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

18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SAN FRANCISCO**

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

22 Plaintiff

23 v.

24 POPCORNVAN, INC.; and DOES 1 through
25 100, inclusive,

26 Defendants

Case No: CGC-22-600445

**DECLARATION OF ASHWIN LADVA
IN SUPPORT OF PLAINTIFF'S
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing Date: June 27, 2024

Hearing Time: 9 am

Department: 304

Judge: Judge Ethan P. Schulman

1 I, Ashwin Ladva, declare:

2 1. I am attorney at law duly licensed to practice before all state courts in California,
3 the United States District Court for the Northern District, the United States District Court for the
4 Eastern District, and the United States District Court for the Central District. This declaration is
5 submitted in support of Plaintiff's Motion for Approval of Settlement Agreement.

6 2. I am a member of the State Bar of California. I am one of the attorneys of record
7 for name plaintiff Jayson Arrington ("Plaintiff" or "Class Representatives").

8 3. I was admitted to the State Bar in 2000. I submit this motion in support of the
9 Motion for Preliminary Approval of the Class Settlement. The facts set forth below are within my
10 personal knowledge, and if called before the Court to testify to these facts I could and would do so
11 competently.

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

3 5. In addition to interviewing our client and reviewing all relevant documents in his
4 possession (time sheets, schedules, pay stubs), the parties exchanged informal discovery including
5 Defendant producing wage and hour human resource policies, sample severance agreements,
6 sample arbitration agreements, full- and complete-time records of class members including the
7 number of work weeks of putative class members, and wage statements from class members.

8 6. Through the discovery process the Parties estimate that there are approximately
9 221 Class Members. The Parties agree that the Class Members, include but are not limited to any
10 current or former employees, from June 29, 2018 until May 31, 2024 (the “Class Period”). The
11 majority of the class only worked between September 1, 2021 until December 31, 2022. After
12 reviewing documents regarding Defendant’s wage and hour policies and practices and other
13 information obtained during the informal exchange of discovery, Class Counsel were able to
14 evaluate the probability of class certification, success on the merits, and the reasonable obtainable
15 maximum monetary exposure for all claims. Class Counsel reviewed these records and prepared a
16 damage analysis prior to mediation. Class Counsel also investigated the applicable law regarding
17 the claims and defenses asserted in the litigation.

18 7. The Parties engaged in a mediation on December 18, 2023 with the Honorable
19 Wilfred Smith. Prior to the mediation I reviewed payroll records (approximately 2083 total
20 workweeks that contained over 15,760 punch records). This amounted to a 40% sample size of
21 the 5,316 workweeks during the class period. The settlement discussions were conducted at arm’s-
22 length and involved an informed and detailed analysis of Defendant’s potential liability of total
23 exposure in relation to the costs and risks associated with continued litigation. Discussions
24 between counsel for the Parties, informal discovery, as well as the investigation and evaluation of
25 the allegations in the Complaint by the Parties, have permitted each side to assess the relative
26 merits of the claims and defenses to those claims.
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8. Based on class-wide documents produced, as well as Plaintiff's counsel's own independent investigation, review of defendant's payroll and time keeping records, Plaintiff's counsel believes that the settlement with Defendant for the consideration and on the terms set forth in this Agreement is fair, reasonable, and adequate, and is in the best interest of the Class Action Members in light of all known facts and circumstances, including the risks of significant delay and uncertainty associated with litigation and various defenses asserted by Defendant.

9. I have been involved in employment class actions since 2001 when I began my legal career. I am familiar with state and federal wage and hour laws, and regularly advise clients about wage and hour compliance issues. Based on my experience with class action settlements, I can represent to the Court that the proposed settlement is the result of arm's-length bargaining.

Declarant's Background

10. I graduated in 1999 from the University of California, Hastings College of the Law (now known as University of California College of the Law, San Francisco). After a short stint of working for a defense firm I began performing contract work for firms specializing in Employment Law and Personal Injury. Currently, more than 50% of the cases that I personally work on deal with Employment related issues.

11. I am the principle of the Ladva Law Firm (formerly Ladva, Shoker & Associates),
a law firm established in July 2000.

12. I have been practicing in the area of plaintiff's employment litigation since June 2000, and have represented Plaintiffs in cases involving discrimination, harassment, retaliation, wage and hour violations, wrongful termination and fraudulent business practices.

13. I have substantial experience in Employment Law, and Class Actions. Since my admission to the bar, I have represented numerous parties in civil actions of various types and degrees of complexity. I have handled actions relating to employment law and unpaid wages over the last 10 years. Additionally, I have served as class counsel in wage and hour class action cases.

1 14. In 2006, I filed a class action entitled *Harbans v. HFS North America*, Fresno
2 County Superior Court Case No. RG06296440. We alleged violations of the wage and hour, meal
3 and rest period and failure to maintain employees' pay records and to make those records available
4 on request. On November 3, 2008, the Honorable Judge Steven Brick of Fresno County Superior
5 Court took under submission Plaintiffs' Motion for Final Approval of Class Action Settlement
6 Agreement. The matter settled for over \$3,000,000. Counsel for plaintiff received and requested
7 attorney fees of over \$1,072,705.75 and costs amounting to over \$120,000. We successfully
8 litigated a class-action lawsuit involving more than 200 truck drivers; that litigation eventually
9 resulted in a three million dollar settlement pre-class certification.
10

11 15. From 2012 to 2013, I co-represented with the Law Offices of Daniel Vega, over
12 twenty-five former employers in a wage and hour class action entitled *Ortiz v. All West Container*
13 *Co.*, San Mateo County Superior Court Case No. CIV 502267. We successfully litigated a class-
14 wide and court approved settlement pre-class certification that included payments for miss-meal
15 breaks.
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17 16. In 2015, I co-represented with the Law Offices of Daniel Vega, over seventy-five
18 former employees in a wage and hour class action entitled *Mineo v. Citysightseeing*, San Francisco
19 County Superior Court Case No. CGC-10-504804. We successfully litigated and certified a class-
20 wide and court approved settlement pre-class certification that included payments for owed
overtime.
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22 17. In 2017, I co-represented with the Law Offices of Daniel Vega, over thirty-four
23 former employers in a wage and hour PAGA action in *Carrillo v. Fante*, San Mateo County
24 Superior Court Case No. CIV CIV505477. We successfully litigated a class-wide and court
approved settlement pre-class certification that included payments for miss-meal breaks.
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26 18. On June 28, 2017, my office filed a putative class action entitled *Jose Cruz v. Copper*
27 *Skillet of Dublin, Inc.* in Alameda County Superior Court, Case No. RG17865856 (the "Action")
28 with the Law Offices of Daniel Vega seeking to represent a class consisting of the "current" and

1 former restaurant employees (servers and cooks) for claims related to alleged unpaid overtime
2 wages, meal and rest breaks, specifically, (1) violation of Labor Code §§ 201, 202, 203, 203.1,
3 226.7, 510, 1194(a), and (2) violation of Business and Professions Code § 17200 (The “Class Action
4 Members”). On November 13, 2020, the Court granted Plaintiff’s Motion for Final Approval of
5 the Class Action Settlement.

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

20 20. In my last request for attorney fees in California Superior Court, the Court
21 approved a rate of \$700.00 per hour.

22 **CLASS CLAIMS**

23 21. Plaintiff Jayson Arrington was employed by POP as a lead driver and packager
24 from approximately December 2021 to March 2022.

25 22. Plaintiff worked at Defendant’s distribution center during the class period located
26 in San Francisco County.
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1 23. Through formal and informal discovery for the purposes of mediation, Defendant
2 produced 15,760 punch records all of the aggrieved employees during the class period. Defendant
3 disclosed that there are 221 Aggrieved Employees for the PAGA claims, 211 non-exempt
4 employees who are Class Members from June 29, 2018 to May 31, 2024 after excluding 10 that
5 signed severance agreements. Of the 211 class members almost all are no longer employed by
6 Defendant, 165 class members were independent contractors and out of that 165, 32 were
7 converted to employees.
8

9 24. The Aggrieved Employees have collectively worked 5,316 workweeks during the
10 class period.

11 25. Defendant contends that it posted the Labor Board Wage Order outlining
12 employees right to all meal and rest breaks, disclosed right to breaks in company communications,
13 but Plaintiff contends that he has never seen such order during his employment with Defendant.

14 26. Defendant contends that that Class Members employees were paid all tips.

15 27. Plaintiff contends that Class Members were paid tips late.

16 28. Plaintiff contends due to nature of employment he was not permitted to take meal
17 and rest breaks regularly during his employment.

18 29. Defendant contend that Class Members were permitted to take a third 10 minute
19 rest break after a 10 hour shift pursuant to posted California Wage Orders.

20 30. Class Members worked 506 shifts of 10 or more hours in 2022. Plaintiff however
21 regularly work shifts over 10 hours.

