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on behalf of themselves, all others similarly situated,  
and on behalf of the general public

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ORANGE**

BRENDAN SMITH and INSIYAH HAAMID  
on behalf of themselves, all others similarly  
situated, and on behalf of the general public,

Plaintiffs,

v.

NORTH AMERICAN VIDEO  
CORPORATION; and DOES 1-100,

Defendants

Case No. 30-2022-01277227-CU-OE-  
CXC  
(Consolidated with Case No. 30-2022-  
01277262)

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

Date: September 17, 2026  
Time: 2:00 p.m.  
Judge: Hon. Layne H. Melzer  
Dept.: CX-103  
Reservation No.: 74884848

Action Filed: August 24, 2022  
Trial Date: None Set

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1     **I.     INTRODUCTION**

2             Plaintiffs Brendan Smith and Insiyah Haamid (hereinafter “Plaintiffs”), on behalf of  
3 themselves and the approximately 174-member putative class, respectfully request that this Court  
4 preliminarily approve the Joint Stipulation and Settlement Agreement (hereinafter “Agreement”<sup>1</sup>)  
5 entered into between Plaintiffs and Defendant North American Video Corporation (hereinafter  
6 “Defendant” or “NAVCO”) (hereinafter Plaintiffs and Defendant are collectively referred to as the  
7 “Parties”). The Parties’ Agreement seeks to resolve claims raised against Defendant in this matter  
8 in exchange for a non-reversionary \$790,000 Gross Settlement Amount (“GSA”). The proposed  
9 Class is comprised of all individuals who performed work for Defendant in California as  
10 independent contractors at any time from August 24, 2018, through whichever date is earlier:  
11 March 10, 2026, or the date of the initial preliminary approval hearing.<sup>2</sup> It is requested that the  
12 Court grant preliminary approval, as, when analyzing the strengths and vulnerabilities of the claims  
13 and Defendant’s potential liability exposure, this proposed settlement of \$790,000 is well within  
14 the range of reasonableness.

15             **This settlement is estimated to pay Class Members an average payment of**  
16 **approximately \$2,107.28.**<sup>3</sup> Participating Class Members<sup>4</sup> will receive individual settlement  
17 payments based upon the number of Work Orders they performed for Defendant in California  
18 compared to the total number of Work Orders performed by all Participating Class Members. Class  
19 Members performed approximately 34,423 Work Orders for Defendant during the Class Period.<sup>5</sup>  
20 This equates to a Work Order value of \$10.65. Thus, the low payment is \$10.65 for any Class  
21 Member who only performed on Work Order for Defendant during the Class Period. **The high**  
22 **payout is estimated to be approximately \$49,234.95.**<sup>6</sup> In addition, the settlement is estimated to  
23

24     <sup>1</sup> The Parties’ Joint Stipulation and Settlement Agreement (“Agreement”) is attached to the Declaration of David  
25 Mara, Esq. as Exhibit 1. “Exhibit 1” herein refers to the Parties’ Agreement.

26     <sup>2</sup> See Exhibit 1 ¶ 9.

27     <sup>3</sup> The Net Settlement Amount is approximately \$366,667. \$366,667 divided by 174 Class Members is approximately  
28 \$2,107.28.

29     <sup>4</sup> Participating Class Members are Class Members who do not submit a valid and timely request to exclude themselves  
from this Settlement. (Exhibit 1 ¶ 34).

30     <sup>5</sup> See Exhibit 1 ¶ 69.1.

31     <sup>6</sup> Based upon Defendant’s records, the Class Member with the greatest number of Work Orders attributed to them  
performed 4,623 Work Orders. (See Declaration of Beth Skakun ¶ 2).

1 pay PAGA Members an average payment of approximately \$127.55.<sup>7</sup>

2 The proposed Agreement satisfies all of the criteria for preliminary approval under Rule  
3 3.769 of the California Rules of Court. As the following sections show, the settlement is fair,  
4 reasonable, and adequate. Accordingly, Plaintiffs seek: (1) preliminary approval of the terms  
5 contained in the Agreement; (2) provisional certification of the Class; (3) appointment of Plaintiffs  
6 as Class Representatives; (4) appointment of Mara Law Firm, PC, as Class Counsel; (5) approval  
7 of the Parties' proposed notice of class action settlement<sup>8</sup> (referred to herein as the "Class Notice"  
8 or "Notice") and method of notifying the Class about the settlement; and (6) a hearing date for  
9 final approval.

## 10 II. BACKGROUND

11 Defendant is a video security system (CCTV) and alarm system installer and maintenance  
12 company. Defendant installs and maintains CCTV and alarm systems for businesses such as  
13 Starbucks and Dutch Bros.

14 On May 23, 2022, Plaintiff Brendan Smith provided timely written notice to Defendant  
15 and the LWDA of his claim for PAGA penalties by sending a PAGA Notice. (Mara Dec. ¶ 14).  
16 Plaintiff Brendan Smith filed this wage and hour putative class action against NAVCO on August  
17 24, 2022 (Case No. 30-2022-01277227-CU-OE-CXC) (the "Class Action"). (Mara Dec. ¶ 15). On  
18 October 11, 2022, Defendant filed an answer to Plaintiff Smith's class action complaint. (*Id.*).

19 On August 24, 2022, Plaintiff Brendan Smith filed a representative action under the Private  
20 Attorneys General Act of 2004 ("PAGA") against NAVCO. (Mara Dec. ¶ 16). On October 13,  
21 2022, Defendant filed an answer to Plaintiff Smith's PAGA complaint. (*Id.*). On November 18,  
22 2022, the Parties stipulated to consolidate the Class and PAGA Actions. (*Id.*). The Actions were  
23 related effective from December 8, 2022. (*Id.*).

24 On June 26, 2025, Plaintiff filed a Motion for Leave to File First Amended Complaint,  
25 which Defendant opposed. (Mara Dec. ¶ 17). The Court held a hearing on this motion on  
26 November 13, 2025. (*Id.*). The Court granted Plaintiff Smith's motion. (*Id.*). On November 24,

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27  
28 <sup>7</sup> The Net PAGA Settlement Amount is \$12,500. \$12,500 divided by 98 PAGA Members is approximately \$127.55.

<sup>8</sup> The Class Notice is attached to the Agreement as Exhibit A.

