

DOUGLAS HAN (SBN 232858)
SHUNT TATAVOS-GHARAJEH (SBN 272164)
CHRIS PETERSEN (SBN 260631)
LIZETTE RODRIGUEZ (SBN 335182)
JUSTICE LAW CORPORATION
751 N. Fair Oaks Avenue, Suite 101
Pasadena, California 91103
Telephone: (818) 230-7502
Facsimile: (818) 230-7259

Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

MARIANNE RAMIREZ, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

DELTA DENTAL OF CALIFORNIA, a
California corporation; and DOES 1 through
100, inclusive;

Defendants.

Case No.: CGC-21-589648

Assigned for All Purposes to:
Honorable Andrew Y.S. Cheng
Department 613

CLASS ACTION

**PLAINTIFFS' SUPPLEMENTAL BRIEF
IN SUPPORT OF PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

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

Hearing Date: TBD
Hearing Time: TBD
Hearing Place: Department 613

Complaint Filed: February 4, 2021
FAC Filed: October 4, 2022
Trial Date: None Set

Plaintiffs Marianne Ramirez and Wendy Campbell (“Plaintiffs”) provide this supplemental submission in response to the Court’s tentative ruling on Plaintiffs’ Motion for Preliminary Approval of Class Action Settlement.

The chart below lists each of the Court’s issues from the tentative ruling and the revisions/submissions made to address each issue.

Ruling	Revisions/Submissions
(1) Class Definition and Aggrieved Employees. “The class definition . . . is overbroad and lacks sufficient objective criteria for purposes of: (1) ascertainability (Noel v. Thrifty Payless, Inc. (2019) 7 Cal.5th 955, 980-86); (2) assessing the adequacy and typicality of Plaintiffs as representatives; and (3) as relevant to evaluating whether sufficient value has been given to the class in consideration for the scope of the release to Delta Dental. . .The inclusion of all hourly or non-exempt employees in the class definition without more is too broad particularly given the lengthy class and PAGA periods and the absence of other delimiting criteria, such as job sites or locations.” (Tentative Ruling p. 3; 4:1–4 and 8–9.)	First the proposed Class Definition and Aggrieved Employees have been modified as follows: “Class” means all current and former hourly-paid or non-exempt Professional and Clerical employees who are or were employed by Delta Dental of California during the Class Period. (See Supplemental Declaration of Douglas Han (“Supp Han Dec.”), ¶ 3, Exhibit 1 at §II, ¶ 5). “Aggrieved Employees” mean all current and former hourly-paid or non-exempt Professional and Clerical employees employed by Delta Dental of California within the State of California at any time during the PAGA Period.” (Supp Han Dec., <i>supra</i> , Exhibit 1 at §II, ¶ 3). /// ///

1 The modified class definition includes 1,604
2 Class Members consisting of 144 professional
3 and clerical job titles. The largest job titles
4 include Telephone Representatives, Customer
5 Service Representative, Telephone Service
6 Center Clerk, Dental Auditor, Audit Review
7 Clerk, Mail Clerk, Eligibility Clerk, Data
8 Entry Operator, Appeals Representative and
9 Appeals Specialist. (See Supp Han Decl., ¶ 7.)
10 During her employment, Plaintiff Marianne
11 Ramirez worked as an Audit Review Clerk and
12 Claims Processing Specialist. Plaintiff Wendy
13 Campbell worked as an Appeal Specialist.
14 Both Plaintiffs worked in professional and
15 clerical capacities in job titles that are most
16 common to the Class Members and Aggrieved
17 Employees. (See Supp Han Decl., ¶ 8.)

18
19 Moreover, the proposed amended definition
20 also addresses the Court’s concern regarding
21 the ascertainability of the class, the adequacy
22 and typicality of Plaintiffs, and the
23 determination that the consideration is
24 sufficient for the scope of the release.
25 Specifically, Plaintiffs’ theories of liability, as
26 explained in their Motion for Preliminary
27 Approval, are based on factors that all “hourly-
28 paid or non-exempt Professional and Clerical

employees” were exposed to—making Plaintiffs adequate and typical of the class. For example, the theory of liability for meal and rest break violations was pertinent to employees of Defendant whose duty it was to answer phone calls and complete customer reports/audits, like Plaintiffs. (*See* Declaration of Douglas Han in Support of Plaintiff’s Motion for Preliminary Approval, filed on August 1, 2023, ¶ 20-21). As is evident from the job titles previously listed, all putative class members are engaged in similar job duties.

