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Attorney for Jayson Arrington individually and on behalf of all others similarly situated.

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

JAYSON ARRINGTON, individually and on
behalf of others similarly situated,

PLAINTIFF

v.

POPCORNVAN, INC.; and DOES 1 through
100, inclusive,

Defendants

Case No: CGC-22-600445

**DECLARATION OF SCOTT NAKAMA
IN IN SUPPORT OF PLAINTIFF'S
MOTION FOR APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing Date: June 27, 2024

Hearing Time: 9 am

Department: 304

Judge: Judge Ethan P. Schulman

I, Scott S. Nakama, declare:

1. I am attorney at law duly licensed to practice before all state courts in California,
the United States Northern District of California, the United States Central District of California,
the United States Eastern District of California, and the United States Court of Appeal for the

1 Ninth Circuit. This declaration is submitted in support of Plaintiff’s Motion for Preliminary
2 Approval of Settlement Agreement.

3 2. I am a member of the State Bar of California. I am one of the attorneys of record
4 for name plaintiff Jayson Arrington (“Plaintiff” or “Class Representatives”).
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6 3. I was admitted to the California State Bar in 2014. I submit this motion in support
7 of the Motion for Preliminary Approval of the Class Settlement. The facts set forth below are
8 within my personal knowledge, and if called before the Court to testify to these facts I could and
9 would do so competently.

10 4. On June 29, 2022, Plaintiff filed a putative class action against Defendant, entitled
11 *JAYSON ARRINGTON v. POPCORN VAN*, in SAN FRANCISCO County Superior Court, Case No.
12 CGC-22-600445 (the “Action”) seeking to represent a class consisting of the “current” and former
13 Class Members of Defendant for claims related to alleged unpaid overtime wages, waiting time
14 penalties, meal and rest breaks. On October 26, 2022, Plaintiff filed his First Amended Class
15 Action against Defendant adding a PAGA Claim. On May 20, 2024, Plaintiff filed a Second
16 Amended Complaint seeking the following claims (1) Violations of the Labor Code sections
17 1194(a) and 510 (failure to pay all wages); (2); Failure To Timely Pay All Wages Upon
18 Termination; (3) Violation of California Labor Code section 226.7 (Failure To Afford Mandatory
19 Rest Breaks and Meal Periods); (4) Labor Code § 432.3; (5) Inaccurate Records (Cal. Labor Code
20 §§ 1174.5); (6) Failure To Provide Accurate Itemized Wage Statements (Violation of Labor Code
21 section 226); (7) Violation of Cal. Business and Professions Code §17200; (8) Wrongful
22 Termination; (9) Labor Code Section 1102.5; (10) Labor Code Section 6310; (11) California
23 Private Attorneys’ General Act (“PAGA”), and (12) Failure to Pay Sick Pay, 13) Conversion for
24 unpaid tips, (14) Reimbursement for expenses, and (15) Minimum Wages.. The Second
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1 Amended Complaint added the latter three claims. Plaintiff claims that he should be able to seek
2 damages and penalties for allegations going back to June 29, 2018.

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4 **Declarant's Background**

5 5. I have been practicing in the area of plaintiff's employment litigation since June
6 2015, and have represented Plaintiffs in cases involving discrimination, harassment, retaliation,
7 wage and hour violations, wrongful termination and fraudulent business practices.

8 6. I have substantial experience in Employment Law, and Class Actions. Since my
9 admission to the bar, I have represented numerous parties in civil actions of various types and
10 degrees of complexity. I have handled actions relating to employment law and unpaid wages over
11 the last 8 years.

12 7. I graduated from Case Western Reserve School of Law in Cleveland, Ohio. During
13 law school, I was a Co-Managing Editor of the Journal of Law, Technology & Internet where I
14 supervised over 20 law students and was a member of the Willem C. Vis International
15 Commercial Arbitration Moot Team that placed as quarterfinalists out of 60 plus teams.

16 8. From June 2, 2015 to March 2020, I was employed as an attorney with Burton
17 Employment Law where 100% of my cases were employment related issues. I estimate that I
18 worked on over 160 cases as an employee of Burton Employment Law.

19 9. As an attorney for Burton Employment Law, I worked on a class action and
20 California Private Attorney Generals Act ("PAGA") claim entitled *Neroza v. Vo's Restaurant*
21 *Company*, Alameda County Superior Court, Case NO. RG1052261 where Plaintiff received an
22 individual and PAGA judgment exceeding \$1,000,000.