2025, Plaintiff Brendan Smith filed a First Amended Complaint adding Plaintiff Insiyah Haamid as a named Plaintiff and class representative. (*Id.*). The operative class complaint alleges that Defendant: (1) failed to pay all straight time wages; (2) failed to pay all overtime wages; (3) failed to provide meal periods; (4) failed to authorize and permit rest periods; (5) knowingly and intentionally failed to comply with itemized employee wage statement provisions; (6) failed to pay all wages due at the time of termination of employment; (7) failed to reimburse employees for all business expenses; and (8) violated the Unfair Competition Law. (*Id.*). Defendant filed an answer to Plaintiffs' First Amended Complaint on December 29, 2025. (*Id.*).

### **III. INVESTIGATION/ LITIGATION HISTORY**

#### **a. Discovery and Investigation**

After filing, the Parties engaged in extensive discovery. On November 30, 2022, Plaintiff propounded one set of interrogatories and one set of requests for production of documents on Defendant regarding Defendant's policies and procedures that applied to Plaintiff and the class members, including policies and practices relating to and regarding meal and rest periods, misclassification of technicians, and payroll and timekeeping. (Mara Dec. ¶ 18). Defendant responded to this discovery and produced relevant documents on February 9, 2023. (*Id.*). Thereafter, Plaintiff sent Defendant a meet and confer letter over Defendant's discovery responses. (*Id.*). The Parties have been extensively meeting and conferring over Defendant's discovery responses. (*Id.*). On December 18, 2023, Defendant produced a 20% sampling of class member records. (*Id.*). On September 23, 2024, Defendant provided first supplemental responses to Plaintiff Smith's requests for production of documents set one and provided an additional document production. (*Id.*).

On September 26, 2023, Defendant propounded one set of form interrogatories – general, one set of requests for admission, one set of requests for production of documents, and one set of special interrogatories on Plaintiff. (Mara Dec. ¶ 19). Plaintiff responded to this discovery on October 6, 2023. (*Id.*). The Parties then met and conferred over this discovery and Plaintiff provided amended responses to Defendant's requests for production and special interrogatories on February 6, 2024. (*Id.*).

1 The Parties agreed to engage in the *Belair-West* notice process. (Mara Dec. ¶ 20). The  
2 Parties agreed on a *Belair-West* notice and the notice was sent to putative class members on July  
3 8, 2024. (*Id.*).

4 On August 20, 2024, Plaintiff propounded a second set of special interrogatories and  
5 requests for production of documents. (Mara Dec. ¶ 21). Defendant responded to this discovery on  
6 September 23, 2024. (*Id.*).

7 Defendant took Plaintiff Brendan Smith's deposition in person in Irvine, California on  
8 February 26, 2025. (Mara Dec. ¶ 22). On May 7, 2025, Plaintiff took the deposition of Defendant's  
9 Person Most Qualified witness, Kim Meiss. (Mara Dec. ¶ 23).

10 On December 9, 2025, the Court held an Informal Discovery Conference regarding  
11 outstanding discovery issues. (Mara Dec. ¶ 24).

12 On December 18, 2025, Plaintiff Insiyah Haamid responded to Defendant's requests for  
13 production of documents ahead of his deposition. (Mara Dec. ¶ 25). On December 22, 2025,  
14 Defendant took the first volume deposition of Plaintiff Insiyah Haamid. (Mara Dec. ¶ 26). On  
15 January 6, 2026, Defendant took the second volume deposition of Plaintiff Insiyah Haamid. (*Id.*).

#### 16 **b. The Parties Agreed to Attend Mediation**

17 The Parties attended a private mediation on February 15, 2024, with mediator Steve  
18 Serratore. This mediation was unsuccessful. On January 9, 2026, the Parties attended a second  
19 mediation with Mr. Serratore. At the conclusion of this mediation, Mr. Serratore issued a  
20 mediator's proposal that was ultimately accepted by the Parties. The Parties then met and conferred  
21 over all the terms of the settlement and finalized their settlement in the Parties' Agreement. The  
22 Parties seek preliminary approval of the Agreement in the instant motion. (*See* Mara Dec. ¶ 27;  
23 *see also* Exhibit 1 attached thereto).

#### 24 **c. The Parties' Staunchly Conflicting Positions**

25 Plaintiffs and the Class Members are technicians who contracted with and performed work  
26 for Defendant during the Class Period. Each of the Class Members was classified by Defendant as  
27 an independent contractor. The core question in the case is whether Defendant correctly classified  
28 technicians as independent contractors. Plaintiffs assert that Defendant's classification was in

1 error, and that technicians were Defendant’s employees under California law. As such, all the  
2 claims alleged in this matter are based on Defendant’s failure to classify Class Members as  
3 employees. Put differently, if Plaintiffs lose on this single issue, they will take nothing from this  
4 matter.<sup>9</sup>

5 Because Plaintiffs assert that Defendant misclassified Class Members as independent  
6 contractors, Plaintiffs assert that Class Members were entitled to protections under the California  
7 Labor Code that they were not afforded while working with Defendant. Plaintiffs contend that  
8 Class Members should have been classified as employees and, thus, should have been provided  
9 with meal and rest periods and reimbursed for these business expenses. Plaintiffs also assert that  
10 due to their alleged misclassification, they were not provided with itemized wage statements and  
11 waiting time penalties that were owed to them under California law. Plaintiffs further assert that  
12 they were not paid for all time driving to and from work locations.<sup>10</sup>

### 13 **i. Plaintiffs’ Claims Faced Formidable Obstacles**

#### 14 **1. Establishing the Employment Relationship**

15 Class Members can only recover if they are successful in showing Defendant misclassified  
16 them as independent contractors, rather than employees. In other words, Class Members must show  
17 they were employees to recover anything. If they fail to show that threshold issue, no matter how  
18 strong their claims are against Defendant, the Class will recover nothing. Thus, any risk analysis  
19 associated with the claims must start foundationally with the existing dangers that could prevent the  
20 Class Members from proving they are employees, rather than independent contractors.<sup>11</sup>

21 Based on deposition testimony and documents produced in this matter, Plaintiffs contend that  
22 Defendant substantially control Class Members, and that Plaintiffs would be able to provide evidence  
23 to meet the factors delineated in either the ABC employment test or the *S.G. Borello & Sons, Inc. v.*  
24 *Department of Industrial Relations* (1989) 48 Cal.3d 341 (“*Borello*”) employment test to show that  
25 Class Members should have been classified as employees.<sup>12</sup>

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27 <sup>9</sup> Mara Dec. ¶ 28.

28 <sup>10</sup> Mara Dec. ¶ 29.

<sup>11</sup> Mara Dec. ¶ 30.

<sup>12</sup> Mara Dec. ¶ 31.

