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Attorneys for Plaintiff

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

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

Plaintiff,

v.

CORNERSTONE DELIVERY SERVICE, a
California limited liability company; and
DOES 1 through 100, inclusive;

Defendants.

Case No.: CVRI2202702

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR AN ORDER (1)
PRELIMINARILY APPROVING THE
CLASS ACTION SETTLEMENT; (2)
APPROVING NOTICE OF CLASS
ACTION SETTLEMENT; AND (3)
SETTING HEARING FOR FINAL
APPROVAL**

*[Filed concurrently with Memorandum of
Points and Authorities; Declarations of
Douglas Han, Tim Johnson, Brian
Concannon, Paul Zimmer, Jodey
Lawrence; [Proposed] Order; and
Compliance Chart]*

Hearing Date: June 13, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: June 30, 2022
FAC Filed: January 9, 2023
SAC Filed: July 27, 2023
Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE on June 13, 2024 at 8:30 a.m., or as soon thereafter as
3 this matter may be heard, at Department 1, located at 4050 Main Street, Riverside,
4 California 92501, Plaintiff Sean Rippa (“Plaintiff”), on behalf of himself and all persons
5 similarly situated, will and hereby does move this Court pursuant to Code of Civil
6 Procedure section 382 and California Rule of Court 3.769 for an order:

- 7 (1) Preliminarily approving the class action settlement reached between
8 Plaintiff and Defendant Cornerstone Delivery Service (“Defendant”),
9 including granting preliminary approval of the following Class: “all current
10 and former hourly-paid or non-exempt employees of Defendant within the
11 State of California at any time during the period from June 30, 2018 to May
12 17, 2023” (“Class,” “Class Members,” and “Class Period”). “Class
13 Members” shall not include any person who submits a timely and valid
14 Request for Exclusion Form;
- 15 (2) Approving the form of notice of class action settlement and procedure for
16 notice to the Class; and
- 17 (3) Setting the Final Approval Hearing.

18 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
19 proposed settlement’s allocation of funds to claims made under the Labor Code section
20 2698, *et seq.* (Private Attorneys General Act of 2004 (“PAGA”)).

21 Pursuant to the Joint Stipulation and Settlement Agreement (“Settlement
22 Agreement” or “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of
23 Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement,
24 Defendant does not oppose the preliminary approval of the settlement.

25 ///

26 ///

27 ///

1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf
2 of the Class shall be fully and finally resolved for the total sum of \$205,000 (“Maximum
3 Settlement Amount”) to be paid on a non-reversionary basis. The amount remaining of the
4 Maximum Settlement Amount after the following deductions are made (“Net Settlement
5 Amount”) shall be available for distribution to Class Members who do not submit timely
6 and valid Requests for Exclusion Form:

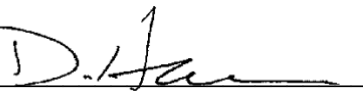
- 7 • up to \$68,333.33 to Class Counsel as the attorneys’ fees;
- 8 • up to \$15,000 to Class Counsel as the attorneys’ costs for reimbursement of
9 attorneys’ costs and expenses incurred;
- 10 • up to \$5,000 to Plaintiff as Class Representative Enhancement Payment;
- 11 • up to \$13,000 to Phoenix Class Action Administration Solutions, the
12 Settlement Administrator, as the Settlement Administration Costs; and
- 13 • \$10,000 as the PAGA Payment, seventy-five percent (75%) of which
14 (\$7,500) will be paid to the California Labor and Workforce Development
15 Agency and twenty-five percent (25%) of which (\$2,500) will be distributed
16 to all current and former hourly-paid or non-exempt employees of
17 Defendant within the State of California at any time during the period from
18 June 29, 2021 to May 17, 2023, on a pro rata basis, as their Individual
19 PAGA Payments in accordance with the Settlement Agreement.

20 This Notice of Motion is based on the fact this is a fair and reasonable settlement
21 that benefits the Class and was the product of informed, non-collusive negotiations by the
22 Parties who were represented by experienced and able counsel. (See *Dunk v. Ford Motor*
23 *Co.* (1996) 48 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) §
24 30.44.) The Agreement meets the legal standard for preliminary approval and is in the best
25 interests of the Class. The proposed form of notice explains the Agreement terms in a clear
26 and straightforward manner. The proposed procedures for notice provide the best practical
27 notice to the Class. Finally, Class Members will have an opportunity to participate in, object
28 to, and/or opt-out of the Agreement.

1 This Notice of Motion is based on this Notice, and the exhibits thereto (including the
2 Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form),
3 Memorandum of Points and Authorities, Declaration of Douglas Han, Declaration of Tim
4 Johnson, Declaration Brian Concannon, Declaration of Paul Zimmer, Declaration of Jodey
5 Lawrence, pleadings, records and files in the case, and such other oral and documentary
6 evidence which may be submitted at or before the hearing on this Motion.

7
8 Dated: May 3, 2024

JUSTICE LAW CORPORATION

9
10 By: 
11 Douglas Han
12 *Attorneys for Plaintiff*

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
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**MEMORANDUM OF POINTS AND
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I. INTRODUCTION

The proposed settlement reflected in the Joint Stipulation and Settlement Agreement (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the best interests of the Class. Consequently, Plaintiff, with the consent of Defendant, moves this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as embodied in the Agreement; (2) approving the Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form (collectively, known as the “Notice Packet”) to be sent to Class Members, and the notification schedule as set forth in the Agreement and the Proposed Order; and (3) setting a hearing for final approval of the class action settlement.

A. Procedural History

On January 9, 2023, Plaintiff filed a First Amended Complaint replacing Cornerstone Deliveries LLC DBA Cornerstone Delivery Service with Defendant as the named defendant. (Han Decl., *supra*, at ¶ 15.)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION

1 After engaging in discovery, investigations, and negotiation, the Parties remotely
2 attended mediation with the mediator Lisa Klerman on May 11, 2023, resulting in the Parties
3 reaching a tentative settlement via a mediator’s proposal. (Han Decl., *supra*, at ¶ 16.)

4 On July 27, 2023, Plaintiff filed a Second Amended Complaint adjusting the “class”
5 and “aggrieved employees” definitions. (Han Decl., *supra*, at ¶ 17.)