23 10. In 2017, as an Attorney for Burton Employment Law, I represented Aries Simmons
24 in a PAGA claim against CALIFORNIA LOGISTICS, INC. DBA DILIGENT DELIVERY
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1 SYSTEMS, Alameda County Case NO. 17863988, alleging the following causes of action: 1.
2 Misclassification as independent contractor-PAGA; 2. Failure to pay overtime- PAGA; 3. Failure
3 to provide Meal Breaks-PAGA; 4. Failure to Provide Rest Breaks-PAGA; 5. Failure to Timely
4 Pay Wages- PAGA; 6. Failure to provide Paid Sick Leave-PAGA; 7. Failure to Furnish Complete
5 and Accurate Itemized Wage Statements -PAGA; 8. Failure to Pay all Wages Due Upon
6 Termination; 9. Failure to Indemnify Employees for Expenses- PAGA; 10. Unlawful Deductions-
7 PAGA; 11. Failure to keep Payroll Records; and 12. Failure to Pay Minium Wages-PAGA. I
8 assisted lead counsel Jocelyn Burton with defeating two Motions to Compel Arbitration by
9 Defendant DILIGENT DELIVERY SYSTEMS. Later, the case was coordinated with two other
10 related cases filed after the *Simmons* case entitled Judicial Counsel Coordinated Proceeding
11 JCCP004990. I worked on the coordinated case until I left Burton Employment Law in March
12 2020. I did a significant amount of work for the coordinated case including propounding and
13 responding to discovery including obtaining the contact list for the aggrieved employees. On June
14 30, 2023, the Alameda County Superior Court issued an order approving the PAGA settlement of
15 \$2,836,667 including attorneys' fees of \$1,400,000 and costs up to \$150,000.

18 11. In 2018, as an attorney for Burton Employment Law, I represented Keith White
19 who filed a Complaint in the United States District Court for the Northern District of California,
20 Northern District of California, Case No. 4:18-cv-03375-JST, against GEO REENTRY
21 SERVICES, LLC. The Complaint contains the following causes of action: (1) PAGA claim for
22 failure to pay overtime; (2) violation of the Fair Labor Standard Act (FLSA) 29 U.S.C. § 207 for
23 failure to pay overtime(an individual claim); (3) PAGA claim for failure to pay timely wages; (4)
24 PAGA claim for failure to furnish complete and accurate itemized wage statements; (5) PAGA
25 claim for failure to pay all wages upon termination; and (6) PAGA claim for failure to reimburse
26 business expense. On August 10, 2019, I represented Lashana Clifton in a PAGA lawsuit filed in
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1 the Northern District, Case NO. 4:19-cv-04640-JST against GEO REENTRY SERVICES, LLC.
2 I worked on the Clifton and White cases until I left Burton Employment Law in March 2020. I
3 did a significant amount of work for both the *Clifton* and *White* matters while at Burton
4 Employment Law. The Clifton and White cases were later consolidated with *Jimenez v. GEO*
5 *REENTRY SERVICES*, Orange County Superior Court CASE NO. 30-2019—01072491-CU-OE-
6 CXC and a judge granted preliminary approval of the class action settlement in November 2021
7 and final approval on June 22, 2022 for \$1,300,000 on behalf of 1,200 class members.

9 12. As an attorney for Burton Employment Law, I worked on a federal appeal with the
10 U.S. Equal Employment Opportunity Commission (“EEOC”) entitled *Gainer v. Peter O’Rourke,*
11 *Acting Secretary, Department of Veterans Affairs*, Appeal NO. 0120162172. There, I drafted the
12 appellate brief and assisted lead counsel with overturning the federal agency’s final decision as to
13 claims of sexual harassment, disability discrimination, and retaliation. The EEOC reversed the
14 federal agency’s decision in my client’s favor. The case was published by the EEOC, available at
15 https://www.eeoc.gov/sites/default/files/migrated_files/decisions/0120162172.pdf.

17 13. From March 2020 to the present, I have been employed as an attorney with the
18 Ladva Law Firm. I worked on approximately 80 employment cases with Ladva Law Firm.

19 14. From 2021 to 2022, as an attorney for Ladva Law Firm, I was lead counsel in a
20 wage and hour case in United States District Court for the Northern District of California entitled
21 *Reyes v. Hearst Communication INC.*, CASE NO. 4:21-cv-03362-PJH. During that case, the
22 employer appealed the District Court’s decision denying the employer’s Motion to Compel
23 Arbitration. In response, I prepared an appellate brief. Ultimately, the 9th Circuit affirmed the
24 District Court’s decision in an unpublished opinion denying the Motion to Compel Arbitration.

25 15. In 2023, as an employee of Ladva Law Firm, I represented over one hundred and
26 sixty-five former employees in a wage and hour class action entitled *Pena v. JB Critchley*, Fresno
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1 County Superior Court Case No. 17CECG03274 with the Law Offices of Daniel Vega. We
2 successfully litigated and certified a class-wide and court approved settlement pre-class
3 certification that included payments for owed overtime. The total amount of the settlement was in
4 excess of \$300,000.00.