22 31. Plaintiff contends he regularly worked shifts of 10 plus hours without receiving a
23 second meal break and a third rest break throughout the approximately 5 months he was employed
24 during the class period. Defendant did not pay him any premium pay for missed meal and rest
25 breaks.
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1 32. Plaintiff's experiences were similar to other class members as he did not receive all
2 rest or meal breaks. The sample time records of class members also clearly indicate that Class
3 Members did not receive a second meal break after working ten hours.

4 33. Plaintiff Arrington worked for Defendant as both an independent contractor and
5 also as a non-exempt employee and paid a base wage per hour for all hours worked.

6 34. During the class period, POP employed 221 non-exempt employees in the State of
7 California, of which almost all are no longer with the company.

8 35. POP strongly denies that Plaintiff's allegations have any merit. Although the
9 Company considers these class allegations meritless, POP recognized that continuing to defend
10 this lawsuit will cost the Company a lot of time and money. With this in mind, and in an effort to
11 avoid continuous costly, disruptive, and time-consuming litigation

12 36. POP resolved the claims individually and obtained releases from approximately 10
13 former employees excluding the PAGA claims relating to those 10 Aggrieved Employees.

14 37. POP also contends of the 221 former employees, 58 signed arbitration agreements
15 and thus, Plaintiff does not have standing to assert any class claims on behalf of those 58
16 Aggrieved Employees.

17 38. At the conclusion of the December 18, 2023 mediation, Defendant agreed to
18 contribute \$250,000 to settle this matter. Per the agreement, each of the Class Members will
19 receive an individual Class Payment and PAGA Payment (if any) depend on how many
20 workweeks the class member worked during the Class Period and how many Pay Periods the Class
21 Member worked during the PAGA Period, respectively.

22 39. Plaintiff also recognized the risk that any PAGA award could be significantly
23 reduced. Many of the causes of action brought were duplicative of the statutory claims such as
24 violations of California Labor Code §§ 226.7, 510, 512(a), 1194, 1198 and 2802. Thus, the
25 maximum penalties for each pay period are not justified. It was indeed arguable whether the
26 Court would award the maximum penalties under the law. Thus, allocating \$20,000 to PAGA
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1 civil penalties was reasonable based on damages and risks of proceeding, given the fact that
2 Defendants are also paying an additional \$230,000.00 in the Class settlement. Where PAGA
3 penalties are negotiated in good faith and "there is no indication that [the] amount was the result of
4 self-interest at the expense of other Class Members," such amounts are generally considered
5 reasonable. *Shiferaw v. Sunrise Senior Living Mgmt., Inc.*, NO., 2017 U.S. Dist. LEXIS 237895, *
6 44 (C.D. Cal. March 29, 2017) (quoting *Hopson v. Hanesbrands Inc.*, NO. CV-08-0844 EDL,
7 2009 U.S. Dist. LEXIS 33900, * 9 (N.D. Cal. Apr. 3, 2009).

8
9 40. There were 52 pay periods per year.

10 41. The likelihood certification and merits risks for collecting damages for meal and
11 rest break violation is very high.

12 42. During the period of June 29, 2018 to May 31, 2024 there are 5,316 workweeks.

13 43. The number Class Period Workweeks and number of PAGA Period Pay Periods
14 the class member worked will be stated on the first page of this Notice.

15 44. Further, Plaintiff claim - and POP deny - that Plaintiff and the Class Members are
16 entitled to waiting time penalties under Labor Code § 203 due to POP' failure to pay its hourly-
17 paid and non-exempt employees for overtime, time worked off-the-clock, and missed meal and
18 rest breaks. If Plaintiff were to prevail on one of the above claims, it would lead to waiting time
19 penalties unless POP had a good faith legal dispute. Subtracting the 10 class members who signed
20 severance agreements, Plaintiff calculate POP' total exposure as to the claim for waiting time
21 penalties to be approximately \$1,114,080.00 ((8 hours/day x \$22.00[average hourly rate] x 30
22 days = \$5,280) x 211 [terminated employees] = \$1,114,080.00).

23 45. Plaintiff claim - and POP deny - that POP are liable for failure pay regular wages
24 and liquidated damages equal to any unpaid minimum wages. If an employer fails to pay an
25 employee at least the minimum wage, then the employee can recover the total in unpaid minimum
26 wages, plus an additional penalty of "liquidated damages" in an amount equal to the minimum
27 wages owed. If each class member had worked .5 hours off the clock over the 5,316 work weeks
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1 then they would be owed a total of \$58,467.00. They would also be entitled to the equivalent
2 amount of \$58,467.00 in liquidated damages. Defendants may be able to show that whether an
3 employee did work unpaid regular (minimum wage violation) is an individualized inquiry and
4 Class Members that logged all their hours were paid for all hours worked. In addition, Defendants
5 may be able to show a number of employees tracked and reported their hours and were paid the
6 correct amount. Further, Defendants may be able to show that they did not know or have reason
7 to know that Class Members worked off the clock. The liquidated damages amount equal to the
8 amount of unpaid wages not paid at minimum rate of pay would be subject to the same defenses.
9

10 46. Plaintiff claim - and POP deny - that POP are liable for overtime wages for any off
11 the clock hours. If the 211 Class Members had worked .5 hours off the clock of overtime over the
12 5,316 work weeks then they would be owed a total of \$87,714.00 based upon an overtime rate of
13 \$33.00 dollars. Defendants again may be able to show that whether an employee worked overtime
14 hours off the clock hours is an individualized inquiry and Class Members that logged all their
15 hours were paid for all hours worked. In addition, Defendants may be able to show a number of
16 employees tracked and reported their hours and were paid the correct amount. Further, Defendants
17 may be able to show that they did not know or have reason to know that Class Members worked
18 off the clock.

19 47. Plaintiff also claim - and POP deny - POP failed to pay all tips and/or bonuses. This
20 resulted in Defendants not paying employees all owed earnings and is the basis for the conversion
21 claim. Although Plaintiff's calculations result in a negligible amount, the existence of any amount
22 here entitles Plaintiffs to waiting time penalties. POP denies that any of the conditions for
23 receiving the bonus were met and all tips were paid to workers. However, if POP had paid owed
24 tips or bonus equivalent to \$50.00 per class member (211), this amount would total \$10,550.00.
25 Defendant contends the claims for conversion will fail since all tips were paid and any late or non-
26 payment was not willful. Furthermore, tips would not be a factor in calculating overtime payment
27 and would not affect worker's regular rate of pay.
28

1 48. Plaintiff claim - and POP deny - that POP are liable for wage statement statutory
2 penalties pursuant to Labor Code § 226(a)(e). Plaintiff contend that, based on the sample data,
3 POP failed to accurately record hours worked by putative class members and, as a result, issued
4 wage statements that failed to state accurate number of hours worked, thereby triggering wage
5 statement penalties. Further, Plaintiff contends that Defendant issued wage statements listing the
6 wrong gross and net wages by failing to pay Class Members with premium pay for missed breaks.
7 Plaintiff calculate POP' total exposure as to the claim for wage statement penalties to be
8 approximately \$844,000.00 (211 employees x (Maximum penalty of \$4000 per class member)).
9 Defendant claims any error in wage statements was not willful, the maximum \$4000 is not
10 warranted because the majority of Class Members did not work for longer than a year, and all
11 wages and tips were paid to workers during their employment.
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13 49. The provisions of the Labor Code potentially triggering PAGA penalties in this
14 case include, but are not limited to, Labor Code sections 201, 202, 203, 226(a), 226.3, 226.7,
15 432.5, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. POP asserted that,
16 regardless of the results of the underlying causes of action, PAGA penalties are not mandatory but
17 permissive and discretionary. POP maintained that, in addition to its strong arguments against the
18 underlying claims, they had a strong argument that it would be unjust to award maximum PAGA
19 penalties given the current unsettled state of law. The “PAGA Period” means the period from June
20 21, 2021 to May 31, 2024.

21 50. Based on at least one violation in every pay period for 5,316 pay periods, Plaintiff
22 calculated the minimum exposure as about \$531,600.00, assuming a violation rate of \$100 per pay
23 period. Given these risks, Plaintiff calculated that the total realistic recovery at trial could range
24 from \$22,100 (assuming at least \$100 award per aggrieved employee for violating Labor Code
25 Section 432.3 and 432.5) to \$531,600.00. This wide range of potential recovery and the additional
26 delays and risks of trial justified settling at this point for a reasonable amount of recovery for the
27 LWDA and per aggrieved employee.
28

1 51. Based on at least one violation for 221 aggrieved employees, Plaintiff calculated
2 the exposure as about \$22,100, assuming a violation rate of \$100 per aggrieved employee for
3 violations of Labor Code sections 432.3 and 432.5 for requesting earnings history.