Secondly, Plaintiffs unpaid wage claim is based on two theories of liability: (1) rounding practice and (2) pre-shift bootup time. (*See* Declaration of Douglas Han in Support of Plaintiff’s Motion for Preliminary Approval, *supra*, ¶ 22). All “hourly-paid or non-exempt Professional and Clerical employees” were subject to the same time-keeping system—and thus rounding practice—that Plaintiffs were subjected to during their employment with Defendant and because they were all using computers to complete their job duties, they were exposed to the same boot-up time.

1		Third, Professional and Clerical employees
2		worked remotely during the pandemic,
3		incurring reasonable and necessary business
4		expenses for, among other things, home office
5		expenses, internet, cell phone usage, and
6		utilities. Defendant provided a work-from-
7		home stipend to Professional and Clerical
8		employees to cover such costs, but Plaintiffs
9		contend that the amount was insufficient to
10		reimburse all reasonable and necessary
11		business expenses.
12		
13		As such, Plaintiffs investigation of the claims
14		in preparation for mediation and their analysis
15		of the merits and risks of these claims
16		sufficiently accounted for the scope of the
17		class, making the value of the settlement
18		sufficient for the scope of the release.
19		
20	(2) Adequacy of Lawyers for Justice, P.C.	On September 1, 2023, Justice Law
21		Corporation filed a Notice of Disassociation of
22		Counsel. Lawyers for Justice, P.C. will no
23		longer seek to represent the Class Members or
24		the Aggrieved employees in this matter. The
25		fee-sharing agreement has also been revoked.
26		(See Supp Han Decl., ¶ 9.)
27		///
28		///

	The Settlement Agreement was amended to remove Lawyers for Justice, P.C. as “Class Counsel” and have removed all reference to Lawyers for Justice, P.C. (Supp Han Decl., <i>supra</i>, Exhibit 1, at §II, ¶ 6.) The Class Notice was modified accordingly. (Supp Han Decl., <i>supra</i>, at ¶ 4; Exhibit 2.)
(3) Certain substantive terms of the settlement.	The Parties have stipulated to file a Second Amended Complaint that adds additional facts in support of the allegations to help narrow the scope of the release. (Supp Han Decl., <i>supra</i>, at ¶ 5; Exhibit 3) The Settlement Agreement has been amended to tailor the release language to the pertinent claims, removed the instances of “including but not limited to” clauses and included the standard carve-outs for unrelated claims or claims not permissibly subject to release in connection with the wage-and-hour settlement. (Supp Han Decl., <i>supra</i>, Exhibit 1 at §II , ¶ 9) Moreover, the Settlement Agreement has struck the former Paragraph 11.2 and 11.4 from the Agreement, which the Court believed may unduly limit the ability of Plaintiffs and their counsel to communicate with class

1		members throughout the settlement process.
2		(Supp Han Decl., <i>supra</i> , Exhibit 1 at §XI)
3		
4		The Class Notice was modified to match the
5		release language.
6		
7		(Supp Han Decl., <i>supra</i> , at ¶ 4; Exhibit 2)
8	(4) Class Counsel’s use of stacked percentage	Plaintiffs’ moving papers and Declaration of
9	discounts for the risk attendant to certification	Douglas Han in Support of Motion for
10	and trial.	Preliminary Approval provided an illustrative
11		chart identifying the theory of liability, their
12		potential exposure and certification risks.
13		(See Declaration of Douglas Han in Support of
14		Plaintiffs’ Motion for Preliminary Approval,
15		<i>supra</i> , at ¶ 53.)
16		Class Counsel’s rationale and justification for
17		the discounts are explained in paragraphs 55 to
18		65 to the Declaration of Douglas Han in
19		Support of Plaintiffs Motion for Preliminary
20		Approval explaining the probability of success
21		and risks. (See <i>Id.</i> at ¶¶ 55 to 65).
22		The use of the stacked percentages are
23		explained below to illustrate the certification
24		and merits risks are explained in detail below.