1 Defendant vehemently denies these contentions. Defendant contends that it does not assert  
2 controls over technicians sufficient to transform them from independent contractors to employees.  
3 Defendant contends that any requirements for specific jobs were set forth by the customer, not by  
4 NAVCO. In addition, Defendant contends that it would be able to meet the Business-to-Business  
5 exemption to the ABC test and, thus, the *Borello* test would apply. Defendant asserts that Plaintiffs  
6 cannot show that they were employees under the *Borello* test. Specifically, Defendant contends that  
7 technicians supply their own tools and equipment; have special skills and training on installing CCTV  
8 and security systems; can determine whether they want to accept or reject a Work Order; are paid by  
9 the job; market themselves through Work Market; and, in many cases, perform work for Defendant  
10 through corporate entities.<sup>13</sup>

## 11 **2. Risks on Plaintiffs' Underlying Claims**

### 12 **a. Meal and Rest Periods**

13 Plaintiff contends that technicians are not provided with lawful meal and rest periods.  
14 Employers have an obligation to provide employees with thirty (30) minute meal periods and ten (10)  
15 minute rest periods. An employer “satisfies this obligation [to provide meal periods] if it relieves its  
16 employees of all duty, relinquishes control over their activities and permits them a reasonable  
17 opportunity to take an uninterrupted 30-minute break, and does not impede or discourage them from  
18 doing so.” *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. In *Augustus v.*  
19 *ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the California Supreme Court ruled that the  
20 standards applicable to providing meal periods the Court articulated a few years earlier in *Brinker*  
21 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, were equally applicable to the rest period  
22 context. Plaintiffs contend that Defendant does not have meal or rest period policies and does not  
23 provide meal or rest periods to technicians.<sup>14</sup>

24 Defendant asserts that most Work Orders are shorter than three and a half hours and, as such,  
25 would not qualify for meal and rest periods. Defendant also argues that technicians can take breaks  
26 whenever they want. Defendant asserts that technicians are in control of their own schedules and can  
27

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28 <sup>13</sup> Mara Dec. ¶ 32.

<sup>14</sup> Mara Dec. ¶ 33.

1 take a meal and rest periods whenever they want.<sup>15</sup>

2 **b. Business Reimbursements**

3 Under California Labor Code section 2802 employers must reimburse their employees for all  
4 costs employees incur in direct consequence of the employees' work. Plaintiffs contend that  
5 technicians must buy and supply tools necessary in performing their jobs such as a telephone butt set,  
6 a pair tester, a tone and probe kit, nut drivers, screw drivers, electrical tape, electricians scissors, a  
7 tape measure, a tool bag, a drill/impact driver and bits, a camera phone, a laptop, RJ-11 crimpers, RJ-  
8 45 crimpers, a punch tool with 110 and 66 cut blades, security torx and hex bits, a cable labeler, drill  
9 bits and extension, and a USB to serial adapter.<sup>16</sup>

10 In addition, Plaintiff contends that technicians must use their personal cell phones for business  
11 purposes. In *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140, it was  
12 held that § 2802 requires employers to always reimburse employees who are required to use personal  
13 cell phones for work-related calls for a reasonable percentage of their cell phone bills.<sup>17</sup>

14 Defendant disputes this claim and asserts that technicians do not need to use their personal  
15 cell phones for business purposes and that technicians do not need to buy any tools to perform their  
16 work. Defendant contends that technicians verify that they own the relevant tools prior to accepting  
17 any Work Orders for Defendant.<sup>18</sup>

18 **c. Unpaid Wages**

19 Employees must be paid for all "hours worked," as that phrase is defined in the Wage Order  
20 and interpreted by California courts. Hours worked is defined in the Wage Order as "the time during  
21 which an employee is subject to the control of an employer and includes all the time the employee is  
22 suffered or permitted to work, whether or not required to do so." Wage Order 7-2001, Subd. 2(G);  
23 *see also Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 833.<sup>19</sup>

24 Here, Plaintiffs contend that technicians are not paid for the time it takes them to drive to and  
25 from work locations. Plaintiffs contend that technicians must bring tools and equipment with them to  
26 each job they perform. Plaintiff argues that the case *Oliver v. Konica Minolta Business Solutions*

27 <sup>15</sup> Mara Dec. ¶ 34.

<sup>16</sup> Mara Dec. ¶ 35.

<sup>17</sup> Mara Dec. ¶ 36.

<sup>18</sup> Mara Dec. ¶ 37.

<sup>19</sup> Mara Dec. ¶ 38.

1 *U.S.A.* (2020) 51 Cal.App.5th 1, supports his position. In *Oliver*, employees were required to drive  
2 their personal vehicles for work and the employer did not have an express policy restricting service  
3 technicians from using their vehicles for personal use during their commutes. There, the Court of  
4 Appeal outlined three factors that must be shown in order for commute time to be compensable: (1)  
5 were employees required to drive their own vehicles; (2) were employees required to bring tools with  
6 them on the commute; and (3) if employees had to bring tools with them on their commute, was there  
7 so many tools that the employee was effectively prevented from using the commute time for his or  
8 her own purposes.<sup>20</sup>

9 Defendant argues that it pays technicians for all time worked. Defendant asserts that the  
10 compensation for Work Orders include commute time. In addition, Defendant contends technicians  
11 do not have to transport a large amount of materials and supplies. Defendant asserts that the materials  
12 and supplies are small enough that they can be kept in a technician's trunk. Defendant asserts that,  
13 should litigation continue, it would provide the Court with declarations from technicians stating that  
14 the amount of materials and supplies technicians transport easily fit into their trunk. Defendant also  
15 argues that in order to resolve this dispute, the fact finder would have to ask each technician the  
16 quantity of materials and supplies they had to transport. Defendant argues that doing so would raise  
17 individual issues that would defeat class certification.<sup>21</sup>

#### 18 **d. Wage Statements and Waiting Time Penalties**

19 Plaintiffs' wage statement and waiting time penalties claims are derivative of Plaintiffs' meal  
20 period, rest period, and unpaid wages claims. As such, these claims are subject to the same risks as  
21 those claims.<sup>22</sup>

22 In addition, as to the waiting time penalties claims, Defendant argues that Plaintiffs would not  
23 be able to prove that Defendant "willfully" failed to pay Class Members the appropriate wages due  
24 upon separation of employment. "A willful failure to pay wages within the meaning of Labor Code  
25 Section 203 occurs when an employer intentionally fails to pay wages to an employee when those  
26 wages are due. However, a good faith dispute that any wages are due will preclude imposition of

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27 <sup>20</sup> Mara Dec. ¶ 39.

28 <sup>21</sup> Mara Dec. ¶ 40.

<sup>22</sup> Mara Dec. ¶ 41.