4 52. Class Counsel calculated penalties under this cause of action by multiplying the
5 number of active Class Members (because of the shortened statutory period for this claim) by the
6 civil penalties that each could be awarded for the Labor Code sections enumerated under Labor
7 Code section 2699.5 that were applicable in this case. Class Counsel then applied discounts in
8 light of the countervailing arguments concerning the other causes of action, as well as the Court's
9 power to award "a lesser amount than the maximum civil liability." Lab. Code § 2699(e)(2).
10

11 53. Given the state of the law and the range of PAGA penalties requested and actually
12 awarded in California courts, it is difficult to determine a reasonable value and actual exposure
13 for PAGA penalties. Defendant disclosed that there were 211 Class Members and 221 Aggrieved
14 Employees employed during the PAGA period (10 individuals who signed separation agreements
15 are excluded as Class Members but are considered Aggrieved Employees pursuant to the PAGA.).
16 However, if PAGA penalties are granted on at least one of the violations alleged in the Action
17 excluding the violations of Labor Code Section 423.5, the minimum penalties exposure for the
18 eligible pay periods could be approximately \$531,600 (\$100 x 5,316 pay periods between
19 6/21/2021 to 5/31/2024).

20 54. Plaintiff claim - and POP deny - that POP are liable for civil penalties for violating
21 Labor Code § 226(a). Plaintiff contend that, based on the sample data, POP failed to accurately
22 record hours worked by putative class members and, as a result, issued wage statements that failed
23 to state accurate number of hours worked, thereby triggering wage statement penalties. POP failed
24 to pay premium pay for missed meal and rest breaks, therefore the gross and net wages were not
25 recorded accurately on paystubs. Further, Plaintiff contends that Defendant misclassified 165
26 Class Members as Independent Contractors and therefore, the gross and net wages were incorrect
27 on paystubs. Additionally, Plaintiff contends that the wage statements inadequately listed the
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1 gross and net wages by failing to pay Plaintiff and other aggrieved employees with premium pay
2 for missed meal and rest breaks. Plaintiff calculate POP' total exposure as to the claim for wage
3 statement penalties to be approximately \$531,600 (\$100 violation x 5316 pay periods)

4 55. Plaintiff calculated POP's PAGA exposure using a hundred percent (100%)
5 violation rate based on the number of pay periods worked per employee during the PAGA time
6 period from June 29, 2021 through May 31, 2024. Multiplying the PAGA exposure by the number
7 of alleged violations under the PAGA theories of recovery (7¹) plus \$22,100 for violations of
8 Labor Code Section 432.5 and \$22,100 for violations of Labor Code Section 203 (221 aggrieved
9 employees * \$100 per violation) gives potential civil penalties of \$0 to \$3,765,400 (\$531,600 * 7
10 + \$22,100 + \$22,100).

11 56. Plaintiff also recognized the risk that any PAGA award could be significantly
12 reduced. Many of the causes of action brought were duplicative of the statutory claims such as
13 violations of California Labor Code §§ 203, 226, 226.7, 510, 512(a), 1194, and 2802. Thus, the
14 maximum penalties for each pay period are not justified. It was indeed arguable whether the Court
15 would award the maximum penalties under the law. Thus, allocating \$20,000 to PAGA civil
16 penalties was reasonable based on a rate of \$3.76 per pay period [(\$20,000 DIVIDED by 5316
17 pay periods in PAGA Timeframe)], given the fact that POP are also paying an additional \$126,500
18 in the Class settlement. Where 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 Members,"
20 such amounts are generally considered reasonable.

21 57. Excluding the PAGA penalties, which could be completely discretionary, for the
22 reasons stated the total estimated potential exposure, assuming certification and prevailing at trial,
23 would be approximately \$804,216.88.
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25

26
27 ¹ Overtime, minimum wages, expenses, tips, paystubs, meal breaks, and rest breaks.
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Category	Potential Exposure	Certification Risk	Merits Risk	Max Exposure
Rest Break (5,316 pay periods X \$22.00 (1 rest break per 5,316 workweek))	\$116,952.00	75%	75%	\$7,309.50
Meal Break (5,316 pay periods X \$22.00 (1 meal break per 5,316 workweek))	\$116,952.00	55%	55%	\$23,682.78
Unpaid Regular Wages for Off-the- Clock Work (211) (\$22 per hour * .5 hrs per workweek * 5,316))	\$58,467.00	0%	90%	\$584.67
Unpaid Minimum Wages for Off-the- Clock Work Liquidated damages	\$58,467.00	90%	90%	\$584.67
Unpaid Overtime Wages 211 Class Member (\$33.00 per hour *.5 hrs per workweek * 5,316)	\$87,714.00	90%	90%	\$877.14
Labor Code sections 432.5 (211 Former Employees X \$100.00)	\$21,100.00	25%	25%	\$11,868.75
Waiting Time Penalty (211 workers X \$5,280.00)	\$1,114,080.00	50%	50%	\$278,520.00
Wage Statement Penalty (\$4,000 to each of 211 Class Members)	\$844,000	25%	25%	\$474,750.00
Tip Claims (\$50.00 to each 211 class member)	\$10,550.00	90%	90%	\$105.00

Expense Claims (\$50 to \$211 Class Members)	\$10,550	25%	25%	\$ 5,934.37
Total	\$2,438,832.00			\$804,216.88

Please note that the amounts above can potentially be reduced by 27.4 % due to Defendant having valid arbitration agreements with 58 out of the 211 Class Members. Therefore, the class size can potentially decrease from 211 to 153 Class Members. Thus, the potential exposures can decrease by 27.4% from \$2,438,832.00 to \$1,770,592.03. Likewise, the “Max Exposure” decreases from \$804,216.88 to \$583,861.45.

58. Of the settlement fund of \$126,500.00 (After Administration Costs, Attorney Costs, Attorney Fees, PAGA and Enhancement Award), there are approximately 211 former employees who will receive \$200.00 for waiting time penalties which would leave a remainder of \$84,300.00 ($\$126,500 - \$42,200$ (211 class members * \$200 = \$42,200) = \$84,300)).

59. All past employees will receive \$100 for any claims related to wages & tip claims, inaccurate pay statements and reimbursement claims ($\$84,300 - \$21,100 = \$63,200$).

60. All employees will receive a pro rata share of the \$63,200 divided by 5316 workweeks for missed meal and rest breaks.

61. Each class member will have received \$11.88 per workweek (Pro-rata share of remaining amount) for each workweek they worked for claims related to missed rest and meal breaks. Therefore, the payments will range from 1 workweek payment of \$11.88 to up to \$1,211.76 if they worked up to 102 workweeks in the Class Period (6/21/2021 to 5/31/2024).

62. The range is determined by the following formula: \$200 for waiting time penalties + \$100 wages, tips, inaccurate pay statements and reimbursement claims + \$11.88 for each work week they worked. Therefore the range of payment to the class will be between \$311.32 to \$1,624.44.

63. Plaintiff apply a seventy-five percent (75%) certification risk and 75% merits risk discounts for rest break exposure. Defendant claim that they have always posted the relevant California Industrial Welfare Commission Wage Order providing class members with the notice

1 of the right to take rests breaks for shift and there is no evidence that Defendant deterred Class
2 Members from reading the Wage Order. "Various district courts in California have held . . . that
3 employers fulfill their duty [to provide meal periods] by posting the relevant IWC Wage Order
4 at the employee's work location and need not inform individual employees of their right to take
5 second meal breaks." *Perez v. Performance Food Grp., Inc.*, 2017 U.S. Dist. LEXIS 232637,
6 2017 WL 6940526, at *7 (C.D. Cal. Dec. 15, 2017); *see also Nguyen v. Baxter Healthcare Corp.*,
7 2011 U.S. Dist. LEXIS 141135, 2011 WL 6018284, at *6-7 (C.D. Cal. Nov. 28, 2011) (finding
8 employer's policy lawful because it posted the IWC Wage Order in its lunchroom and "no
9 evidence that [plaintiff] was somehow deterred from reading the Wage Order" was presented).
10 Moreover, Defendants did not go over their rest break policy with employees. Defendants also
11 did not have a policy to pay employees rest period premiums. For these reasons, Class Counsel
12 believes seventy-five percent (75%) certification risk discounts are justified. However,
13 Defendant may produce evidence and testimony that employees were over compensated during
14 the day and received paid meal breaks. Furthermore, the Class Members did record the number
15 of hours they worked. Defendants will contend that Class Members if they were
16 undercompensated for hours worked or rest breaks it was due to not properly recording their
17 hours.

19 64. Plaintiffs apply a fifty-five percent (55%) certification risk and fifty-five 55%
20 merits risk discounts for meal break exposure. The payroll records show a workers punched in
21 and out throughout the day. POP claims it has always provided at least 1 meal break per shift.
22 Defendant claim that they have always posted the relevant California Industrial Welfare
23 Commission Wage Order providing class members with the notice of the right to take meal
24 breaks for shift in excess of 10 hours and there is no evidence that Defendant deterred Class
25 Members from reading the Wage Order. Defendants will contend that Class Members if they
26 were undercompensated for hours worked or rest breaks it was due to not properly recording
27 their hours. Class Counsel believes this justifies additional fifty-five percent (55%) merits risk
28

1 discounts.