6 **B. Investigation and Discovery**

7 Before filing the lawsuit, Class Counsel investigated and researched the facts and
8 circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 18.)
9 After conducting an initial investigation, Class Counsel determined the claims were suited for
10 class and representative action adjudication. (*Ibid.*)

11 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
12 and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 19.) This included:

- 13 • conducting informal discovery and meeting and conferring with Defendant’s
14 counsel several times throughout this litigation, which produced the following:
- 15 ○ Personnel records;
 - 16 ○ Defendant’s profits and losses statements from January 2021 to December
17 2021 and from January 2022 to December 2022;
 - 18 ○ A copy of Defendant’s employee handbooks from June 2020 and August
19 2021 along with various policy documents and meal period waiver forms;
 - 20 ○ A twenty percent (20%) sampling class list of hourly-paid or non-exempt
21 employees in the form of a Microsoft Excel Worksheet (*e.g.*, hire dates,
22 termination dates, employee status, rates of pay);
 - 23 ○ A twenty percent (20%) sampling of putative class members’ time and
24 payroll records in the form of Microsoft Excel Worksheets (*e.g.*, pay dates,
25 pay period start and end dates, employee codes, gross hours worked, regular
26 hours worked, overtime hours worked, clock ins, clock outs, wages paid);

27 ///

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1 • reviewing and analyzing the sampling of time and payroll records, personnel
2 records, employee handbooks, policy documents, profits and losses statements, class list, and
3 other documentation;

- 4 • researching the applicable law and potential defenses;
- 5 • locating and interviewing several putative class members;
- 6 • constructing damage models based on interpretations of the law;
- 7 • discussing Defendant’s current financial condition and the recent financial
8 hardships it has been experiencing; and
- 9 • reviewing information provided by Defendant. (Han Decl., *supra*, at ¶ 19.)

10 The Class is ascertainable because the Class Members may be readily identified by
11 reference to Defendant’s records. (Han Decl., *supra*, at ¶ 20.) Class Counsel’s investigation
12 revealed there are about seven hundred forty-six (746) Class Members, which was confirmed
13 by Defendant. (*Ibid.*) Class Counsel’s investigation also revealed there are approximately four
14 hundred sixty-seven (467) Eligible Aggrieved Employees. (*Ibid.*)

15 **C. Settlement Efforts**

16 Defendant contested liability, amount of claimed damages, and propriety of class
17 certification. (Han Decl., *supra*, at ¶ 21.) Given the high level of risk present for both sides, the
18 Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

19 On May 11, 2023, the Parties remotely participated in full day mediation. (Han Decl.,
20 *supra*, at ¶ 22.) During mediation, the Parties discussed all aspects of the case. (*Ibid.*) From
21 Class Counsel’s review of the facts, strengths and weaknesses of the case, the risks and delays
22 posed by further litigation, and Class Counsel’s prior litigation experience, Class Counsel
23 believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the
24 settlement negotiations, the Agreement was the product of a non-collusive settlement process.
25 (*Ibid.*) The Parties had to make significant compromises in the interest of reaching a full and
26 complete settlement of this Action. (*Ibid.*)

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1 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

2 The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han’s declaration.
3 Defendant agreed to pay \$205,000 (“Maximum Settlement Amount”) on a non-reversionary
4 basis to settle and release all claims asserted in the operative complaints on behalf of the
5 proposed Class. (Han Decl., *supra*, at ¶ 24.) The Settlement Agreement defines the Class as
6 “all current and former hourly-paid or non-exempt employees of Defendant within the State of
7 California at any time during the period from June 30, 2018 to May 17, 2023” (“Class,” “Class
8 Members,” and “Class Period”). (*Ibid.*) “Class Members” shall not include any person who
9 submits a timely and valid Request for Exclusion Form. (*Ibid.*) The amount remaining in
10 Maximum Settlement Amount after the following deductions shall be distributed to Class
11 Members who do not opt out (“Net Settlement Amount”):

- 12 • up to one-third (1/3) of the Maximum Settlement Amount to Class Counsel as
13 the attorneys’ fees (\$68,333.33);
- 14 • up to \$15,000 to Class Counsel as the attorneys’ costs for the reimbursement of
15 actual costs and expenses incurred;
- 16 • up to \$5,000 to Plaintiff as the Class Representative Enhancement Payment;
- 17 • up to \$13,000 as the Settlement Administration Costs to the Settlement
18 Administrator, Phoenix Class Action Administration Solutions (“Phoenix”); and
- 19 • up to \$10,000 as the PAGA Payment, seventy-five percent (75%) of which
20 (\$7,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$2,500) will be
21 paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment
22 even if they submit valid and timely Request for Exclusion Form (“PAGA Payment” and
23 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 24.)

24 The Net Settlement Amount (approximately \$93,666.67) will be distributed to the Class
25 Members. (Han Decl., *supra*, at ¶ 25.)

26 The Agreement amount was a compromise, factoring in risks related to certification,
27 liability, and damages. (Han Decl., *supra*, at ¶ 28.) Considering the circumstances of the
28 Action, Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

1 **A. Number of Class Members**

2 There are around seven hundred forty-six (746) Class Members and four hundred sixty-
3 seven (467) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 20, 91(a).)

4 **B. Attorney’s Estimate of the Recovery by the Average Class Member if the**
5 **Settlement Agreement Were Approved**

6 If the Settlement Agreement is approved, it is estimated the gross *average* Individual
7 Settlement Payment will be about \$125.56. (Han Decl., *supra*, at ¶ 25.) Individual Settlement
8 Payments will be calculated and apportioned from the Net Settlement Amount based on the
9 number of Workweeks a Class Member worked during the Class Period as an hourly-paid or
10 non-exempt employee in California. (*Id.* at ¶ 26.) Individual PAGA Payments will be
11 calculated and apportioned from the twenty-five percent (25%) of the PAGA Payment based
12 on the number of Workweeks an Eligible Aggrieved Employee worked during the PAGA
13 Period as an hourly-paid or non-exempt employee in California. (*Ibid.*)

14 **C. Discovery Exchanged**

15 Section II.B. The description of Class Counsel’s investigation above provides a detailed
16 description regarding the discovery that was exchanged.