1 waiting time penalties under Section 203.” Cal. Code Regs. Tit. 8 § 13520. “A ‘good faith dispute’  
2 that any wages are due occurs when an employer presents a defense, based in law or fact, which would  
3 preclude any recovery on the part of the employee. The fact that a defense is ultimately unsuccessful  
4 will not preclude a finding that a good faith dispute did exist.” *Id.*<sup>23</sup>

5 Defendant contends that any failure to pay wages due at the separation of employment was  
6 not willful. Defendant argues that it would not be liable for waiting time penalties because a “good  
7 faith dispute” exists over the payment of those wages. *See* Cal. Code Regs. Tit. 8 § 13520; *Amaral v.*  
8 *Cintas Corp. No. 2* (2008) 163 Cal.App.4th 1157, 1201.<sup>24</sup>

9 As to Plaintiffs’ wage statement claim, Defendant asserts that any violation of California  
10 Labor Code § 226 was not “knowing and intentional.” *See* Cal. Lab. Code § 226(e) (“An employee  
11 suffering injury as a result of a knowing and intentional failure by an employer” may recover  
12 damages”) (emphasis added); *Amaral v. Cintas Corp. No. 2*, 163 Cal.App.4th 1157, 1195 (2008)  
13 (“Some statutory penalties are imposed only if an employers’ violation was ‘willful’ or ‘knowing.’ .  
14 . . [S]ection 226, subdivision (e) penalizes an employer’s ‘knowing and intentional’ failure to provide  
15 itemized wage statements under section 226, subdivision (a)[.]”). Defendant also contends that  
16 employees cannot show that they have suffered an injury because of any potential violation of  
17 California Labor Code § 226.<sup>25</sup>

#### 18 **e. PAGA Claims**

19 Plaintiffs’ PAGA claims are based upon the same underlying conduct as Plaintiffs’ class  
20 claims. As such, they are subject to the same risks of establishing employment status and the  
21 underlying claims are subject to the same risks on the merits.<sup>26</sup>

22 In addition, there is the risk that the Court would reduce the maximum penalty amount, if  
23 established. Section 2699, subdivision (e)(2) provides that “[i]n any action by an aggrieved employee  
24 seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser  
25 amount than the maximum penalty amount specified by this part if, based on the facts and  
26 circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary,

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27 <sup>23</sup> Mara Dec. ¶ 42.

28 <sup>24</sup> Mara Dec. ¶ 43.

<sup>25</sup> Mara Dec. ¶ 44.

<sup>26</sup> Mara Dec. ¶ 45.

oppressive, or confiscatory.” In *Thurman v. Bayshore Transit Management, Inc.*, the court found that penalties may be reduced when a defendant has taken its obligations to comply with the law seriously. *Thurman v. Bayshore Transit Management, Inc.*, 203 Cal. App. 4th 1112, 1135-1136 (2012). Defendants argue that if the case were to continue in litigation, it would be able to show that it took its obligations to comply with the law seriously. As such, if Plaintiffs were able to prevail on the merits of their PAGA claims, the Court may reduce the maximum penalty amount.<sup>27</sup>

As noted, Plaintiffs PAGA claims are based on the same alleged unlawful conduct as their class claims. Because of this, the likelihood of the Court reducing the PAGA penalties awarded to Plaintiffs and the PAGA Members – assuming liability is proven as to each of Plaintiffs’ claims – is higher in this case where Class Members would be receiving damages for the same conduct under both the class claims and the PAGA claims. Defendant argues that this would be an unjust double recovery and would lead the Court to reducing any PAGA penalty amount.<sup>28</sup>

#### **IV. TERMS OF THE PROPOSED SETTLEMENT**

##### **a. Deductions from the Settlement**

The Parties have agreed (subject to and contingent upon the Court’s approval) that this action be settled and compromised for the non-reversionary total sum of \$790,000, which includes: (a) attorneys’ fees of up to \$263,333 (one-third of the GSA) to compensate Class Counsel for work already performed and all work remaining to be performed in documenting the settlement, administering the settlement, and securing Court approval; (b) litigation costs estimated at approximately, and not to exceed, \$60,000; (c) Class Representative Enhancement Payments to the named class representatives, Brendan Smith and Insiyah Haamid, in a sum not to exceed \$15,000 each in consideration for prosecuting this class action, serving as Class Representatives, work performed, and risks undertaken for the payment of attorneys’ fees and costs in the event he had been unsuccessful in the matter; (d) claims administration fees and expenses to Simpluris estimated not to exceed approximately \$25,000; and (e) \$50,000 allocated to Plaintiff’s claims

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<sup>27</sup> Mara Dec. ¶ 46.

<sup>28</sup> Mara Dec. ¶ 47.

under the PAGA.<sup>29</sup> Of this payment, 75%, or \$37,500 will be provided to the LWDA, and 25%, or \$12,500, will be available for distribution to PAGA Members.<sup>30</sup>

**b. Calculation of the Settlement Payments to Class Members<sup>31</sup>**

After all Court-approved deductions from the GSA, it is estimated that \$366,667 (“Net Settlement Amount” or “NSA”), less employee taxes on the “wage portion” of the settlement payment, will be distributed to Participating Class Members. Subject to the terms and conditions of the settlement, each Participating Class Member will receive a proportionate share of the Net Settlement Amount based on the number of Work Orders they performed in California for Defendant during the Class Period. (Exhibit 1 ¶ 74.1.1). Each Class Member’s Individual Settlement Share will be apportioned as follows: 10% wages, 45% penalties, and 45% interest. (Exhibit 1 ¶ 74.2).

In addition, each PAGA Member will receive a will receive a proportionate share of the Net Settlement Amount that is allocated for distribution to PAGA Members (i.e., 25% of the PAGA Payment) based on the number of Work Orders they performed in California for Defendant during the PAGA Period. (Exhibit 1 ¶ 75.1.1). In addition, each PAGA Members’ PAGA Settlement Share will be apportioned as 100% penalties. (Exhibit 1 ¶ 75.2).

Under no circumstances will any portion of the \$790,000 settlement revert to Defendant and 100% of the NSA will be paid out to Participating Class Members. In addition, the employer’s share of taxes will be paid in addition to and outside of the GSA. (Exhibit 1 ¶ 18).

**c. Notice to the Class**

Within twenty-one (21) calendar days after entry of the Preliminary Approval Order, Defendant shall deliver the Class and PAGA Data to the Settlement Administrator. (Exhibit 1 ¶ 78.3.1). Within ten (10) calendar days after receipt of the Class and PAGA Data, the Settlement

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<sup>29</sup> The amount allocated to Plaintiff’s PAGA claims takes into account the risk that the Court will likely reduce Plaintiffs’ PAGA exposure for the reasons outlined herein. It also takes into account that all Aggrieved Employees are also Class Members.