2 65. For unpaid overtime wages, Class Counsel believes a ninety percent (90%)
3 certification risk and a ninety percent (90%) merits risk discount are justified. Employees
4 workload required long hours but were required to clock all hours. Plaintiff contends due to
5 delivery deadlines and requirements, the supervisors and managers should have known that
6 Class Members hours were not being properly accounted for and paid. To prevail on a claim for
7 off-the-work work, Plaintiff must prove that Defendant knew or should have known that
8 Plaintiff was working off-the clock. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th
9 1007, 1051-52 (CA. 2012). POP contends that it had no reason to know of off the clock work
10 because there were no complaints of off the clock work. POP also contends there was actually
11 overpayment of employees because employees regularly record they worked shifts of 8 hours
12 every day when in fact their hours were less 8 hours. Moreover, POP contends that all tips
13 were paid by customers and therefore, Class Members' overtime rate did not increase by earning
14 a tip.

15
16 66. Plaintiff apply a ninety percent (90%) certification risk and ninety percent 90%
17 merits risk discounts for unpaid tip exposure. POP class members did receive tips from
18 customers. However the heart of the dispute is the timing of the payments and how often they
19 were paid. The amounts varied from employee. POP contends all tips were paid and also
20 contend the tips were at times overpaid when paid the following pay period when they were
21 earned. POP also contends some leads and warehouse employees that merely loaded the trucks
22 were not eligible for such tips. Therefore, Labor Code violation based upon nonpayment is
23 unlikely lead to class certification and the merit risks are high.

24 67. Plaintiff apply a ninety percent (90%) certification risk and ninety 90% merits
25 risk discounts for minimum wage and liquidated damages exposure. If an employer fails to pay
26 an employee at least the minimum wage, then the employee can recover the total in unpaid
27 minimum wages, plus an additional penalty of "liquidated damages" in an amount equal to the
28

1 minimum wages owed. Defendants may be able to show that whether Class Members worked
2 off the clock hours and were not paid (minimum wages violation) is an individualized inquiry
3 and Class Members that logged all their hours were paid for all hours worked. Class Counsel
4 believes this defense justifies a ninety percent (90%) certification risk. In addition, Defendants
5 may be able to show a number of employees tracked their time and were paid the correct amount.
6 The liquidated damages amount equal to the amount of unpaid wages not paid at minimum rate
7 of pay would be subject to the same defenses. For these reasons, Class Counsel believes a ninety
8 percent (90%) discount due to risk on the merits is justified for both the minimum wage claims
9 and liquidated damages penalty
10

11 68. Plaintiffs' § 203 claim for waiting time penalties is based on Plaintiff's claims
12 for unpaid wages, time worked off-the-clock, and missed rest and meal breaks. If Plaintiff's
13 prevail on at least one of these underlying claims, waiting time penalties would result unless
14 Defendant had a good faith legal dispute. However, Defendant may argue that any failure to pay
15 wages due and owing to employees in a timely manner was not "willful" under Labor Code §
16 203 and was instead a mistake made in good faith. For these reasons and the reasons explained
17 in the previous sections especially about Defendant posting the applicable Wage Order, Class
18 Counsel believes a fifty percent (50%) certification risk and fifty percent (50%) risk on the
19 merits are justified.

20 69. Plaintiffs' § 226(a) claim for wage statement penalties is based on Defendants'
21 failure to maintain accurate records. Defendants failed to accurately record hours worked by
22 putative Class Members and subsequently issued wage statements that failed to accurately state
23 the numbers of hours worked as well as gross and net wages in violation of the California Labor
24 Code. However, Defendants' error most likely did not affect all employees. In addition,
25 Defendants may argue that its failure to provide accurate wage statements was not "knowing
26 and intentional" under Labor Code § 226(a). Therefore, Class Counsel believes a twenty-five
27 percent (25%) certification risk and twenty-five percent (25%) risk on the merits are justified.
28

1 70. Finally, Plaintiffs' § 2802 claim is based on Defendants' not reimbursing
2 employees for expenses. However, Defendant provided the Class Members including
3 contractors with vehicles and gas to perform their deliveries. Therefore, Class Counsel believes
4 a twenty-five percent (25%) certification risk and twenty-five percent (25%) risk on the merits
5 are justified.
6

7 71. The proposed Class is ascertainable and numerous as to make it impracticable to
8 join all Class Members, and there are common questions of law and fact that predominate over
9 any questions affecting any individual Class Member. Plaintiffs' claims are typical of the claims
10 of the Class Members, and Class Counsel will fairly and adequately protect the interests of the
11 Class. Further, prosecution of separate actions by individual Class Members would create the
12 risk of inconsistent or varying adjudications, and a class action is superior to other available
13 means for the fair and efficient adjudication of the case. As discussed below, this case is
14 amenable to class certification.

15 72. The Action involves 211 Class Members. Class is sufficiently numerous. Further,
16 all Class Members can and will be identified by Defendants to the Settlement Administrator
17 through a review of Defendants' employment records concerning hourly-paid and non-exempt
18 employees employed by Defendants within the State of California during the Class Period.

19 73. Plaintiff Arrington assert that common issues of fact and law predominate as to
20 each of the claims alleged by him. All Class Members during the Class Period were subject to
21 the same or similar employment practices, policies, and procedures. All of Plaintiff Arrington's
22 claims surround Defendants' common practice and scheme of failing to maintain compliant rest
23 and meal break policies, compensation for those rest & recovery time and failing to fully and
24 properly compensate employees, infer alia, for non-compliant rest and meal breaks, off-the-
25 clock work for overtime and minimum wages, failure to reimburse expenses, and associated
26 wage statement and waiting time penalties.

27 74. Specifically, as stated earlier, Defendant's meal and rest break policies do not
28

1 comply with binding precedent, and Defendant's did not have a policy to pay premium pay for
2 meal and rest break violations. As a result, all of the Class Members, including Plaintiff
3 Arrington, were uniformly not paid for all of the hours they worked for Defendants during the
4 Class Period.

5 75. Plaintiff Arrington was a non-exempt employee. Plaintiff Arrington alleged that
6 they and the Class Members were employed by the same company and injured by Defendants'
7 common policies and practices related to rest and meal breaks, uncompensated off-the-clock
8 work, unpaid wages, untimely paid wages, and inaccurate wage statements. Plaintiff Arrington
9 seeks relief for these claims and derivative claims on behalf of all Class Members. Thus,
10 Plaintiff's claims arise from the same employment practices and are based on the same legal
11 theories as those applicable to the other Class Members.
12

13 76. Plaintiff Arrington has proven to be adequate Class Representative. He has
14 conducted himself diligently and responsibly in representing the class in this litigation, he
15 understands his fiduciary obligations, and he has actively participated in the prosecution of this
16 case. Plaintiff Arrington has spent time in meetings and conferences with counsel to provide
17 counsel with a complete understanding of his work environment and requirements. Further,
18 Plaintiff Arrington does not have any interest that is adverse to the interest of other Class
19 Members. Moreover, proposed class counsel is adequate to represent the class.

20 77. The proposed Settlement is the product of serious, informed, non-collusive
21 negotiations, has no obvious defects, does not improperly grant preferential treatment to the
22 Class Representative or segments of the Class and falls within the range of fair and reasonable
23 settlements. believe that this non-reversionary settlement is in the best interests of the Class as
24 fair, reasonable, and adequate. Therefore, I recommend approval of the Settlement.

25 78. The Settlement calls for the payment of up to \$82,500.00 for the Attorney Fee
26 Award. This request is fair, reasonable, and adequate to compensate Class Counsel for the
27 substantial work they have put into this case and, moreover, the risk they assumed by taking it
28

1 in the first place.

2 79. Plaintiff will also seek the Court a \$5,000 service award to Plaintiff.

3 80. Plaintiff's counsel will request, and Defendant and its counsel will not oppose, a
4 Class Representative Enhancement payment to Plaintiff Arrington in the amount of up to Five
5 thousand dollars (\$5,000.00), in addition to whatever payment he is otherwise entitled to receive
6 as a Class Member.

7 81. The Motion for Preliminary Approval shall ask for Twenty-thousand Dollars
8 (\$20,000.00) for a PAGA award to the State of California and up to \$9,000.00 dollars for claims
9 administration and handling. The Net Settlement Amount available to the Class Members for
10 Distribution is the Gross Settlement less payment of (1) Plaintiff's Attorney's Fees; (2)
11 Plaintiff's Costs; (3) Enhancement Payment to Plaintiff; (4) PAGA Penalties; and (5) Claims
12 Administration Costs. The parties further agree that the settlement payments shall be mailed to
13 participating class members no later than thirty (30) days after the order granting final approval
14 or the settlement becomes final.