17 **D. Other Pending Litigation**

18 After making reasonable inquiries (*e.g.*, using Courthouse News Service, conducting a
19 PAGA search), Class Counsel learned there is a similar lawsuit against Defendant in the
20 Superior Court of California, County of Riverside, titled *Barham v. Cornerstone Delivery*
21 *Service, LLC, et al.* (Case No. CVRI2203036) filed on July 21, 2022 (“Barham Action”). (Han
22 Decl., *supra*, at ¶ 23.) The Barham Action alleges: (1) individual claims for: (a) failure to pay
23 wages; (b) failure to provide meal and rest breaks; (c) failure to provide accurate itemized
24 wage statements; (d) failure to pay wages upon termination; (e) failure to reimburse; and (f)
25 unfair business practices; and (2) violation of Labor Code section 2698, *et seq.* (PAGA). (*Ibid.*)
26 The violation of Labor Code section 2698, *et seq.* (PAGA) claim in the Barham Action was
27 brought on behalf of employees who worked for Defendant during the period from November
28 24, 2020 to the present. (*Ibid.*) The current procedural status of the Barham Action is that the

1 PAGA claims are stayed pending completion of individual arbitration. (Han Decl., *supra*, at ¶
2 23.) Class Counsel also learned there is another similar lawsuit against Defendant in the
3 Superior Court of California, County of Riverside, titled *Gilliland v. Cornerstone Delivery*
4 *Service, LLC, et al.*, (Case No. CVRI2203043) filed on July 21, 2022 (“Gilliland Action”).
5 (*Ibid.*) The Gilliland Action alleges: (1) individual claims for: (a) failure to pay wages; (b)
6 failure to provide meal and rest breaks; (c) failure to provide accurate itemized wage
7 statements; (d) failure to pay wages upon termination; (e) failure to reimburse; (f) unfair
8 business practices; (g) sexual harassment; and (h) negligent hiring and supervision; and (2)
9 violation of Labor Code section 2698, *et seq.* (PAGA). (*Ibid.*) The violation of Labor Code
10 section 2698, *et seq.* (PAGA) claim in the Gilliland Action was brought on behalf of
11 employees who worked for Defendant during the period from November 24, 2020 to the
12 present. (*Ibid.*) The current procedural of the Gilliland Action is that the PAGA claims are
13 stayed pending completion of individual arbitration. (*Ibid.*)

14 **E. Defendant’s Counsel’s Declaration**

15 Defendant’s counsel’s declaration is being submitted concurrently with this Motion.

16 **F. Settlement Administrator**

17 The Settlement Agreement provides for up to \$13,000 to be paid to the Settlement
18 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 87.) The bid is
19 comprised of Not-To-Exceed Total, per hour/unit rates, and per line-item rates. (*Ibid.*)

20 Class Counsel obtained bids from Phoenix, CPT Group, Inc. (“CPT Group”), and
21 ILYM Group, Inc. (“ILYM Group”) for the administration of this Action. (Han Decl., *supra*, at
22 ¶ 88.) Phoenix had the most competitive (lowest) bid of \$11,995 when compared to the bids
23 from CPT Group and ILYM Group that were \$12,000 and \$15,500 respectively. (*Ibid.*)

24 Phoenix has extensive experience in administering employment class action
25 settlements. (Declaration of Jodey Lawrence, ¶¶ 5-15; Exhibits A, B.)
26

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1 **G. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

2 Class Members will receive checks for their Individual Settlement Payments and
3 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 89.) Checks will remain negotiable for one
4 hundred eighty (180) calendar days. (*Ibid.*) Any check not cashed within one hundred eighty
5 (180) calendar days will be void. (*Ibid.*) The funds from the uncashed Individual Settlement
6 Payments shall be distributed by the Settlement Administrator to the State Controller's
7 Unclaimed Property Fund while the funds from the uncashed Individual PAGA Payments shall
8 be distributed by the Settlement Administrator to the LWDA. (*Ibid.*)

9 **H. Release by Class Members is Limited**

10 Pursuant to the terms set forth in the Settlement Agreement, Class Members' Released
11 Claims include the following:

12 [A]ll causes of action and factual or legal theories stated in the operative
13 complaints and those based solely upon the facts alleged in the operative
14 complaints. This includes all of the following claims for relief: (a) failure
15 to pay all regular wages, minimum wages, overtime wages, and sick pay
16 due; (b) failure to provide proper meal and rest breaks and to properly
17 provide premium pay in lieu thereof; (c) failure to provide complete,
18 accurate, or properly formatted wage statements and payroll records; (d)
19 failure to reimburse necessary business expenditures; (e) failure to pay
20 waiting time penalties; (f) failure to timely pay wages during employment
21 and after employment; (g) engaging in unfair business practices that could
22 have been premised on the claims, causes of action or legal theories of
23 relief described above or any of the claims, causes of action or legal
24 theories of relief pleaded in the operative complaints; (h) all claims under
25 PAGA, which shall only bind Plaintiff and the State of California, that
26 were described in Plaintiff's notice letters sent to the LWDA on June 29,
27 2022 and July 15, 2022 and only to the extent these claims were alleged in
28 the operative complaints; and (i) all damages, penalties, interest, and other
amounts recoverable under said claims, causes of action or legal theories
of relief. The period of the Released Claims shall extend to the limits of
the Class Period ("Released Claims").

(Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 33.)

Pursuant to the terms set forth in the Agreement, Released Parties include Defendant
together with its past and present officers, directors, employees, business partners, contracting
partners, and clients ("Released Parties"). (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 34.)

1 **I. The Proposed Notice Packet Provides Adequate Notice to the Class Members**

2 Within thirty (30) calendar days of entry of the Court’s Order Granting Preliminary
3 Approval, Defendant will provide the Class List to the Settlement Administrator. (Han Decl.,
4 *supra*, at ¶ 74.) Prior to mailing, the Settlement Administrator will perform a search based on
5 the National Change of Address Database for information to update and correct for any known
6 or identifiable address changes. (*Id.* at ¶ 75.) Within ten (10) calendar days after the Settlement
7 Administrator receives the Class List, the Settlement Administrator will mail a Notice Packet
8 to all Class Members via regular First-Class U.S. Mail. (*Ibid.*) The Notice Packet will only be
9 mailed to the Class Members in English. (*Ibid.*)

10 The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims
11 involved, material terms of the Agreement, Class Members’ options thereunder, and how Class
12 Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 76.) The
13 Notice Packet also provides for a specific procedure to seek exclusion from the Class and for
14 lodging objections to the Agreement. (*Ibid.*)

15 **J. Settlement Does Not Require Any Class Members to Submit Claim Forms**

16 Class Members are not required to submit claim forms to receive their share of the
17 Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 17.)