<sup>30</sup> PAGA Aggrieved Employees are Class Members who worked for Defendant at any time from May 23, 2021, through whichever date is earlier: March 10, 2026, or the date of the initial preliminary approval hearing. (Exhibit 1 ¶ 5).

<sup>31</sup> The estimated awards to the named Plaintiffs are approximately \$11,182.50 to Plaintiff Brendan Smith (based upon approximately 1,050 Work Orders performed) and approximately \$2,694.45 to Plaintiff Insiyah Haamid (based upon approximately 253 Work Orders performed).

1 Administrator shall mail and e-mail the Class Notices to Class Members in English and Spanish  
2 using the information provided by Defendant and the results of a search of the National Change of  
3 Address Database on all Class Members and PAGA Members. (Exhibit 1 ¶ 78.3.3). After notices  
4 are mailed, Class Members will have sixty (60) days to respond to the settlement. (Exhibit 1 ¶ 40).  
5 This deadline is referred to as the “Response Deadline.” Class Members may respond to the  
6 settlement by requesting to be excluded from it or objecting to it. (Exhibit 1 ¶¶ 78.4, 78.5. Class  
7 Members can also file a dispute as to the number of workweeks attributed to them. (Exhibit 1 ¶  
8 78.6).

9 Because Social Security Numbers (“SSNs”) are unknown for some Class Members, Class  
10 Members with unknown SSNs will be asked to submit their SSN. Five (5) calendar days after  
11 receipt of the Class Data, the Settlement Administrator shall provide the Class Data to Class  
12 Counsel. Within fifteen (15) calendar days of receiving the Class Data, the Settlement  
13 Administrator shall call each Class Member in an attempt to obtain the Class Member’s SSN.  
14 (Exhibit 1 ¶ 78.3.4). Class Counsel will also contact Class Members without known SSNs to  
15 attempt to obtain this information. (*Id.*). Reminder postcards will be sent to Class Members for  
16 whom the Settlement Administrator has not received Social Security Number thirty (30) and sixty  
17 (60) days after the Class Notices are mailed. (Exhibit 1 ¶ 78.3.5). Class Members can submit their  
18 SSN by mailing back the IRS W-9 Form included with the Class Notice or by submitting their  
19 information through the settlement website. (Exhibit 1 ¶¶ 78.3.2, 78.9).

20 If a Class Notice is returned because of an incorrect address, within five (5) calendar days  
21 from receipt of the returned notice, the Settlement Administrator will conduct a search for a more  
22 current address for the Class Member and re-mail the Class Notice to the Class Member. (Exhibit  
23 1 ¶ 78.3.6). The Settlement Administrator will use the National Change of Address Database and  
24 skip traces to attempt to find the current address. (*Id.*). The Class Member shall have forty-five  
25 (45) days after the date of remailing or the Response Deadline, whichever is later, to respond to  
26 the settlement by submitting a request for exclusion, objection, or dispute. (*Id.*).

#### 27 **d. Settlement Website**

28 The Settlement Administrator shall establish a website to allow Class Members to submit

1 their Social Security Numbers to the Settlement Administrator and to host documents relevant to  
2 this lawsuit and the proposed settlement. (Exhibit 1 ¶ 78.9). Such documents shall include: the  
3 operative complaint, this Joint Stipulation and Settlement Agreement, the Class Notice and related  
4 documents, and the preliminary and final approval orders. (*Id.*). The URL for the website shall be:  
5 www.NAVCOSettlement.com. (*Id.*).

6 **e. Distribution of Funds**

7 Defendant shall wire or otherwise provide to the Settlement Administrator the Gross  
8 Settlement Amount no later sixty (60) calendar days after the Effective Final Settlement Date.  
9 (Exhibit 1 ¶¶ 20, 78.13.1). The effective date of this settlement will be the later of the time when  
10 either: (i) the Judgment of the Court granting final approval of the settlement is final and no longer  
11 subject to appeal, if there are objections, or (ii) the date the Court enters an order on final approval  
12 of the settlement, if there are no objections. (Exhibit 1 ¶ 17). Within ten (10) calendar days after  
13 the Settlement Administrator's receipt of the Gross Settlement Amount, the Settlement  
14 Administrator shall disburse the settlement payments. (Exhibit 1 ¶¶ 16, 78.13.2).

15 If a settlement check is returned because of an incorrect address, within five (5) calendar  
16 days from receipt of the returned settlement check, the Settlement Administrator will conduct a  
17 search for a more current address for the Class Member and re-mail the settlement check to the  
18 Class Member. (Exhibit 1 at ¶ 78.13.2).

19 Participating Class Members and PAGA Members must cash or deposit their Individual  
20 Settlement Share checks within one hundred and eighty (180) calendar days after the checks are  
21 mailed to them. (Exhibit 1 ¶ 78.15). If any checks are not redeemed or deposited within ninety (90)  
22 calendar days after mailing, the Settlement Administrator will send a reminder postcard indicating  
23 that unless the check is redeemed or deposited in the next ninety (90) days, it will expire and  
24 become non-negotiable, and offer to replace the check if it was lost or misplaced. (*Id.*). All funds  
25 associated with the Uncashed Checks shall be tendered to the State of California's Unpaid Wage  
26 Fund, in the name of the Class Member. (*Id.*).

27 **f. Release of Claims**

28 The claims that Plaintiffs and other Participating Class Members are releasing in exchange

for an Individual Settlement Share payment are based on the facts and claims asserted in the class case. (Exhibit 1 ¶ 37). Similarly, the claims that Plaintiffs and other PAGA Members are releasing in exchange for a PAGA Settlement Share payment are based upon Plaintiff's PAGA complaint and notice to the LWDA. (Exhibit 1 ¶ 38). The Class and PAGA releases become effective as of the date Defendant funds the settlement. (Exhibit ¶¶ 79, 80). In addition, Plaintiffs have agreed to a general release of their claims against Defendant, which is a broader release than Class Members. (Exhibit 1 ¶ 81).

**g. Final Judgment**

The Final Approval Order and Judgment shall be posted on the settlement website for a period of at least thirty (30) days after entry of Judgment. (Exhibit 1 ¶ 78.8.3).

