjust to award maximum
PAGA penalties given the law’s unsettled state. (Han Dec., *supra*, at ¶ 50; *Thurman v. Bayshore
Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].)
Without stacking and limited to the initial violation, the PAGA penalties would be limited to
\$15,900 (159 stacking and limited to the initial violation, the PAGA penalties would be limited
to \$2,900 (29 employees x \$100 initial violation) on the low end and \$20,300 (29 employees x
\$100 initial violation x 7 theories of recovery) on the high end. (Han Dec., *supra*, at ¶¶ 51-54.)

Plaintiffs also recognized the risk any PAGA award could be reduced. (Han Decl., *supra*,
at ¶ 55.) Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*)
The maximum penalties for each pay period are likely not justified, and it was arguable the Court
would award the maximum penalties. (*Ibid.*) Thus, allocating \$50,000 to PAGA civil penalties
was reasonable based on a rate of \$106.38 per pay period [$\$50,000 \div 470$ pay periods in PAGA
date range], given the fact Defendant is paying an additional \$350,000 in the class settlement.⁴
(*Ibid.*) When PAGA penalties are negotiated in good faith and “there is no indication that [the]
amount was the result of self-interest at the expense of other Class Members,” such amounts are
generally considered reasonable.⁵ (*Ibid.*)

Considering the defenses, supporting evidence, and position the case is not suitable for
class treatment, the Settlement is reasonable, adequate, and fair.

c. 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 about \$929,131.76 on
the low end and \$978,739.76 on the high end. (Han Decl., *supra*, at ¶ 56.)

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⁴ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of
\$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of \$25
to \$75 per violation and a total PAGA penalty of \$70,000,000].)

⁵ (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-00844 EDL) 2009
U.S.Dist.LEXIS 33900, at *24; see, e.g., *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576,
579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims”).)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$87,907.06	75%	65%	\$7,691.87
Meal Break Premiums	\$89,115.73	65%	65%	\$10,916.68
Overtime/Minimum Wage: Off-the-Clock Work	\$99,163 to \$148,771	65%	55%	\$15,618.17 to \$23,431.53
Overtime/Minimum Wage: Regular Rate	\$143,513.17	35%	45%	\$51,305.96
Unreimbursed Business Expenses	\$51,366	25%	45%	\$21,188.48
Wage Statement Penalty	\$44,950	25%	25%	\$25,284.38
Waiting Time Penalty	\$413,116.80	25%	25%	\$232,378.20
MAXIMUM TOTAL EXPOSURE	\$929,131.76 to \$978,739.76⁶			\$364,383.74 to \$372,197.10⁷

Based on this analysis, the realistic recovery for this case is **\$364,383.74** on the low end and **\$372,197.10** on the high end. (Han Decl., *supra*, at ¶ 65.) The Gross Settlement Amount is about forty-one percent (40.87%) of the maximum potential exposure and well above the maximum realistic exposure at trial, which is an excellent 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. 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”).) Nevertheless, the Settlement provides significant recovery for the Class Members.

⁶ (Han Decl., *supra*, at ¶¶ 42-49.)

⁷ (*Id.* at ¶¶ 57-64.)

1 **d. Conditional Certification of the Class Is Appropriate**

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

8 The Class is ascertainable and numerous as to make it impracticable to join all Class
9 Members, and there are common questions of law and fact amongst the Class. (Han Dec., *supra*,
10 at ¶ 66.) Plaintiffs contend, as former hourly-paid, non-exempt employees of Defendant, their
11 claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect
12 the interests of the Class. (*Ibid.*) Also, Plaintiffs assert the prosecution of separate actions by
13 individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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

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

22 This case involves about one hundred thirty-four (134) Class Members, meaning the Class
23 is sufficiently numerous. (Han Dec., *supra*, at ¶ 67.) Class Members will be identified by
24 Defendant to the Administrator through a review of the employment records. (*Ibid.*)

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

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

11 **1. Common Issues Predominate**

12 The “common issues” requirement “involves analysis of whether the proponent’s ‘theory
13 of recovery’ is likely to prove compatible with class treatment.” (*Capitol People First v.*
14 *Department of Developmental Services, supra*, 155 Cal.App.4th at p. 690 (emphasis added).)
15 Courts determine whether the elements necessary to establish liability are susceptible to common
16 proof, even if the class members must individually prove their damages. (*Brinker Restaurant*
17 *Corporation v. Superior Court* (2012) 53 Cal.4th 1024). These types of claims are regularly
18 granted class certification when the plaintiff can present evidence of common policies. (See, e.g.,
19 *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012
20 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi*
21 *South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS
22 [court certified class of dancers on state law claims].)