18 **K. Settlement Does Not Provide Any Reversion to Defendant**

19 Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert
20 to Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 20(c).)

21 **L. Employer’s Share of Payroll Taxes and the Allocation of Settlement Payments**

22 All Individual Settlement Payments will be allocated as follows: (1) twenty percent
23 (20%) as wages; and (2) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶
24 2; Exhibit 1, *supra*, at ¶ 63.) All Individual PAGA Payments will be allocated as one hundred
25 percent (100%) penalties. (*Id.* at ¶ 64.)

26 Defendant shall pay the employer’s share of applicable payroll taxes due on the portion
27 of Individual Settlement Payments allocated to wages separately and in addition to the
28 Maximum Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 20(b).)

1 **M. Notice of Class Action Settlement, Objection Form, and Request for Exclusion**
2 **Form**

3 The Notice of Class Action Settlement, Objection Form, and Request for Exclusion
4 Form are attached as **Exhibits A-C** respectively in the Agreement and Proposed Order, filed
5 concurrently herewith, and were drafted to be reasonably understood by the Class Members.

6 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

7 Express judicial policy favors maintaining wage-and-hour actions as class actions.
8 (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richmond v. Dart Industries,*
9 *Inc.* (1981) 29 Cal.3d 462.) Any doubt as to the appropriateness of class treatment should be
10 resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, at
11 pp. 473-475.) The decision to certify a class is a procedural one, and should be based on the
12 allegations in the operative complaint, and not in the perceived factual or legal merit of the
13 class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

14 To certify a settlement class, the Court must find the two primary requirements for
15 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a
16 well-defined community of interest in the questions of law and fact involving the parties to be
17 represented. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow*
18 *Cab Company* (1967) 67 Cal.2d 695, 704.) The criteria are met herein.

19 **A. There Is A Numerous and Ascertainable Class**

20 Ascertainability is determined by examining class definition, class size, and means to
21 identify class members. (See *Vasquez v. Superior Court, supra*, 4 Cal.3d at pp. 821, 822; *Reyes*
22 *v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class
23 members are “ascertainable” where they may be readily identified without unreasonable
24 expense or time.

25 Plaintiff contends, and Defendant does not dispute, the requirement of numerosity is
26 met. The documents and information exchanged reflect a Class of approximately seven
27 hundred forty-six (746) Class Members. (Han Decl., *supra*, at ¶ 91(a).) The Class Members
28 were identified by Defendant’s payroll and personnel records. (*Id.* at ¶ 90(b).)

1 **B. There Is A Well-Defined Community of Interest**

2 A community of interest is established by the predominance of common issues of law
3 and fact. (See *Vasquez v. Superior Court, supra*, 4 Cal.3d at p. 811.) The requirement of a
4 community of interest:

5 [Does] not depend upon an identical recovery, and the fact that
6 each member of the class must prove his separate claim to a
7 portion of any recovery by the class is only one factor to be
8 considered ... The mere fact that separate transactions are involved
9 does not of itself preclude a finding of the requisite community of
10 interest so long as every member of the alleged class would not be
11 required to litigate numerous and substantial questions to
12 determine his individual right to recover subsequent to the
13 rendering of any class judgment which determined in plaintiffs’
14 favor whatever questions were common to the class.

15 (*Vasquez v. Superior Court, supra*, 4 Cal.3d. at p. 809.)

16 Plaintiff contends, and Defendant does not dispute, common issues of fact and law
17 predominate as to each of the claims alleged. Because Plaintiff alleged a single scheme, “the
18 relevant proof [does] not vary among class members” and “clearly presents a common question
19 fundamental to all class members.” (See *In Re NASDAQ Market-Makers Antitrust Litigation*
20 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
21 (SDNY 1997) 169 F.R.D. 493, 518).) California courts show “no hesitancy” in inferring class-
22 wide causation, class-wide injury, and class-wide damages when a common course of action
23 has been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 1350.) This inference
24 “eliminates the need for each class member to prove individually the consequences of the
25 defendants’ actions to him or her.” (*Id.* at p. 1351 (quoting *Rosack v. Volvo of America Corp*
26 (1982) 131 Cal.App.3d 741, 753 [emphasis added]).)

27 This Action involves, *inter alia*, a determination about Defendant’s alleged: (1) failure
28 to provide meal and rest breaks and pay applicable premium wages; (2) failure to reimburse
business expenses; (3) failure to pay minimum wages and overtime wages; (4) failure to pay
final wages when required; (5) failure to provide accurate wage statements; and (6) largely
derivative claims under the Business & Professions Code and PAGA. (Han Decl., *supra*, at ¶

91(e).) Plaintiff contends these practices affected Class Members in the same way. (*Ibid.*) While Defendant maintained otherwise, these issues will not be decided based on facts peculiar to each Class Member but based on facts common to the Class. Finally, these issues of liability can be determined on a class-wide basis.

C. The Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*, *supra*, 191 Cal.App.3d at p. 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members.")) Thus, it is not necessary that the class representative should have personally incurred all the damage suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.)

Plaintiff contends, and Defendant does not dispute, the claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Han Decl., *supra*, at ¶ 91(c).) Plaintiff was employed by Defendant during the Class Period and subject to the allegedly unlawful meal and rest break policies and pay practices at issue in this litigation. (*Ibid.*) The central issues of this litigation (whether Defendant failed to pay all wages, failed to provide meal and breaks, failed to pay premium wages, etc.), which would arise if this were an individual action brought by Plaintiff, apply to the other Class Members. (*Ibid.*) Consequently, the answer to these questions would determine Defendant's liability to the Class. (*Ibid.*)

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1 **D. Adequacy of Class Counsel and Class Representative**

2 Class Counsel are experienced in class actions, have represented their clients zealously,
3 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 90(d); Exhibit 2.) Plaintiff’s
4 interests are aligned with those of the Class Members, suffered the same injuries as the Class
5 Members, and have no conflicts of interest. (*Id.* at ¶ 90(d).)