**V. ARGUMENT**

**a. Class Action Settlements Are Subject to Court Review and Approval Under the California Rules of Court**

Rule 3.769 requires court approval for class action settlements.<sup>32</sup> "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (California Rules of Court, Rule 3.769(g)). Rule 3.769 further requires a noticed motion for preliminary approval of class settlements. Courts act within their discretion in approving settlements that are fair, not collusive, and take into account "all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions." *In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F. 2d 167, 179, cert. den. sub nom. *Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.

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

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure § 382, the Court must find that a proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. A proposed class action settlement is **presumed** fair under the following circumstances: (1) the parties reached settlement after arms-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act

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<sup>32</sup> The California Supreme Court also has 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; *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.

intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. *Dunk v. Ford Motor Co.*, *supra*, at 1802. As the following shows, all of these elements – with the exception of the percentage of objectors, which cannot be anticipated at this stage of the litigation – bearing on the fairness of the proposed settlement are present here and the Court’s grant of preliminary approval is therefore requested.

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

The settlement was reached as a result of arm’s-length negotiations. Though cordial and professional, the settlement negotiations have been, at all times, adversarial and non-collusive in nature. Prior to, at, and after the mediation, Counsel for the Parties conducted extensive arm’s length settlement negotiations until the settlement was reached. The terms of the settlement are memorialized in the Agreement which is attached to the Declaration of David Mara, Esq. as Exhibit 1. While Plaintiffs believe in the merits of their case, they also recognize the inherent risks of litigation and understand the benefit of the class receiving significant settlement funds immediately as opposed to risking continued litigation in achieving class certification, preparing for and conducting a trial, and/or an appeal that may take several more years to litigate.

**ii. The Settlement is the Result of Thorough Investigation and Discovery**

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

**iii. Counsel for Both Parties Are Experienced in Similar Litigation**

Both Plaintiffs’ Counsel and Defendant’s Counsel are particularly experienced in wage and hour employment law and class actions. Plaintiff’s Counsel has significant experience in litigating wage and hour class actions. Indeed, Plaintiffs’ Counsel was class counsel in *Hohnbaum et al. v.*

1 *Brinker Restaurant Corp et al.*, which is the subject case in the landmark decision of *Brinker*  
2 *Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. (Mara Dec. ¶¶ 2-13). Plaintiffs' Counsel  
3 has prosecuted numerous wage and hour class action cases on behalf of employees for California  
4 Labor Code violations and thus are experienced and qualified to evaluate the class claims and to  
5 evaluate settlement versus trial on a fully informed basis, and to evaluate the viability of the defenses.  
6 This experience instructed Plaintiffs' Counsel on the risks and uncertainties of further litigation and  
7 guided their determination to endorse the proposed settlement.<sup>33</sup> Defendant's Counsel practices labor  
8 and employment law and have represented numerous employers in similar types of claims.  
9 Accordingly, both Parties' Counsel are experienced in wage and hour employment law and class  
10 actions.

#### 11 **iv. The Proposed Settlement is a Reasonable Compromise of Claims**

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

18 In weighing the strength of the plaintiff's case, *Kullar* instructs that the court is not to "decide  
19 the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the  
20 attorneys." *Kullar, supra*, 168 Cal.App.4th at 133. *Kullar* does not require an explicit statement of the  
21 maximum amount the plaintiff class could recover if it prevailed on all its claims, provided there is a  
22 record which allows "an understanding of the amount that is in controversy and the realistic range of  
23 outcomes of the litigation." *Munoz*, 186 Cal.App.4th at 409. Put differently, "as the court does when  
24 it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least  
25 satisfy itself that the class settlement is within the 'ballpark' of reasonableness." *Kullar, supra*, 168  
26 Cal.App.4th at 133, citing *Tech-Bilt v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-

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27 <sup>33</sup> The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been  
28 provided to the class and they have had an opportunity to respond. This information will be provided to the Court in  
conjunction with the final approval motion.

500. As the following subsections show, the Parties' investigation and discovery revealed many reasons to discount claims and agree to this settlement.

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

The proposed settlement was only possible following significant discovery and an evaluation of Defendant's relevant policies and procedures, as well as the data that Defendant produced for the putative class as referenced above. This permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. The discovery conducted allowed Plaintiffs to evaluate the strengths and weaknesses of their theories of liability, which are predicated on Plaintiffs' claims that Defendant misclassified technicians as independent contractors. As explained herein, Defendant maintains that the discovery produced demonstrates that it would succeed at both in denying class certification and on the merits.

Although, Plaintiffs believe this case is suitable for certification on the claimed bases that there are company-wide policies that Plaintiffs contend violate California law and uniformly affect the Class Members, Defendant's counterarguments raise uncertainties with respect to both class certification and success on the merits. As the California Supreme Court ruled in *Sav-On v. Superior Court* (2004) 34 Cal.4th 319, class certification is always a matter of the trial court's sound discretion. Decisions following *Sav-On* have reached different conclusions, with respect to certification of wage and hour claims.<sup>34</sup> While remaining confident in the strengths of their claims, all of these factors led Plaintiffs to discount the following potential damage exposure.

### **2. Potential Exposure as Estimated by Plaintiffs**

The settlement encompasses approximately 34,423 Work Orders. If Class Members were to prevail on establishing that they were misclassified by Defendant as independent contractors, and were successful in proving their underlying claims, they may be entitled to the following potential damages. Given the prospect of taking nothing if Plaintiffs are unable to establish that

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<sup>34</sup> See, e.g., *Harris v. Superior Court* (2007) 154 Cal. App. 4th 164 (reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees), *review granted*, 171 P.3d 545 (2007) (not cited as precedent, but rather for illustrative purposes only); *Walsh v. IKON Solutions, Inc.* (2007) 148 Cal. App. 4th 1440 (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).

1 Plaintiffs and the Class Members were misclassified, Plaintiffs had to discount the potential  
2 damages when reaching a settlement of the claims alleged.