25

26 ///

27 ///

28 ///

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$5,726,044.90	70%	60%	\$687,125.39
Meal Break Premiums	\$6,140,110.68	60%	50%	\$1,228,022.14
Overtime/Minimum Wage: Off-the-Clock Work	\$6,739,221.72 to \$10,108,832.60	65%	50%	\$1,179,363.80 to \$1,769,045.70
Overtime/Minimum Wage: Rounding	\$428,030.33 to \$642,045.49	30%	50%	\$149,810.62 to \$224,715.92
Overtime/Minimum Wage: Regular Rate	\$1,938,690	30%	40%	\$814,249.80
Overtime Wage: Alternative Workweek	\$2,301,437.36	30%	50%	\$805,503.08
Unreimbursed Business Expenses	\$3,539,940	25%	60%	\$1,061,982
Wage Statement Penalty	\$3,014,550	30%	30%	\$1,477,129.50
Waiting Time Penalty	\$4,406,054.40	30%	30%	\$2,158,966.66
MAXIMUM TOTAL EXPOSURE	\$34,234,079.39 to \$37,817,705.43			\$9,562,152.99 to \$10,226,740.19

Class Counsel believes that there is a two-step analysis when assessing exposure in these type of cases. The first step analyzes the risk or likelihood of class certification on a certain theory. The next step, assuming class is certified, address likelihood of prevailing on the merits of the case. The “Potential Exposure” column is the exposure if class is certified and Plaintiffs prevail on the merits. “Certification Risk” is percentage of discount applied due to the risk of certifying the particular theory. For example, for the rest break theory, Class Counsel attributed 70% risk discount or believed that there was only a 30% chance that this theory would be certified and remain certified through trial. Hence, of the \$5,726,044.90 in Rest Break premium exposure, taking account the risk of certification the exposure would be \$1,717,813.47 ($\$5,726,044.90 \times .30$ (likelihood of certification) = \$1,717,813.47). Next, starting with the discounted Certification Risk value, Class Counsel further discounted the risk or likelihood of prevailing on the merits of the claim. In the same example, Class Counsel believed there was only 40% chance of prevailing on the merits, thus, applied a 60% discount resulting in a “Realistic Exposure” of \$687,125.39 ($\$1,717,813.47 \times .40$ (likelihood of success on the merits) = \$687,125.39).

1 The illustrative chart and Class Counsel’s discount/risk analysis provides the court with
2 “an understanding of the amount that is in controversy and the realistic range of outcomes of the
3 litigation.” *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* 186 Cal.App.4th 399, 408 (2010)
4 *citing Kullar v. Foot Locker Retail, Inc.* 168 Cal.app.4th 116, 120. The Declaration of Douglas
5 Han in Support of Plaintiffs’ Motion for Preliminary Approval provides sufficient facts to
6 establish the record to determine that this settlement is fair and reasonable. Considering the
7 revisions in the class definition, scope of the release and modification of other settlement terms to
8 the Court’s satisfaction, the Court should find the settlement fair and reasonable.

9
10 Dated: October 6, 2023

JUSTICE LAW CORPORATION

11
12 By: 
13 Douglas Han
14 Attorney for Plaintiffs
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **PROOF OF SERVICE**
2 **1013A(3) CCP**

3 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

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

7 On October 6, 2023, I served the foregoing document described as

8 **PLAINTIFFS' SUPPLEMENTAL BRIEF IN SUPPORT OF PRELIMINARY**
9 **APPROVAL OF CLASS ACTION SETTLEMENT**

10 for the following case: **Ramirez, et al. v. Delta Dental of California**
11 LWDA/Court Case No.: **LWDA Case No.: CM- 891853-22**
Court Case No.: CGC-21-589648
San Francisco County Superior Court

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

13 State of California
14 Labor & Workforce Development Agency
15 800 Capitol Mall, MIC-55
Sacramento, California 95814

16 **[X] BY ELECTRONIC SUBMISSION**

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

19 **[X] STATE**

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

22 Executed on October 6, 2023, at Pasadena, California.

23 

24
25 Mariah Anderson
26
27
28