6 **E. Predominance and Superiority**

7 Individual issues do not predominate over those common to the Class. (Han Decl.,
8 *supra*, at ¶ 91(f).) Furthermore, the class action mechanism is superior to individualized actions
9 because Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 91(g).)

10 **V. THE TWO-STEP APPROVAL PROCESS**

11 Any settlement of class litigation must be reviewed and approved by the Court. This is
12 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review
13 after notice has been distributed to the class members for their comment or objections. The
14 Manual for Complex Litigation (Third) states:

15 “Approval of class action settlements involves a two-step process. First,
16 counsel submits the proposed terms of settlement and the court makes a
17 preliminary fairness evaluation. If the preliminary evaluation of the
18 proposed settlement does not disclose grounds to doubt its fairness or
19 other obvious deficiencies, such as unduly preferential treatment of class
20 representatives or of segments of the class, or excessive compensation for
21 attorneys, and appears to fall within the range of possible approval, the
22 court should direct that notice ... be given to the class members of a
23 formal fairness hearing, at which arguments and evidence may be
24 presented in support of and in opposition to the settlement.” (§ 30.41.)

25 Preliminary approval by the court is a conditional finding that the settlement appears to
26 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
27 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
28 settlement proposal may vary. The court may find the settlement proposal contains some merit,
is within the range of reasonableness required for a settlement offer, or is presumptively valid
subject only to any objections that may be raised at a final hearing.” (4 Alba Conte & Herbert
B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

1 The procedures for the Parties' submission of a proposed settlement for preliminary
2 approval by the court also are discussed in Newberg on Class Actions:

3 When the parties to an action reach a monetary settlement, they will
4 usually prepare and execute a joint stipulation of settlement, which is
5 submitted to the court for preliminary approval. The stipulation should
6 set forth the central terms of the agreement, including but not limited to,
7 the amount of settlement, form of payment, manner of determining the
effective date of settlement and any recapture clause, Newberg on Class
Actions. (§ 11.24.)

8 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

9 As a matter of public policy, the courts both encourage the use of the class action
10 device and favor settlement over continued litigation. (See e.g. *Linder v. Thrifty Oil Co.*, *supra*,
11 23 Cal.4th at p. 434 (“Courts have long acknowledged the importance of class actions as a
12 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
13 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly
14 where complex class action litigation is concerned.”).)

15 The courts presume the absence of fraud or collusion in the negotiation of a settlement
16 unless evidence to the contrary is offered. There is a presumption the negotiations were
17 conducted in good faith. (*Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
18 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
19 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when
20 settlement was reached by experienced counsel familiar with the litigation. (*Rodriguez*, at p.
21 24; *Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087.)

22 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid
23 out several factors that should be analyzed in determining if a class action settlement should be
24 approved. These factors include: (1) strength of plaintiff's case; (2) risk, expense, complexity,
25 and likely duration of further litigation; (3) risk of maintaining class action status through trial;
26 (4) amount offered in settlement; (5) extent of discovery completed and stage of the
27 proceedings; (6) experience and views of counsel; (7) presence of a governmental participant;
28 and (8) class members' reaction to the proposed settlement.

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1 The Agreement satisfies these factors. Class Counsel conducted extensive discoveries
2 before entering meaningful settlement negotiations, including a detailed analysis of the policies
3 and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 18, 19.) This
4 discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and the
5 risks associated with ongoing litigation. (*Id.* at ¶ 22.) The Parties also discussed Defendant's
6 current financial condition and the financial hardships it has been experiencing in recent years.
7 (*Ibid.*) In addition, Class Counsel are experienced in the handling of wage-and-hour class
8 actions and support the Settlement. (*Id.* at ¶¶ 3-10; Exhibit 2.)

9 **A. The Strength of Plaintiff's Case.**

10 The claims in this action include: (1) failure to provide meal and rest breaks; (2) failure
11 to pay minimum wages; (3) failure to pay overtime wages; (4) failure to pay final wages when
12 due; (5) failure to provide accurate wage statements; (6) failure to reimburse necessary
13 business expenses; and (7) related claims for violations of the Business & Professions Code
14 and for penalties under PAGA. (Han Decl., *supra*, at ¶ 30.)

15 Class Counsel felt confident the claims would be certified given Defendant's policies
16 and practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 31-67.)

17 **B. The Risks Associated with the Merits.**

18 Plaintiff contended Defendant would regularly assign employees heavy delivery quotas
19 to complete almost every day, which forced employees to forgo taking compliant meal and rest
20 breaks. (Han Decl., *supra*, at ¶¶ 32, 35, 36.) This was allegedly made worse by Defendant
21 failing to authorize and permit employees to take additional meal and rest breaks even if they
22 worked the requisite number of hours and attempting to conceal instances of noncompliant
23 meal breaks. (*Ibid.*) Defendant countered it always maintained compliant meal and rest break
24 policies, rarely, if ever, assigned employees with heavy delivery quotas, and authorized and
25 permitted employees to take additional breaks. (*Id.* at ¶¶ 33, 37.) In other words, employees
26 were choosing to forgo taking compliant meal and rest breaks to timely deliver packages
27 without Defendant's knowledge. (*Ibid.*) By extension, Defendant may even produce evidence
28 to demonstrate supervisors and dispatch were instructed to remind and encourage employees to

1 take their meal and rest breaks. (Han Decl., *supra*, at ¶¶ 33, 37.) Finally, Defendant contended
2 Class Counsel will have to gather declarations from putative class members to prove the
3 existence of improper, uniform policies and practices. (*Ibid.*)

4 As the consideration concerning meal and rest breaks would likely depress the damages
5 ultimately awarded, Class Counsel applied significant and appropriate discounts to the meal
6 and rest break claims. (Han Decl., *supra*, at ¶¶ 34, 38.) If Defendant's contentions are proven
7 true and prevail in trial, the likely outcome of these claims, particularly rest breaks, would be
8 no recovery for the Class Members.