3 Plaintiffs assert that Defendant failed to provide lawful meal and rest periods to  
4 technicians. If Plaintiffs were to prevail on this claim, Plaintiff and the Class Members would be  
5 entitled to damages in the amount of approximately \$291,584<sup>35</sup> in meal period damages and  
6 approximately \$352,480<sup>36</sup> in rest period damages.<sup>37</sup>

7 Defendant contends that this amount should be zero because technicians were properly  
8 classified as independent contractors and, thus, Defendant is not required to provide them with  
9 meal and rest periods. In addition, Defendant contends that technicians are in control of their own  
10 schedules and can take a meal and rest periods whenever they want. Accordingly, Defendant  
11 contends that it does not owe technicians any meal or rest period premiums. Defendant further  
12 contends that in order to resolve the issue of whether or not technicians were provided with meal  
13 and rest periods, the fact finder would have to ask each technician whether or not they were  
14 provided with these breaks. Defendant asserts that doing so would create individualized issues and  
15 defeat certification. Taking into account these risks, Plaintiffs evaluated a realistic exposure for  
16 these claims at \$145,792 for meal period damages and \$176,240 for rest period damages.<sup>38</sup>

17 In addition, Plaintiffs allege that Defendant fails to reimburse technicians for all necessary  
18 business expenses. Plaintiffs contend that technicians must buy and supply tools necessary in  
19 performing their jobs. Plaintiffs also contend that technicians must use their personal cell phones  
20 for business purposes. If Plaintiffs were to prevail on this claim, they would be entitled to damages  
21 in the amount of approximately \$148,500<sup>39</sup> for cell phone reimbursements and approximately  
22 \$86,500<sup>40</sup> in tools.<sup>41</sup>

23 Defendant contends, again, that it properly classified technicians as independent  
24 contractors. In addition, Defendant asserts that technicians do not need to use their personal cell

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25 <sup>35</sup> 18,224 Work Orders over 5 hours x \$16.00 = \$291,584

26 <sup>36</sup> 22,030 Work Orders over 3.5 hours x \$16.00 = \$352,480

27 <sup>37</sup> Mara Dec. ¶ 48.

28 <sup>38</sup> Mara Dec. ¶ 49.

<sup>39</sup> 90 months x \$30 x 55 current Class Members at any one time = \$148,500

<sup>40</sup> 173 Class Members x \$500 = \$86,500

<sup>41</sup> Mara Dec. ¶ 50.

1 phones for business purposes and that technicians do not need to buy any tools to perform their  
2 work. Defendant contends that technicians verify that they own the relevant tools prior to accepting  
3 any Work Orders for Defendant. As such, Defendant contends it does not owe technicians any  
4 business reimbursements. In evaluating the realistic exposure of this claim, Plaintiffs had to take  
5 these arguments into consideration. When taking these arguments into consideration, Plaintiffs  
6 evaluated the realistic exposure for this claim at \$188,000.<sup>42</sup>

7 Plaintiffs allege that Defendant failed to pay all wages owed because Plaintiffs contend  
8 that technicians are not paid for the time it takes them to drive to and from work locations. Plaintiffs  
9 assert that technicians spend approximately 30 minutes commuting to their first location and from  
10 their last location each workday. If Plaintiffs were to prevail on this claim, Plaintiff and the Class  
11 Members would be owed damages in the amount of approximately \$275,384<sup>43</sup>.<sup>44</sup>

12 Defendant asserts that it does not owe any wages because technicians were properly  
13 classified as independent contractors. In addition, Defendant contends that the compensation it paid  
14 to technicians for Work Orders includes commute time. In addition, Defendant contends  
15 technicians do not have to transport a large amount of materials and supplies such that commute  
16 time is transformed into compensable time worked. Defendant further contends that in order to  
17 determine the amount of tools technicians had to transport to and from work locations, the fact  
18 finder would have to ask each technician how many tools they had to transport for each Work  
19 Order they performed. Defendant asserts that doing so would create individualized issues and  
20 defeat class certification. For these reasons, Defendant asserts it does not owe technicians any  
21 additional wages. Plaintiffs had to take these arguments into consideration. In doing so, Plaintiffs  
22 evaluated the realistic exposure for this claim at \$82,615.<sup>45</sup>

23 If Plaintiffs were to prevail on these claims, they and the Class Members may also be  
24 entitled to wage statement penalties. If Plaintiffs were to prevail on this claim, Plaintiffs and the  
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27 <sup>42</sup> Mara Dec. ¶ 51.

<sup>43</sup> 34,423 Work Orders x 0.5 x \$16.00 = \$275,384

28 <sup>44</sup> Mara Dec. ¶ 52.

<sup>45</sup> Mara Dec. ¶ 53.

1 Class Members would be entitled to damages in the amount of approximately \$260,100<sup>46, 47</sup>

2 Defendant asserts that because the underlying claims fail, this claim also fails. In addition,  
3 Defendant contends that any violation of California Labor Code § 226 was not “knowing and  
4 intentional.” Defendants also contend that technicians cannot show that they have suffered an  
5 injury because of any potential violation of California Labor Code § 226. Plaintiffs had to take  
6 these arguments into consideration and Plaintiffs evaluated the realistic exposure for this claim at  
7 \$52,020.<sup>48</sup>

8 Plaintiffs and the Class Members may also be entitled to waiting time penalties. Plaintiffs  
9 calculate the potential exposure under their waiting time penalties cause of action as approximately  
10 \$216,000.<sup>49</sup>

11 Defendant asserts that because the underlying claims fail, this claim also fails. Further,  
12 Defendant argues that Plaintiffs would not be able to prove that Defendant “willfully” failed to  
13 pay Class Members the appropriate wages due upon separation of employment. Defendant argues  
14 that it would not be liable for waiting time penalties because a “good faith dispute” exists over the  
15 payment of those wages. In taking these arguments into consideration, Plaintiffs evaluated the  
16 realistic exposure for this claim at \$43,200.<sup>50</sup>

17 Plaintiffs also seek PAGA penalties. Plaintiffs calculate their damages under Plaintiffs’  
18 PAGA claim as approximately \$1,332,500.<sup>51</sup> Defendant contends that Plaintiffs would not be allowed  
19 to “stack” PAGA penalties. If the Court were to agree with this and only award one PAGA penalty  
20 per pay period, Defendant’s exposure would be \$265,000.<sup>52</sup> As Plaintiffs’ PAGA claims are based on  
21 the same alleged unlawful conduct as their class claims, Plaintiffs’ PAGA claims are subject to the  
22 same risks on the merits as Plaintiffs’ class claims.<sup>53</sup>

23 Plaintiffs also contend that they would be entitled to PAGA penalties for Defendant’s willful  
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25 <sup>46</sup> (98 pay periods x \$50 = \$4,900) + (2,552 pay periods x \$100 = \$255,200)

26 <sup>47</sup> Mara Dec. ¶ 54.

27 <sup>48</sup> Mara Dec. ¶ 56.

28 <sup>49</sup> 75 former employees x 6 hours x \$16.00 x 30 days = \$216,000

<sup>50</sup> Mara Dec. ¶ 57.

<sup>51</sup> (2,650 pay periods x 5 violation x \$100 = \$1,325,000) + (75 pay periods x 1 violation x \$100 = \$7,500)

<sup>52</sup> 2,650 pay periods x \$100 = \$265,000

<sup>53</sup> Mara Dec. ¶ 58.