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6 16. On August 27, 2021, my office filed a putative class action entitled *Hector Estrada*
7 *v. GLASSFAB TEMPERING SERVICES INC.*, in SAN JOAQUIN County Superior Court, Case
8 No. STK-CV-UOE-2021-8051 with the Law Offices of Daniel Vega to represent a class
9 for claims related to alleged unpaid overtime wages, meal and rest breaks, specifically, (1)
10 Violations of the Labor Code sections 1194(a) and 510 (failure to pay overtime wages); (2)
11 Violation of California Labor Code section 226.7 (failure to provide meal and rest breaks); (3)
12 Violation of Labor Code section 226 (failure to provide accurate itemized wage statements); (4)
13 Violation of Labor Code section 510 and 204 (failure to pay all wages and overtime wages); (5)
14 Violation of Labor Code section 201, 202, 203, and 203.1 (waiting time penalties); (6) Unfair
15 Competition in Violation of Cal. Business and Professions Code §17200; (7) Unjust Enrichment;
16 and (8) Declaratory relief behalf of himself and other employees of the Company. On March 14,
17 2024, the Court granted Plaintiff's Motion for Final Approval of the Class Action Settlement of
18 \$345,000.00.

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21 17. In my last request for attorney fees in California Superior Court, the Court
22 approved a rate of \$450.00 per hour.

23 18. During the litigation, I conducted extensive legal and factual research, including
24 interviews with Plaintiff and declarants, calculating damages, preparing the mediation brief, and
25 finalizing the motion for preliminary approval.

26 19. Performing this work for the benefit of the Class precluded Class Counsel from
27 accepting other work.
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1 20. Class Counsel's lodestar will continue to increase as Class Counsel continues to
2 perform work for the Class overseeing the settlement.

3 21. I maintain my time and billing records contemporaneously and expended
4 approximately 76 hours litigating this matter.

5 22. Class Counsel managed the work by efficiently allocating tasks to individuals and
6 avoiding duplication of effort.

7 23. Our rates are consistent with the market for attorneys with comparable experience
8 in San Francisco.

9 24. Class Counsel have also been awarded attorneys' fees at or near the rates they
10 request here.

11 25. The Parties discussed at length the burdens and risks of continuing with the
12 litigation as well as the merits of claims and defenses. After the mediation, the Parties then signed
13 a long form settlement agreement.

14 26. Plaintiff and Class Counsel are aware of the burdens of proof necessary to establish
15 liability for the claims asserted in the Action, both generally and in response to Defendant's
16 defenses thereto.

17 27. Plaintiff and Class Counsel have determined that the Settlement set forth in this
18 Agreement is a fair, adequate, and reasonable Settlement and is in the best interests of the Class.
19 Solely for the purpose of settling this case, the parties agree that the requirements for establishing
20 class action certification with respect to this class have been met and are met. If this Settlement is
21 not approved by the Court for any reason, Defendant reserves its right to contest class
22 certification. This Settlement, if approved, will result in the termination of the litigation through
23 the entry of the Judgment and the release of all Released Claims for all Class Members, including
24 all within the class definition who have not elected to exclude themselves from the Class.
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1 28. Class Counsel managed the work by efficiently allocating tasks to individuals and
2 avoiding duplication of effort.

3 29. The settlement is fair and reasonable based on my review of documents,
4 independent investigation, and analysis of the risks.

5 30. With respect to the claims asserted on behalf of the Class in this case, there are
6 serious risks that support this compromise amount. These risks include, but are not limited to: (i)
7 the risk that Plaintiff would be unable to establish liability for unpaid wages; (ii) the risk that
8 Defendant's meal and rest period policies might not ultimately support class certification or a
9 class-wide liability finding; (iii) the risk that uncertainties about the ultimate legality of
10 Defendant's policies and practices could preclude class-wide awards of statutory penalties; (iv) the
11 risk that individual differences between Class Members could be construed as pertaining to
12 liability and not solely to damages; (v) the risk that any civil penalties award under PAGA could
13 be reduced by the Court in its discretion; (vi) the risk that class treatment could be deemed
14 improper as to one or more claims, except for settlement and (vii) that 25% of the class size is
15 decreased by Defendant enforcing arbitration agreements. These risks are non-exhaustive.
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18 I declare under penalty of perjury that the foregoing is true and correct, that I could testify
19 competently thereto if called upon to do so, and that I executed this Declaration on the 31st day of
20 May 2024, in the City and County of San Francisco, California.
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24 _____
25 Scott Nakama
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