15 82. I have practiced law in Northern California since December of 2000, with the
16 vast majority of my time focused solely on the prosecution of employment and wage and hour
17 litigation. I am aware that the common and acceptable rate for contingency representation in
18 wage and hour class action litigation is normally forty percent (40%) before trial, with the range
19 being from thirty-three and one-third percent (33.3%) up to fifty percent (50%),
20

21 83. The Attorney Fee Award is intended to reimburse Class Counsel for all
22 uncompensated work that they have already done and for all the work they will continue to do
23 in carrying out and overseeing the notification of the Class Members, communication with Class
24 Members regarding the proposed Settlement, and administration of the Settlement if the
25 Settlement is preliminarily approved. Class Counsel took this case on a contingent fee basis
26 against a business represented by a reputable defense firm. When we take contingent fee-based
27 cases, we must pay careful attention to the economics involved. Accordingly, when taking these
28

1 cases, we anticipate that we Shall, if successful, receive a fee that exceeds our normal hourly
2 rate; otherwise, the risk is often too great to bear. Even when we work long hours, the number
3 of hours in a day is limited. Therefore, when we take on one particular matter, we are unable to
4 take on other matters. When Class Counsel became involved in this case, we realized the time
5 commitment that it would entail, and we were forced to turn down matters that we otherwise
6 could have handled. We were forced to do so because of the thorough factual investigation and
7 development this case required. In sum, this case claimed a significant portion of Class Counsel's
8 time and attention throughout its pendency.
9

10 **WRONGFUL TERMINATION CLAIMS**

11 84. Plaintiff Arrington has individual claims related to his termination in March of
12 2022.

13 85. The individual claims relate to Plaintiff's safety complaints of the workplace
14 safety and making a complaint on the day he was terminated.

15 86. Following his termination, Plaintiff was unemployed for over 6 months after his
16 termination and had wages loss are in excess of \$36,960.00 due to his termination.

17 87. Plaintiff agreed to settle his individual wrongful termination claims with POP in
18 exchange for an individual settlement for his wage loss.

19 88. Ladva Law Firm and Law Firm of Daniel Vega will not receive any additional
20 sums from this individual settlement and release of claims related to Plaintiff's wrongful
21 termination claims.

22 **LITIGATION COSTS AND EXPENSES INCURRED BY Class Counsel**

23 89. The Ladva Law Firm has currently incurred approximately \$5,900 in costs and
24 litigation expenses excluding the filing of this motion. With the court fees and printout fees for
25 filing this motion and the Motion for Final Approval, I estimate that the total costs will be
26 approximately \$7,000.00. These expenses were reasonable and necessary in the prosecution of
27 this class action.
28

1 **CLASS REPRESENTATIVE ENHANCEMENT PAYMENT AND**
2 **REPRESENTATIVE PLAINTIFF ENHANCEMENT PAYMENT**

3 90. The Settlement also provides that Plaintiffs request final approval by the Court
4 for a Class Representative Enhancement Payment in the amount of\$ 5,000 to Plaintiff for his
5 time and effort serving as the Class Representative and Representative Plaintiff. The Class
6 Representative Enhancement Payment requested is fair and appropriate. The Class
7 Representative and Representative Plaintiff has spent time and effort in producing relevant
8 documents and past employment records, as well as providing the facts and evidence necessary
9 to prove the allegations. The Class Representative and Representative Plaintiff was available
10 whenever Class Counsel needed them and actively tried to obtain information that would benefit
11 the Class. Accordingly, it is appropriate and just for the Class Representative and Representative
12 Plaintiff to receive a reasonable Class Representative Enhancement Payment and Representative
13

14 91. Plaintiff Enhancement Payment in addition to their shares of the Individual
15 Settlement Share for their services on behalf of the Class Members.

16 92. **WORK PERFORMED BY CLASS COUNSEL**

17 93. Prior to the filing of the Case and continuing over the duration of the Case, Class
18 Counsel conducted a thorough investigation of the factual and legal issues. The investigation
19 entailed, among other things, the exchange of information pursuant to informal discovery.
20 Pursuant to informal discovery and in preparation for early mediation, Plaintiffs received,
21 among other things, the following information and evidence with which to properly evaluate the
22 claims: (I) Plaintiff's personnel records; (2) Class Members' demographic information (e.g.,
23 information bearing on the class size); (3) employee handbooks and procedure manuals
24 regarding, e.g., timekeeping and payroll policies and meal and rest breaks; and (4) Full- and
25 complete Class Members' time records, and (5) payroll records for the relevant period. Using
26 this information, Class Counsel was able to determine: (i) the average hourly rate of pay for
27 Class Members; (ii) the total approximate number of former and current employees who worked
28

1 during the Class Period; (iii) the total approximate number of Class Members employed during
2 the Private Attorney General Act of 2004 ("PAGA") Timeframe; and (iv) the total
3 approximate number of shifts worked by all Class Members during the Class Period.

4 94. During the litigation, the Parties analyzed numerous documents either produced
5 by Defendant or obtained by Class Counsel through other sources. Class Counsel also
6 interviewed Class Members who worked for Defendant during the Class Period, who apprised
7 Plaintiff of their experiences working for Defendant. This enabled Class Counsel to determine
8 the extent and frequency of Labor Code violations, as well as learn more about the day-to-day
9 circumstances giving rise to the alleged violations.

10 95. The documents analyzed by Class Counsel provided a critical understanding of
11 the nature of the work performed by Class Members and Defendant's policies and procedures.

12 96. They were used in analyzing liability and damages issues in connection with all
13 phases of the litigation, and ultimately with the mediation process. Overall, Class Counsel
14 performed an exhaustive investigation into the claims at issue, which included: (1) determining
15 Plaintiff's suitability as a putative Class Representative and Representative Plaintiff respectively
16 through interviews and analyses of their employment files and related records; (2) evaluating all
17 Plaintiff's potential claims; (3) researching similar wage and hour class actions to the claims
18 brought, the nature of the positions, and the type of employer; (4) interviewing putative class
19 members to gather information about potential claims, identify additional witnesses, and obtain
20 documents; (5) analyzing Defendant's labor policies and practices; (6) researching settlements
21 in similar cases; (7) evaluating Plaintiff's claims and estimating Defendant's liability for
22 purposes of settlement; (8) drafting the mediation brief and the damages analysis; (9)
23 participating in the mediation; (10) litigating to remand the Case from federal court to state
24 court; and (11) finalizing the Settlement Agreement. The extensive document and data
25 exchanges have allowed Class Counsel to appreciate the strengths and weaknesses of the claims
26 against Defendant, as well as the benefits of the proposed Settlement.
27
28

1 97. After the exchange of relevant information and evidence, the Parties agreed to
2 enter private mediation to attempt to resolve the claims in the Case. On December 18, 2023, the
3 Parties participated in a full-day mediation with former Alameda County Superior Court Judge,
4 Hon. Wilfred Smith, a respected mediator of wage and hour class actions. Hon. Wilfred Smith
5 helped to manage the Parties' expectations and provided a useful, neutral analysis of the issues
6 and risks to both sides. Under the auspices of Hon. Wilfred Smith, the Parties were eventually
7 able to reach an agreement on settlement, the terms of which were memorialized in the
8 Settlement Agreement. At all times, the Parties' negotiations were adversarial and non-
9 collusive.
10

11 98. As set forth more fully in the accompanying motion, Class Counsel seeks
12 Attorney Fee Award in the amount of \$82,500.00 (\$41,250 to Ladva Law Firm and \$41,250 to
13 Law offices of Daniel Vega) as set forth in the Settlement Agreement and the Notice Packet.
14 This percentage award is commensurate with: (1) the risk Class Counsel took in commencing
15 this action; (2) the time, effort, and expense dedicated to the case; (3) the skill and determination
16 they have shown; (4) the results they have achieved throughout the litigation; (5) the value of
17 the settlement they have achieved for Class Members; and (6) the other cases Class Counsel
18 have turned down in order to devote their time and efforts to this matter.

19 99. I am aware that the common and acceptable rate for contingency representation
20 in wage and hour class action litigation is normally forty percent (40%) before trial, with the
21 range being from thirty-three and one-third percent (33.3%) up to fifty percent (50%).

22 100. While not necessarily required to be demonstrated because the contingent fee is
23 proper for such a settlement, Class Counsel have also incurred so many hours of work in
24 connection with this case that the fee request is also justified under a simple lodestar analysis.

25 101. Since the commencement of this matter, the total hours worked by the Ladva Law
26 Firm totals 112 hours (36 hours for Ashwin Ladva (\$700 X 36 hrs = \$25,200.00), 76 hours for
27 Scott Nakama (\$450 X 76 hrs = \$34,200.00). Mr. Daniel Martinez de la Vega worked a total of
28

1 131 hours on this matter ($\$500 \times 131 \text{ hrs} = \$65,000$) for a total of \$124,400.00 in attorney fees.
2 These hours do not include the additional administrative oversight during the payment period as
3 well as preparation of the final report and reporting before the court regarding the final
4 disbursement of the Settlement.

5 102. The base lodestar fee calculation, based upon the total of worked, utilizing a
6 reasonable hourly rate that is commensurate with attorneys' experience for all firms' time, is
7 \$124,400.00. The hourly rates of \$700 per hour for myself, \$450 per hour for my associate
8 Scott Nakama (practicing nearly 9 years in employment law), and \$500 to Daniel Martinez de
9 la Vega (practicing 15 plus years in employment law) is commensurate with our individual
10 background and the background of our firm, training, and experience in litigating class actions,
11 and in particular, wage-and-hour matters, as outlined below. In fact, the lodestar cross-check
12 only results in a negative multiplier of 0.6631 (66.31% recovery of total attorney fees) when
13 cross-checked with the requested the work performed, the risks incurred, and the contingent
14 nature of representation, the requested fees and costs are reasonable and should be awarded.