9 Plaintiff alleged Defendant expected employees to begin working before clocking in
10 and continue working after clocking out. (Han Decl., *supra*, at ¶ 39.) For instance, employees
11 were purportedly expected to retrieve their work phones and perform pre-trip and post-trip
12 inspections before clocking in and after clocking out. (*Ibid.*) Yet, Defendant supposedly did not
13 compensate employees for these additional hours worked off-the-clock. (*Ibid.*) Defendant
14 countered these claims are not suitable for class treatment. (*Id.* at ¶ 40.) Defendant argued its
15 policies expressly prohibited off-the-clock work, that it was never made aware of employees
16 working off-the-clock, and that it immediately tried to rectify any issues involving payment for
17 all hours worked. (*Ibid.*) Finally, Defendant asserted any unrecorded hours would likely be
18 subject to individual inquiries and unlikely to be certified. (*Ibid.*) Given the difficulty in
19 certifying this claim, Class Counsel applied a discount to damages. (*Id.* at ¶ 41.) If Defendant's
20 contentions held true, the outcome of this claim would be little to no recovery for employees.

21 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties**

22 To establish liability for wage statement violations and waiting time penalties, Plaintiff
23 would first have to establish liability for the underlying claims. Defendant argued the claim for
24 further Labor Code section 226(e) penalties would depend on the underlying rest break, meal
25 break, and wage claims, meaning it would be subject to the same defenses. (Han Decl., *supra*,
26 at ¶ 44.) Defendant added the above-mentioned violations did not occur every pay period and
27 that section 226(e) penalties are not automatic. (*Ibid.*) Thus, Defendant concluded employees
28 need to show they suffered injury because of Defendant's noncompliance and that such

1 noncompliance was knowing and intentional. (Han Decl., *supra*, at ¶ 44.)

2 Similarly, Defendant also countered the claim for section 203 penalties is dependent on
3 the underlying meal and rest break and wage claims, meaning it would be subject to the same
4 defenses listed and described above. (Han Decl., *supra*, at ¶¶ 48, 49.) With these penalties,
5 there is always the risk the trier of fact would not have held Defendant's actions were done
6 "willfully." A good faith belief in a legal defense can preclude a finding of willfulness.
7 (*Gonzalez v. Downtown LA Motors* (2013) 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As
8 discussed above, Plaintiff alleges Defendant failed to pay for all hours worked and premiums
9 for noncompliant meal and rest breaks. (Han Decl., *supra*, at ¶¶ 32, 35, 36, 39.) By extension,
10 Plaintiff contends the Class Members are entitled to minimum wages, overtime wages, and
11 premium wages, which were allegedly not paid at the time of their termination or resignation.
12 (*Id.* at ¶¶ 46, 47.) Defendant counters it provided employees with reasonable opportunities to
13 take breaks, asked employees to confirm the accuracy of their time records, and had good-faith
14 defenses under *Brinker* and its progeny. (*Id.* at ¶¶ 48, 49.)

15 **D. The Risks Associated with the PAGA Penalties.**

16 Labor Code section 2699.3 gives aggrieved employees the right to recover civil
17 penalties for specific Labor Code violations by way of a civil action. The PAGA provides a
18 penalty amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
19 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay
20 period for each subsequent violation. (Labor Code § 2699, subd. (e)(2).) If a civil penalty is
21 provided in a specified amount by the Labor Code section relating to the underlying alleged
22 Labor Code violation, that amount shall apply. (*Ibid.*) PAGA also gives the Court discretion to
23 award any lesser amount than the maximum civil penalty. (*Id.* ["[A] court may award a lesser
24 amount than the maximum civil penalty amount specified by this part if, based on the facts and
25 circumstances of the particular case, to do otherwise would result in an award that is unjust,
26 arbitrary and oppressive, or confiscatory."].)

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1 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
2 Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 432.5, 510,
3 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*,
4 at ¶ 55.) Defendant asserted, regardless of the results of the underlying causes of action, PAGA
5 penalties are only permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its
6 strong arguments against the underlying claims, it had a strong argument it would be unjust to
7 award maximum PAGA penalties given the law’s unsettled state. (Han Decl., *supra*, at ¶ 55;
8 See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112 (reducing
9 penalties by 30% under this authority).) Without stacking and limited to the initial violation,
10 PAGA penalties would be **\$46,700** (467 employees x \$100 initial violation) on the low end and
11 **\$280,200** (467 employees x \$100 initial violation x 6 theories of recovery) on the high end.
12 (Han Decl., *supra*, at ¶¶ 56-59.)

13 Plaintiff recognized the risks any PAGA award could be reduced. (Han Decl., *supra*, at
14 ¶ 60.) The maximum penalties for each pay period are not justified, and it was arguable the
15 Court would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$10,000 to
16 PAGA civil penalties was reasonable based on a rate of **\$1.69** per pay period [$\$10,000 \div 5,911$
17 pay periods in the PAGA Period] given that Defendant is paying an additional \$195,000 in the
18 class settlement.¹ (*Ibid.*) If PAGA penalties are negotiated in good faith and “there is no
19 indication that [the] amount was the result of self-interest at the expense of other Class
20 Members,” such amounts are considered reasonable.² (*Ibid.*)

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24 ¹ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
26 \$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

27 ² (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
28 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.”).)

1 Finally, Class Counsel are confident they would successfully prove Defendant's alleged
2 wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 61.) Plaintiff
3 contends Defendant would intentionally assign employees heavy delivery quotas to complete
4 almost every day, which prevented employees from taking compliant meal and rest breaks.
5 (*Ibid.*) This issue with meal and rest breaks was purportedly made worse by Defendant
6 knowingly and intentionally failing to authorize and permit employees to take additional
7 breaks despite working the requisite hours. (*Ibid.*) Despite these violations, Defendant
8 supposedly intentionally and knowingly failed to pay employees premium wages for
9 noncompliant meal and rest breaks. (*Ibid.*) Defendant also apparently knew that employees
10 were working additional hours off-the-clock pre-shift and post-shift but were not being
11 compensated for these additional hours worked. (*Ibid.*) Thus, Defendant purportedly
12 knowingly and intentionally implemented its improper, uniform practices, which resulted in the
13 alleged violations. (*Ibid.*)

14 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

15 Given the risks outlined above, the issues in this case were complex and the risk for
16 Plaintiff and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
17 68-72.) A class trial would have required extensive preparations, thereby requiring the Parties
18 to expend a substantial amount of time. (*Ibid.*) Given the complexity and unsettled nature of
19 the issues, it is likely any outcome at trial would have resulted in a lengthy and costly appeal.
20 (*Ibid.*) Finally, an appeal would result in further delay for the Class Members who have already
21 waited years for resolution in this matter. (*Ibid.*)

22 **F. The Risk of Maintaining Class Action Status Through Trial.**

23 In class actions, decertification is always a possibility. There is always a risk a trial of
24 this magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.*
25 (2014) 59 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class
26 actions, decertification is a real risk Class Counsel must consider.