23 Plaintiffs assert common issues of fact and law predominate as to each of the claims
24 alleged. (Han Dec., *supra*, at ¶ 68.) Plaintiffs contend all persons employed by Defendant as
25 hourly-paid or non-exempt employees in California during the Class Period were subject to the
26 same or similar policies, practices, and procedures described in detail above. (*Ibid.*)

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2. Plaintiffs' Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiffs are former employees of Defendant and alleges they and the Class Members were employed by the same company and injured by Defendant's common policies, practices, and procedures related to the claims described above. (Han Dec., *supra*, at ¶ 69.) Plaintiffs seek relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories as those applicable to the Class. (*Ibid.*)

3. Plaintiffs Are Adequate to Represent the Class

Plaintiffs have proven to be adequate representatives. (Han Dec., *supra*, at ¶ 70.) Plaintiffs have conducted themselves diligently and responsibly in representing the Class in this litigation, understand their fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiffs also have no interests averse to the interests of the Class Members. (*Ibid.*)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiffs contend the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense. Because some Class Members are current employees, Plaintiffs believe the fear of retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find the proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court

1 to act intelligently; (3) counsel is experienced in similar litigation; and (4) percentage of objectors
2 is small. (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1802.) These elements are present.

3 **f. Notice to Class Members Complies with California Rules of Court, Rule 3.769(f)**

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

5 If the court has certified the action as a class action, notice of the final approval
6 hearing must be given to class members in the manner specified by the court. The
7 notice must contain an explanation of the proposed settlement and procedures for
8 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.

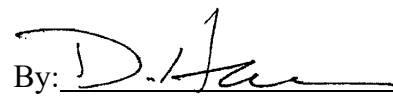
9 The Class Notice meets all these requirements. The Class Notice advises the Class
10 Members of their right to participate in the Settlement; how and when to object to or request
11 exclusion from the Settlement; and the date, time, and location of the Final Approval Hearing.

12 **V. CONCLUSION**

13 Plaintiffs submit the Settlement is in the best interests of the Class, as it is fair, adequate,
14 and reasonable. Under the applicable class action criteria and guidelines, the Settlement should
15 be preliminarily approved by the Court, the Class should be conditionally certified for purposes
16 of settlement only, and the Class Notice should be approved.

17
18 Dated: January 13, 2023

JUSTICE LAW CORPORATION

19
20 By: 
21 Douglas Han
Attorneys for Plaintiffs



Superior Court of Alameda County Public Portal

Make a Reservation

VON BARDELEBEN vs AUTOGLASSNOW, LLC

Case Number: 21CV001084 Case Type: Unlimited Civil Category: Other Employment Complaint Case
Date Filed: 2021-10-25 Location: Rene C. Davidson Courthouse - Department 21

Reservation

Case Name: VON BARDELEBEN vs AUTOGLASSNOW, LLC	Case Number: 21CV001084
Type: Motion re: (Preliminary Approval of Class Action Settlement)	Status: RESERVED
Filing Party: Tiffany Von Bardeleben (Plaintiff)	Location: Rene C. Davidson Courthouse - Department 21
Date/Time: 02/15/2023 10:00 AM	Number of Motions: 1
Reservation ID: 760053764820	Confirmation Code: CR-2MU3PCLTQVEOWSCF5

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	0.00	1	0.00
Court Technology Fee	1.00	1	1.00
TOTAL			\$1.00

Payment

Amount: \$1.00	Type: Visa
Account Number: XXXX1109	Authorization: 01363G
Payment Date: 1969-12-31	

[Print Receipt](#)[+ Reserve Another Hearing](#)[View My Reservations](#)

**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, California 91103 and my electronic service address is manderson@justicelawcorp.com

On January 13, 2023, I served the foregoing document described as

PLAINTIFFS' 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: **Von Bardeleben v. Autoglassnow, LLC**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM- 886548-22**
Court Case No.: 21CV001084
Alameda 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 January 13, 2023, at Pasadena, California.



Mariah Anderson