15
16 1. Attached as Exhibit 1 (CLASS ACTION AND PAGA SETTLEMENT
17 AGREEMENT AND CLASS NOTICE)

18 2. Attached as Exhibit 2 (Proposed Order)

19 I declare under penalty of perjury that the foregoing is true and correct, that I could testify
20 competently thereto if called upon to do so, and that I executed this Declaration on the _30th day
21 of May 2024, in the City and County of San Francisco, California.

22
23
24 

25
26 _____
Ashwin Ladva

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Jayson Arrington (“Plaintiff”) individually and as the representative of putative class and aggrieved employees in the Action and Defendant Popcornvan, Inc. (“Defendant”). The Agreement refers to Plaintiff and Defendant collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS.

- 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Defendant captioned *Arrington v. Popcornvan, Inc.* initiated on or around June 22, 2022 and is pending in Superior Court of the State of California, County of San Francisco. The Action has case Number CGC-22-600445.
- 1.2. “Administrator” means Simpluris, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved Employee” means all (i) independent contractors who performed services for the Company in the warehouse or as a driver and/or (ii) non-exempt employees for the Company during the PAGA Period.
- 1.5. “Class” means (i) independent contractors who performed services for the Company in the warehouse or as a driver and/or (ii) non-exempt employees for the Company during the Class Period.
- 1.6. “Class Counsel” means Ashwin Ladva and Scott Nakama at Ladva Law Firm as well as Daniel Martinez de la Vega of the Law Offices of Daniel Vega.
- 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8. “Class Data” means Class Member identifying information in Defendant’s possession including the Class Member’s name, last-known mailing address, Social Security number or tax identification number, and number of Class Period Workweeks and PAGA Pay Periods.
- 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).

- 1.10. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available resources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.12. “Class Period” means the period from June 29, 2018 to May 31, 2024.
- 1.13. “Class Period Workweeks” means the total number of workweeks for each Class Member during the Class Period.
- 1.14. “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15. “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.16. “Court” means the Superior Court of California, County of Los Angeles.
- 1.17. “Defendant” means named Defendant Popcornvan, Inc.
- 1.18. “Defense Counsel” means Heather Sager, Matt Goldberg and Jill Ripke at Perkins Coie, LLP.
- 1.19. “Effective Date” means the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, three days the Court enters Judgment if no appeals are filed; (b) if one or more Participating Class Members objects to the Settlement, three days after the deadline for filing a notice of appeal from the Judgment if no appeals are filed; or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur and the appeal time period of the appellate decision has expired without further appeal.
- 1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22. “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

- 1.23. “Gross Settlement Amount” means \$250,000.00 which is the total amount Defendant agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses.
- 1.24. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period.
- 1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.26. “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.27. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.28. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Defendant for at least one day during the PAGA Period.
- 1.32. “PAGA Period” means the period from June 21, 2021 to May 31, 2024.
- 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).
- 1.34. “PAGA Notice” means Plaintiff’s June 17, 2021 letter to the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.35. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00) and the 75% to LWDA (\$15,000.00) settlement of PAGA claims.

- 1.36. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. “Plaintiff” means Jayson Arrington, the named plaintiff in the Action.
- 1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.40. “Released Class Claims” means the claims being released as described in Paragraph 6.2 below.
- 1.41. “Released PAGA Claims” means the claims being released as described in Paragraph 6.3 below.
- 1.42. “Released Parties” means: Popcornvan, Inc. and each of its past, present and future parent companies, subsidiaries, predecessors, affiliates, present and former owners, officers, directors, shareholders, agents, managing agents, investors, partners, tax advisors, attorneys, insurers, trustees, administrators, board members, real or alleged alter egos, real or alleged joint employers, predecessor, successor, transferees, assigns and all other representatives of Defendant, individual and in their corporate or other representative capacities.
- 1.43. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.44. “Response Deadline” means sixty (60) days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.45. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.46. “Workweek” means any week during which a Class Member worked for Defendant or performed services for Defendant for at least one day, during the Class Period.

2. RECITALS.

- 2.1. On or around June 29, 2022, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendant for: (1) failure to pay all wages; (2) failure to timely pay all wages upon termination; (3) failure to afford mandatory breaks or meal periods; (4) Labor Code Section 432.3; (5) inaccurate records; (6)

failure to provide accurate, itemized wage statements; (7) failure to make proper disclosure in violation of the FCRA; (8) violation of California Business and Professions Code section 17200; (9) wrongful termination; (10) Labor Code Section 1102.5; and (11) Labor Code Section 6310. On or around October 26, 2022, Plaintiff filed a First Amended Complaint alleging causes of action against Defendant for: (1) failure to pay all wages; (2) failure to timely pay all wages upon termination; (3) failure to afford mandatory rest breaks and meal periods; (4) Labor Code Section 432.3; (5) inaccurate records; (6) failure to provide accurate, itemized wage statements; (7) violation of California Business & Professions Code Section 17200; (8) wrongful termination; (9) Labor Code Section 1102.5; (10) Labor Code Section 6310; (11) Private Attorneys General Act (PAGA) claims; and (12) Failure to Pay Sick Pay.

- 2.2. Plaintiff intends to file a Second Amended Complaint within 15 days after the execution of this Agreement. The Second Amended Complaint will allege: (1) failure to pay all wages; (2) failure to timely pay all wages upon termination; (3) failure to afford mandatory rest breaks and meal periods; (4) Labor Code Section 432.3; (5) inaccurate records; (6) failure to provide accurate, itemized wage statements; (7) violation of California Business & Professions Code Section 17200; (8) wrongful termination; (9) Labor Code Section 1102.5; (10) Labor Code Section 6310; (11) Private Attorneys General Act (PAGA) claims; (12) Failure to Pay Sick Pay; (13) Conversion; (14) Failure to Reimburse Expenses; and (15) Failure to Pay Minimum Wages.
- 2.3. The Second Amended Complaint will be the operative complaint in the Action (the “Operative Complaint”). Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint (and the Complaint and First Amended Complaint) and denies any and all liability for the causes of action alleged.
- 2.4. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and the LWDA by sending the PAGA Notice.
- 2.5. On December 18, 2023, the Parties participated in an all-day mediation presided over by Hon. Winifred Y. Smith (Ret.) at ADR Services, Inc. which led to this Agreement to settle the Action.
- 2.6. Prior to mediation, Plaintiff obtained, through informal discovery with some time records, payroll records and applicable policies and procedures including but not limited to handbooks and arbitration agreements. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“Dunk/Kullar”).
- 2.7. The Court has not granted class certification and Plaintiff has not filed a motion for class certification.

- 2.8. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendant promises to pay \$250,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (The allocation of Individual Class Payments is described below in Paragraph 3.2.4). Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.4 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$5,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.
- 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than 33%, which is currently estimated to be \$82,500.00 (\$41,250 to Ladva Law Firm and \$41,250 to Law Offices of Daniel Vega) and a Class Counsel Litigation Expenses Payment to Ladva Law Firm of not more than \$7,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will

allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendant harmless, and indemnifies Defendant, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$9,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less or the Court approves payment less than \$9,000.00, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. The tax allocation will depend on whether a Participating Class Member was ever paid as a W-2 employee by Defendant.

3.2.4.1. If a Participating Class Member was ever paid as a W-2 employee by Defendant, then the tax allocation shall be as follows:

- Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2. If a Participating Class Member was only paid as a 1099 service provider by Defendant, then the tax allocation shall be as follows:

- One hundred percent (100%) of each Participating Class Member's Individual Class Payment will be allocated to

settlement of claims for interest and penalties which is not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.3. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

3.2.5.3. For the avoidance of doubt, if an Aggrieved Employee is also a Non-Participating Class Member, the individual will receive the Aggrieved Employee's Individual PAGA Payment.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. Class Workweeks. Based on a review of its records, for the period of September 1, 2021 to December 4, 2023, Defendant estimated there are 221 Class Members who collectively worked a total of 5,316 Workweeks. The Parties anticipate that this number will increase for the Class Period.

4.2. Class Data. Not later than 30 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a password protected Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in

confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendant has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendant must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

4.2.1. The Administrator will run searches to help identify any missing information from the Class Data that is necessary for the administration of the settlement. This includes, but is not limited to, searches for addresses and/or social security numbers.

4.3. Funding of Gross Settlement Amount. Defendant shall deposit with the Administrator the funds necessary to fund the Gross Settlement Amount and an estimated portion of Defendant's share of payroll taxes within ten (10) business days of the date upon which this Agreement is fully-executed. The Administrator shall hold such deposit for the sole purpose of making all payments required by this Agreement as ordered by the Court. In the event that the Court does not grant final approval or this Agreement does not become effective for any reason, in such a case, any funds deposited with the Administrator shall be returned to Defendant by the Administrator within 14 days after the Administrator receives notification that the Agreement is not effective.