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G. The Amount Offered in Settlement.

There is no doubt the Agreement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations. To determine the approximate potential damages owed to each Class Member, Class Counsel analyzed a sampling of time and pay records. Using this information, Class Counsel estimated the full value of the case if Plaintiff prevailed at trial.

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$4,016,777.30** on the low end and **\$4,175,962.48** on the high end. (Han Decl., *supra*, at ¶ 63.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$342,939.16	65%	60%	\$48,011.48
Meal Break Premiums	\$222,866.52	50%	50%	\$55,716.63
Overtime/Minimum Wage: Off-the-Clock	\$318,182.42 to \$477,367.60	50%	50%	\$79,545.61 to \$119,341.90
Unreimbursed Business Expenses	\$86,740	45%	85%	\$7,156.05
Wage Statement Penalty	\$583,750	75%	75%	\$36,484.38
Waiting Time Penalty	\$2,462,299.20	75%	75%	\$153,893.70
MAXIMUM TOTAL EXPOSURE	\$4,016,777.30 to \$4,175,962.48			\$380,807.85 to \$420,604.14

Based on this analysis, the total estimated realistic exposure for this case would be approximately **\$380,807.85** on the low end and **\$420,604.14** on the high end. (Han Decl., *supra*, at ¶ 64.) The Maximum Settlement Amount is approximately four percent (4.91%) of the high end total potential exposure at trial and around forty-nine percent (48.74%) of the high end total realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering Defendant's present financial condition and the financial hardships it has been experiencing in recent years. (*Ibid.*)

The allocation of wages, penalties, and interest indicated above was based on the realistic exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages. (Han Decl., *supra*, at ¶ 65.) Plaintiff added the realistic exposure for rest break premiums and meal break premiums (\$48,011.48 + \$55,716.63 = \$103,728.11). (*Ibid.*) Plaintiff

1 then added the \$103,728.11 to the low end realistic exposure for unpaid wages due to off-the-
2 clock work ($\$103,728.11 + \$79,545.61 = \$183,273.72$). (Han Decl., *supra*, at ¶ 65.) The
3 realistic exposure of \$183,273.72 Plaintiff can expect to receive if he were to prevail at trial for
4 meal and rest break premiums and low end unpaid wages due to off-the-clock work represents
5 about eighteen percent (18.55%) of the low end total realistic exposure and PAGA penalties
6 ($\$183,273.72 \div \$987,908 = 0.18551 \times 100 = 18.55\%$). (*Ibid.*) Because this represents
7 approximately twenty percent (20%) of wages, allocating twenty percent (20%) as wages and
8 eighty percent (80%) as interest and penalties pursuant to the Agreement is appropriate. (*Ibid.*)

9 Once Class Counsel determined the maximum potential damages, they established a
10 fair and reasonable settlement for the Class after analyzing the likelihood of success on the
11 merits. (Han Decl., *supra*, at ¶ 28.) After reviewing the facts and circumstances of this matter,
12 Class Counsel concluded the Class had a reasonable likelihood of success on the core claims.
13 (*Id.* at ¶¶ 63-72.) Defendant disputes this contention, denies all wrongdoing in this matter, and
14 is confident it has strong legal and factual defenses to the claims. (*Id.* at ¶¶ 69, 71.) After
15 considering the likelihood of success and the challenges faced with certification, Class Counsel
16 determined the Agreement amount was fair and reasonable.

17 Class Members have been represented by experienced counsel with many years of
18 experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)
19 Class Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶
20 18-22.) This included, among other things: (1) interviewing Plaintiff at length on repeated
21 occasions; (2) drafting pleadings, conducting informal discovery, and meeting and conferring
22 with Defendant's counsel; (3) reviewing and analyzing time and pay records, class list,
23 employee handbooks, policies documents, profits and losses statements, and personnel records;
24 (4) researching the law; (5) locating and interviewing putative class members; (6) preparing for
25 and attending mediation; and (7) negotiating and finalizing the Settlement Agreement. (Han
26 Decl., *supra*, *passim*.)

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1 Finally, Class Counsel believe the Settlement Agreement serves the best interests of the
2 Class. The court can consider counsel's recommendations if counsel have been involved in
3 litigation for some period, appear to be competent, and have experience with this type of
4 litigation, and significant discovery has been completed. (See *Newberg*, § 11.47.)

5 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENT IS FAIR AND**
6 **REASONABLE**

7 It is appropriate to provide a relatively modest additional incentive payment to the class
8 representative. (See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
9 901 F.Supp. 294.)

10 Plaintiff is entitled to reasonable service payment for his efforts in this matter. (Han
11 Decl., *supra*, at ¶ 82.) Plaintiff spent significant time better apprising himself of his rights,
12 deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

13 By suing Defendant, Plaintiff increased the risk of retaliation by future employers. (Han
14 Decl., *supra*, at ¶ 73.) The lawsuit has cost Defendant considerable resources, and such conduct
15 will not be lost on prospective employers. (*Ibid.*) This risk of losing employment opportunities
16 is real in the information age that contains quick background checks. (*Ibid.*)

17 But Plaintiff did not allow fears of the potential repercussions of being a class
18 representative to deter him from acting for the benefit of Class Members. (Han Decl., *supra*, at
19 ¶ 84.) Plaintiff has been intimately involved in this case since its inception and has devoted a
20 substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

21 Plaintiff spent hours with Class Counsel detailing his knowledge of Defendant's
22 practices. (Han Decl., *supra*, at ¶ 85.) Plaintiff diligently, adequately, and fairly represented
23 Class Members and did not place his interests above the Class Members. (*Ibid.*) The Class
24 Representative Enhancement Payment is intended to recognize Plaintiff's time and effort, and
25 the amount requested is fair and appropriate based on his contributions. (*Ibid.*)

26 Therefore, Class Counsel believe the Class Representative Enhancement Payment of
27 \$5,000 to Plaintiff is fair and reasonable. (Han Decl., *supra*, at ¶ 86.)