1 misclassification of technicians. Under California Labor Code §226.8 (a)(1), it is unlawful for an  
2 employer to engage in willful misclassification of an individual as an independent contractor.  
3 Defendant’s exposure under this theory would be approximately \$980,000.<sup>54</sup> Defendant contends that  
4 it properly classified technicians as independent contractors and would be able to prove that if  
5 litigation continued.<sup>55</sup>

6 In addition, Plaintiffs had to take into consideration that fact that the Court may reduce any  
7 PAGA penalties awarded under Section 2699, subdivision (e)(2). The likelihood of the Court  
8 reducing the PAGA penalties awarded to Plaintiffs and the PAGA Members – assuming liability is  
9 proven as to each of Plaintiffs’ claims – is higher in this case where these same individuals may also  
10 be receiving money for the same unlawful conduct under the class claims. *See Avila v. Cold Spring*  
11 *Granite Co.* (E.D. Cal. Jan. 12, 2018) 2018 U.S. Dist. LEXIS 6142 \*17 (“Because the PAGA penalties  
12 sought are at least partially duplicative of penalties granted by the underlying Labor Code  
13 violations, *see, e.g.*, Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion  
14 in whether and in what amount to award PAGA penalties, *see* Cal. Lab. Code § 2699(e)(2), Plaintiffs  
15 recognize that the potential PAGA penalties are highly uncertain.”). As such, the Court may reduce  
16 any PAGA penalty amount awarded to Plaintiffs and the PAGA Members. Based upon these  
17 considerations, Plaintiffs evaluated the realistic exposure for their PAGA claim at \$231,250.<sup>56</sup>

18 Thus, not taking into account any of their defenses or arguments, Plaintiffs estimate that if  
19 they were successful in their underlying claims, Defendant’s total exposure would be  
20 approximately \$1,630,548 [\$291,584 (meal period exposure) + \$352,480 (rest period exposure) +  
21 \$235,000 (business reimbursement exposure) + \$275,384 (unpaid wage exposure) + \$260,100  
22 (wage statement exposure) + \$216,000 (waiting time penalties) = \$1,630,548]. If Plaintiffs’ claims  
23 are successful, they may also be entitled to PAGA penalties for the underlying violations and  
24 willful misclassification.<sup>57</sup>

25 Further, when taking Defendant’s arguments into consideration, the realistic exposure  
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27 <sup>54</sup> 98 aggrieved employees x \$10,000 = \$980,000

28 <sup>55</sup> Mara Dec. ¶ 59.

<sup>56</sup> Mara Dec. ¶ 60.

<sup>57</sup> Mara Dec. ¶ 61.

would be approximately \$919,117 [\$145,792 (meal period exposure) + \$176,240 (rest period exposure) + \$188,000 (business reimbursement exposure) + \$82,615 (unpaid wage exposure) + \$52,020 (wage statement exposure) + \$43,200 (waiting time penalties) + \$231,250 (PAGA penalties) = \$919,117].<sup>58</sup>

### 3. The Settlement Amount of \$790,000 is Reasonable

In light of the risks Plaintiffs' claims faced, Plaintiffs and their Counsel believe that the settlement amount of \$790,000 – **with an average settlement share amount estimated at \$2,119.46 and a high payment estimated at \$49,234.95** – is a reasonable and fair settlement amount. (Mara Dec. ¶ 63).

It should be noted that a settlement is not judged solely against what might have been recovered, had the plaintiff prevailed at trial, nor does the settlement have to provide 100% of the damages sought to be fair and reasonable. *Wershba v. Apple Computers, Inc.* (2001) 91 Cal.App.4th 224, 246, 250; *Rebney v. Wells Fargo Bank* (1990) 220 Cal.App.3d 1117, 1139; “Compromise is inherent and necessary in the settlement process...even if the relief afforded by the proposed settlement is substantially narrower than it would be if the suits were to be successfully litigated, this is no bar to a class settlement because the public interest may indeed be served by a voluntary settlement in which each side gives ground in the interest of avoiding litigation.” *Wershba, supra*, at 250; *Officers for Justice v. Civil Serv. Comm’n* (9th Cir. 1982) 688 F.2d 615, 628 (“It is well-settled law that a cash settlement amounting to only a fraction of the potential recovery does not...render the settlement inadequate or unfair”); *see also In re Omnivision Technologies, Inc.* (N.D. Cal. 2007) 2007 U.S. Dist. LEXIS 95616, \*21, (noting that certainty of recovery in settlement of 6% of maximum potential recovery after reduction for attorneys’ fees was higher than median percentage for recoveries in shareholder class action settlements, averaging 2.2%-3% from 2002 through 2006).

### v. Provisional Certification Should be Granted

A class action is appropriate when the class is ascertainable and there is “a well defined community of interest in the questions of law and fact involved affecting the parties to be

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<sup>58</sup> Mara Dec. ¶ 62.

represented.” Cal. Civ. P. Code § 382. State law requirements under California Code of Civil Procedure section 382 for class certification follow federal law according to Rule 23 of the Federal Rule of Civil Procedure: numerosity, typicality of the class representatives’ claims, adequacy of representation, predominance of common issues, and superiority. Fed. R. Civ. P. 23(a); *see also Hanlon v. Chrysler Corp.* (9th Cir. 1998) 150 F.3d 1011, 1019. It should be noted that while a court must certify a class for settlement purposes if a class has not already been certified, “it is well established that trial courts should use different standards 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.” *Glob. Minerals & Metals Corp. v. Superior Court* (2013) 113 Cal.App.4th 836, 859 *citing Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1807, fn. 19. Plaintiff contends, and Defendant does not dispute for settlement purposes only, each of these elements must be present. *See Wershba v. Apple Computer* (2001) 91 Cal. App. 4th 224, 237-38.

**vi. Notice to the Class Complies with California Rule of Court 3.769(f)**

The proposed Class Notice meets all of the requirements of California Rule of Court 3.769(f). The proposed Class Notice advises the class of their rights to participate in the settlement, how to and when to object to or request exclusion from the settlement, and the date, time, and location of the final approval hearing.

**VI. CONCLUSION**

Plaintiff respectfully submits that the proposed settlement is in the best interests of the Class and Class Members, as it is fair, adequate, and reasonable, and one that should ultimately be granted final approval. Under the applicable class action criteria and guidelines, the proposed settlement should be preliminarily approved by the Court, the class should be conditionally certified for purposes of settlement only, and the Class Notice should be approved. Plaintiff also respectfully requests the Court set a final approval hearing date.

Dated: June 24, 2026

**MARA LAW FIRM, PC**



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