4.4. Payments from the Gross Settlement Amount. Within 30 days after the Effective Date, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class

Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.
- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. [Paragraph 5 is omitted as it was not in the model form]

6. RELEASES OF CLAIMS. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

- 6.1. Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences including, but not limited to: (a) all claims that were, or could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action. ("Plaintiff's Release") Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,

unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them. Plaintiff's Release in this Class Action Settlement Agreement do not release claims for wrongful termination or retaliation.

6.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For the claims released through Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, rights, demands, liabilities, and causes of action, whether statutory, in tort, contract, or otherwise, that were alleged, or could have been alleged in the Operative Complaint and/or LWDA Letter or that could have been alleged based on the facts pleaded in the Operative Complaint and/or LWDA Letter, arising during the Class Period, including claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and or other provisions of law for failure to pay all wages (including but not limited to minimum wages, all wage, and overtime), failure to timely pay all wages upon termination, failure to provide rest and meal periods, Labor Code Section 432.3, claims related to the disclosure of salary information, claims related to failure to provide pay scale information, claims related to requests of earnings history, claims related to failure to pay all tips and gratuities, failure to maintain accurate records, failure to provide accurate itemized wage statement, violations of California Business and Professions Code Section 17200, failure to pay sick pay (including but not limited to claims under the San Francisco Sick Leave Ordinance), conversion, failure to reimburse expenses, failure to pay minimum wages, claims for liquidated damages, waiting time penalty claims, claims under Labor Code Section 226(e), claims under Labor Code 226.3, claims for equitable relief (including but not limited to equitable accounting), claims for injunctive release and declaratory relief, and any and all penalties or damages related to such claims. For the avoidance of doubt, this release releases claims related to misclassification as an independent contractor rather than an employee.

Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

- 6.3. PAGA Release by Aggrieved Employees: The State of California and all Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from the claims for civil penalties for the violations of the California Private Attorneys General Act of 2004 that were alleged, or could have been alleged, based on the facts alleged in the Operative Complaint and/or the LWDA Letter during the PAGA Period.

7. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

- 7.1. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); (vi) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 7.2. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary

Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

- 7.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

- 8.1. Selection of Administrator. The Parties have jointly selected Simpluris to serve as the Administrator and verified that, as a condition of appointment, Simpluris agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 8.4. Notice to Class Members.
- 8.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Workweeks, and Pay Periods in the Class Data.
- 8.4.2. Using best efforts to perform as soon as possible, and in no event later than [14] days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,

and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

- 8.4.3. Not later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 8.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice. Class Members who submit a written, signed challenge to his/her Individual Settlement Amount must opt out within 14 days from the date the Claims Administrator mails an adjusted Individual Settlement or notice of rejection of the challenge by the Response Deadline, whichever is later.
- 8.4.5. If the Administrator, Defendant or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

8.5. Requests for Exclusion (Opt-Outs).

- 8.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone

number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

- 8.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 8.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 8.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph of this Agreement and are eligible for an Individual PAGA Payment.
- 8.6. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

8.7. Objections to Settlement.

8.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1. Email Address and Toll-Free Number. The Administrator will establish and maintain an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

8.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments ("Weekly Report"). The Weekly Reports must include provide the Administrator's assessment of

the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 8.8.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 8.8.5. Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 8.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

9. **DEFENDANT'S RIGHT TO WITHDRAW**. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members, Defendant may, but is not obligated, elect to withdraw from the Settlement or decrease the Gross Settlement amount on a pro rata basis, at Defendant's sole election. The Parties agree that, if Defendant withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendant will remain responsible for paying all Settlement Administration Expenses incurred to that point. Defendant must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

- 10. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.
- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.
- 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that

requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, and Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal government agency or (6) with respect to Defendant, to provide information with respect to employees/managers/board members regarding the status and fact of the settlement. Each Party agrees to immediately notify each

other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendant and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members. The Parties and their attorneys shall not make any public announcements (including press releases, press interviews, internet postings, or social media posts) concerning the settlement other than seeking the court’s approval of settlement through a motion for preliminary approval and final settlement.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 12.8. No Tax Advice. Neither Plaintiff, Class Counsel, Defendant nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 12.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendant in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendant unless, prior to the Court's discharge of the Administrator's obligation, Defendant makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly

given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff: Ladva Law Firm
Ashwin Ladva and Scott Nakama
530 Jackson Street, 2nd Floor
San Francisco, CA 94133
ladvalaw@gmail.com; snakama@ladvalaw.com

Law Offices of Daniel Vega
Daniel Martinez de la Vega
201 Spear Street, Suite 1100
San Francisco, CA 94105
415-287-6200
Dvega@VegaLawyer.com

To Defendant: Perkins Coie LLP
Heather Sager, Matt Goldberg and Jill Ripke
505 Howard Street, Suite 1000
San Francisco, CA 94105
Email: hsager@perkinscoie.com,
mgoldberg@perkinscoie.com, jripke@perkinscoie.com

12.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

[Signature page to follow]



Jayson Arrington, Plaintiff

DocuSigned by:

35E830EF057B4C9...

Onur Kardesler
Popcornvan, Inc. by _____

Approved as to Form


Counsel for Plaintiff



Counsel for Popcornvan, Inc.

**COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND
HEARING DATE FOR FINAL COURT APPROVAL**

(Arrington v. Popcornvan, Inc., No. CGC-22-600445)

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from a class action lawsuit (“Action”) against Popcornvan, Inc. (“Defendant”) for alleged wage and hour violations.

The Action was filed by Jayson Arrington and seeks payment of (1) wage and hour claims and other relief for a class of (i) independent contractors who performed services for the Company in the warehouse or as a driver and/or (ii) non-exempt employees for the Company (“Class Members”) during the Class Period (June 29, 2018 to May 31, 2024); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all) independent contractors who performed services for the Company in the warehouse or as a driver and/or (ii) non-exempt employees for the Company during the PAGA Period (June 21, 2021 to May 31, 2024) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Defendant’s records showing that **you worked _____workweeks** during the Class Period and **you worked _____workweeks** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendant and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.
- (3) **Object to the Settlement.** All Class Members who do not opt-out ("participating Class Members") can object to any aspect of the proposed Settlement. See Section 7 of this notice for more information.

Defendant will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is [REDACTED]	You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel

but not the PAGA Settlement Written Objections Must be Submitted by 	and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on . You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Workweeks and number of PAGA Period Pay Periods you worked according to Defendant's records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by . See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff formerly provided services/worked for Defendant. The Action accuses Defendant of violating California labor laws. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, *et seq.*) ("PAGA"). Plaintiff is represented by attorneys in the Action by the Ladva Law firm and the Law Offices of Daniel Vega ("Class Counsel.")

Defendant strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendant or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendant engaged a mediator in an effort to resolve the Action by negotiating an end to the case by agreement to settle rather than continuing the expensive and time-consuming process of litigation. By signing a lengthy written settlement agreement ("Agreement") and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendant have negotiated a proposed Settlement that is subject to the Court's Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay **\$250,000.00** as the Gross Settlement Amount (Gross Settlement). Defendant has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Defendant will fund the Gross Settlement not more than 30 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to **\$82,500.00** (33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to **\$7,000.00** for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to **\$5,000.00** as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to **\$9,000.00** to the Administrator for services administering the Settlement.
 - D. Up to **\$20,000.00** for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. The tax allocation will depend on whether a Participating Class Member was ever paid as a W-2 employee by Defendant.
5. If a Participating Class Member was paid as a W-2 employee by Defendant, Plaintiff and Defendants are asking the Court to approve an allocation of 20% of each Individual Class Payment to taxable wages (“Wage Portion”) and 80% to interest and penalties (“Non-Wage Portion.”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

If a Participating Class Member was paid by Defendant as a 1099 service provider, Plaintiff and Defendants are asking the Court to approve an allocation of 100% of each Individual Class Payment to interest and penalties (“Non-Wage Portion.”). The Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendant have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

6. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller’s Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.
7. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than [REDACTED], that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a

simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Defendant.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Defendant based on the PAGA Period facts alleged in the Action.

8. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs and Defendant have agreed that, in either case, the Settlement will be void: Defendant will not pay any money and Class Members will not release any claims against Defendant.
9. Administrator. The Court has appointed a neutral company, Simpluris, (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re- mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
10. Participating Class Members’ Release. After the Judgment is final and Defendant has fully funded the Gross Settlement, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all claims, rights, demands, liabilities, and causes of action, whether statutory, in tort, contract, or otherwise, that were alleged, or could have been alleged in the Operative Complaint and/or LWDA Letter or that could have been alleged based on the facts pleaded in the Operative Complaint and/or LWDA Letter, arising during the Class Period, including claims under the California Labor Code, California Industrial Welfare Commission Wage Orders, regulations, and or other provisions of

law for failure to pay all wages (including but not limited to minimum wages, all wage, and overtime), failure to timely pay all wages upon termination, failure to provide rest and meal periods, Labor Code Section 432.3, claims related to the disclosure of salary information, claims related to failure to provide pay scale information, claims related to requests of earnings history, claims related to failure to pay all tips and gratuities, failure to maintain accurate records, failure to provide accurate itemized wage statement, violations of California Business and Professions Code Section 17200, failure to pay sick pay (including but not limited to claims under the San Francisco Sick Leave Ordinance), conversion, failure to reimburse expenses, failure to pay minimum wages, claims for liquidated damages, waiting time penalty claims, claims under Labor Code Section 226(e), claims under Labor Code 226.3, claims for equitable relief (including but not limited to equitable accounting), claims for injunctive release and declaratory relief, and any and all penalties or damages related to such claims. For the avoidance of doubt, this release releases claims related to misclassification as an independent contractor rather than an employee.