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1 **VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 Under the Agreement, Class Counsel request, without opposition from Defendant, an
4 award of Attorneys' Fees and Costs consisting of: (1) up to \$68,333.33 as the attorneys' fees;
5 and (2) up to \$15,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 79.) The requested fees are
6 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
7 consuming litigation on a contingent basis. (*Id.* at ¶¶ 79, 80.)

8 California courts look to the federal courts on class action approvals. The Ninth Circuit
9 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
10 percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*
11 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
12 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
13 active beneficiary does not bear the entire burden alone." (*Ibid.*) Courts have discretion to
14 choose either the percentage-of-the-fund method or the lodestar method. (*In re Wash.*
15 *Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295, 1296.)

16 Courts have expressed frustration with the lodestar approach to deciding fee awards.
17 The percentage approach can be preferable in certain situations because it: (1) aligns the
18 interests of class counsel and absent class members; (2) encourages efficient resolution of the
19 litigation by providing an incentive for early, yet reasonable, settlement; and (3) reduces the
20 demands on judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378,
21 1379.) The Ninth Circuit has used the percentage of the common fund approach to determine
22 the award of attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47
23 F.3d 373, 378, 379 (approving attorneys' fee of 33 1/3% of settlement fund).)

24 When considering the facts and circumstances herein, the request for attorneys' fees is
25 within the range of reasonableness. Historically, courts have awarded percentage fees in the
26 range of twenty percent (20%) to fifty percent (50%) of the common fund, depending on the
27 circumstances of the case. (*Newberg*, at § 14.03; see also *In re Activision Securities Litigation*,
28 *supra*, 723 F.Supp. at p. 1378.) *Newberg* further notes: "[A]chievement of a substantial

1 recovery with modest hours expended should not be penalized but should be rewarded for
2 considerations of time saved by superior services performed.” (*Newberg*, at §§ 14-10:14-11.)

3 The attorneys’ fees request provided for in the Settlement Agreement is commensurate
4 with judicial precedent. Both state and federal courts regularly approve fee awards equal to or
5 greater than the percentage requested in this case. (See e.g. *In re Pacific Enterprises Securities*
6 *Litigation*, *supra*, 47 F.3d at p. 379 (affirming an award equal to 33% of the common fund); *In*
7 *re Activision Securities Litigation*, *supra*, 723 F.Supp. at p. 1375 (awarding plaintiffs’ counsel
8 32.8% of the common fund created to settle the litigation); *In re Ampicillin Antitrust Litigation*
9 (D. D.C. 1981) 526 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); and *Parker v.*
10 *City of Los Angeles* (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of
11 one-third (1/3) of recovery achieved).)

12 In similar lawsuits, courts approved attorney’s fees consistent with or greater than the
13 percentage requested herein. (See *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County
14 Superior Court, Case No. BC 262247 (May 2005) (Honorable Anthony J. Mohr); *Moreno v.*
15 *Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004)
16 (Honorable Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange
17 County Superior Court, Case No. 01CC00140 (Honorable Stephen J. Sundvold); *Kimbell v.*
18 *Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359
19 (Sept. 2006) (Honorable Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*,
20 Orange County Superior Court, Case No.02CC10201 (2006) (Honorable Ronald L. Bauer).)

21 Class Counsel have borne the entire risk and costs of litigation and will not receive any
22 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 79, 80.) The Court should
23 also consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the
24 requested attorneys’ fees award is reasonable.

25 **A. Fee Splitting Agreement**

26 Class Counsel are not splitting the costs associated with the settlement with any other
27 individuals or firms. (Han Decl., *supra*, at ¶ 90.)

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1 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
2 **APPROVAL**

3 The Parties respectfully request this Court, as part of the preliminary approval process,
4 to grant the following relief and make the following orders:

5 1. Review and approve the Settlement Agreement attached to Douglas Han's
6 declaration as **Exhibit 1**;

7 2. Review and approve the Notice of Class Action Settlement, Objection Form,
8 and Request for Exclusion Form attached to the Proposed Order as **Exhibits A-C** respectively;

9 3. Consider and determine the proposed class action settlement as set forth in the
10 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

11 4. Conditionally certify the action as a class action for settlement purposes only
12 and preliminarily approving the proposed class action settlement and Settlement Agreement;

13 5. Approve and appoint Douglas Han, Shunt Tatavos-Gharajeh, and William
14 Wilkinson of Justice Law Corporation to serve as Class Counsel for settlement purposes;

15 6. Approve and appoint Phoenix as the Settlement Administrator to handle the
16 notice procedures as set forth in the Settlement Agreement;

17 7. Approve the proposed allocation of funds to the claims made under PAGA;

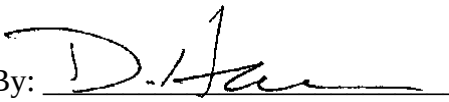
18 8. Order Defendant to disclose the Class List to Phoenix in accordance with the
19 manner set forth in the Settlement Agreement;

20 9. Order Phoenix to mail the Notice Packet to Class Members; and

21 10. Set a date for the Final Approval Hearing.

22
23 Dated: May 3, 2024

JUSTICE LAW CORPORATION

24
25 By: 
26 Douglas Han
27 Attorneys for Plaintiff
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On May 3, 2024, I served the foregoing document described as

NOTICE OF MOTION AND MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL

for the following case: **Rippa v. Cornerstone Deliveries LLC dba Cornerstone Delivery Service**
LWDA/Court Case No.: **LWDA Case No.: LWDA-CM-892132-22**
Court Case No.: CVRI2202702
Riverside 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 May 3, 2024, at Pasadena, California.



Mariah Anderson