Except as set forth in Aggrieved Employees' PAGA Release, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

11. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendant has paid the Gross Settlement (and separately paid the employer-side payroll taxes), the State of California and all Aggrieved Employees, including Non-Participating Class Members who are Aggrieved Employees, are deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties from the claims for civil penalties for the violations of the California Private Attorneys General Act of 2004 that were alleged, or could have been alleged, based on the facts alleged in the Operative Complaint and/or the LWDA Letter during the PAGA Period.

This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendant or Released Parties for the released claims.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$_____ by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Defendant's calculation of Workweeks and/or Pay Periods based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Defendant's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Arrington v. Popcornvan, Inc.*, Case No. CGC-22-60045 and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid.

The Administrator must be sent your request to be excluded by _____, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendant are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action as *Arrington v. Popcornvan, Inc.*, Case No. CGC-22-60045 and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at _____ (time) _____ in Department [INSERT] of the San Francisco Superior Court, located at [INSERT]. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff,

and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. You can telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to **[INSERT]** and entering the Case Number for the Action, Case No. CGC-22-600445. You can also make an appointment to personally review court documents in the Clerk's Office by calling **[INSERT]**.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:

Email Address:

Name of Firm:

Mailing Address:

Telephone:

Settlement Administrator:

Name of Company:

Email Address:

Mailing Address:

Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

- 11. WHAT IF I CHANGE MY ADDRESS?** To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

1 **Ashwin ladva, Esq. (SB# 206140)**
2 **Scott S. Nakama, Esq. (SB# 296732)**
3 **LADVA LAW FIRM**
4 530 Jackson St., 2nd floor
5 San Francisco, CA 94133
6 Telephone: (415) 296-8844
7 Fax: (415) 296-8847
8 ladvalaw@gmail.com
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10 **Daniel Martinez de la Vega, Esq. (SB# 255885)**
11 **LAW OFFICES OF DANIEL VEGA**
12 201 Spear Street, Suite 1100
13 San Francisco, CA 94105
14 Telephone: (415) 287-6203
15 Fax: (415) 704-5067
16 dvega@vegalawyer.com

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

18 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SAN FRANCISCO**

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

22 **PLAINTIFF**

23 **v.**

24 **POPCORNVAN, INC.; and DOES 1 through**
25 **100, inclusive,**

26 **Defendants**

Case No:

**[PROPOSD ORDER] FOR MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: June 27, 2024

Hearing Time: 9 am

Department: 304

Judge: Judge Ethan P. Schulman

**This case has been assigned to Ethan P.
Schulman in Department 304 for all
purposes including trial.**

1
2 **PLAINTIFF’S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT** came
3 on for hearing on _____, before the Honorable _____, Judge of the Superior Court of the
4 State of California, County of San Francisco, in Department ____ (“the Court”). Based on a
5 review of the record in this matter, including the papers filed by the parties and the arguments of
6 counsel at the hearing on this motion, the Court hereby FINDS AND ORDERS as follows:
7

8 1. On June 29, 2022, Plaintiff filed a putative class action against Defendant, entitled
9 *JAYSON ARRINGTON v. POPCORN VAN*, in SAN FRANCISCO County Superior Court, Case No.
10 CGC-22-600445 (the “Action”) seeking to represent a class consisting of the “current” and former
11 Class Members of Defendant for claims related to alleged unpaid overtime wages, waiting time
12 penalties, meal and rest breaks. On October 26, 2022, Plaintiff filed his First Amended Class
13 Action against Defendant adding a PAGA Claim. On May 20, 2024, Plaintiff filed a Second
14 Amended Complaint seeking the following claims (1) Violations of the Labor Code sections
15 1194(a) and 510 (failure to pay all wages); (2); Failure To Timely Pay All Wages Upon
16 Termination; (3) Violation of California Labor Code section 226.7 (Failure To Afford Mandatory
17 Rest Breaks and Meal Periods); (4) Labor Code § 432.3; (5) Inaccurate Records (Cal. Labor Code
18 §§ 1174.5); (6) Failure To Provide Accurate Itemized Wage Statements (Violation of Labor Code
19 section 226); (7) Violation of Cal. Business and Professions Code §17200; (8) Wrongful
20 Termination; (9) Labor Code Section 1102.5; (10) Labor Code Section 6310; (11) California
21 Private Attorneys’ General Act (“PAGA”), and (12) Failure to Pay Sick Pay, 13) Conversion for
22 unpaid tips, (14) Reimbursement for expenses, and (15) Minimum Wages. The Second Amended
23 Complaint added the latter three claims. Plaintiff claims that he should be able to seek damages
24 and penalties for allegations going back to June 29, 2018.
25

26 2. WHEREAS, Defendant deny all of Plaintiff’s allegations, and further deny that this
27 Action is appropriate for class treatment;
28

1 3. WHEREAS, Defendant contend that it complied at all times with the California
2 Labor and Business and Professions Codes and with all other applicable state and federal wage and
3 hour laws and regulations;

4 4. WHEREAS, Plaintiff, the putative class, and Defendant have been represented in the
5 Action by experienced and qualified attorneys;

6 5. WHEREAS, Plaintiff asserts that his counsel has conducted significant relevant
7 discovery relating to Plaintiff's allegations in the Action, to which Defendant fully responded.

8 6. WHEREAS, following arms-length negotiations with respect to the merits of each
9 party's claims and defenses, the Parties reached a settlement of the Action during mediation with
10 Honorable Wilfred Smith, embodied in a written agreement (the "Settlement Agreement and
11 Release, which is subject to the Court's approval and determination by the Court as to its fairness,
12 reasonableness, and adequacy;

13 7. Now, upon reviewing the terms of the Settlement Agreement and Release
14 ("Settlement Agreement") and the matter having come before the Court for hearing, it is hereby
15 **ORDERED, ADJUDGED, AND DECREED** as follows:

16 **I. BASIC TERMS OF THE SETTLEMENT**

17 The Settlement Agreement, attached as Exhibit 1 to the Declaration of Ashwin Ladva
18 In Support of Plaintiff's Motion For Preliminary Approval Of Settlement Agreement,
19 Defendant will pay a total amount of \$250,000.00 ("Settlement Sum"). Defendant's payments of
20 the balance of the Settlement Sum shall settle all pending issues between the Parties, including,
21 but not limited to, payment of all class claims, employee and employer payroll taxes on these
22 payments, class counsel's fees and costs, administrative costs, and any incentive award. Each class
23 member, and all payroll taxes or other usual deductions on his or her share of the settlement, will
24 be paid from the Settlement Sum after the Court-approved attorneys' fees and costs and incentive
25 award are subtracted from the Settlement Sum. Class counsel's fees and costs will be in an amount
26 to be determined by the Court, but not to exceed \$82,500.00 for attorney fees (\$41,250 to Ladva
27 Law Firm and \$41, 250 to Law Offices of Daniel Vega), \$7,000 in costs to Ladva Law Firm,
28

1 \$9,000.00 of which will be used to pay the third party administrator and a \$20,000 allocation to
2 the PAGA claims. The incentive payment for Plaintiff's service as class representative will be in
3 an amount to be determined by the Court, but not to exceed \$5,000.00.

4 In return, the Parties agree that the Class Members, include but are not limited to any
5 current or former employees since June 29, 2018, through the date of preliminary approval of the
6 parties' settlement agreement by the Court. Defendant will release all claims against Plaintiff and
7 each Class Member solely related to initiating, prosecuting or participating in this lawsuit.

8 **II. PRELIMINARY APPROVAL OF SETTLEMENT**

9 The Court finds that the proposed Settlement Agreement (1) resulted from arms-length
10 negotiations, and (2) appears sufficiently fair, reasonable, and adequate on its face to warrant
11 notice thereof to the members of the class and a final fairness hearing.

12 **III. APPROVAL OF THE SETTLEMENT CLASS**

13 Based on the foregoing, and for good cause shown, the Court concludes that the following
14 class should be certified only for the purposes of this settlement (the "Settlement Class"):

15 1. All hourly, non-exempt individuals employed by Defendant in California at anytime
16 from June 29, 2018, through the date of preliminary approval of the parties' settlement agreement
17 by the Court;

18 2. Legal successors-in-interest (such as conservators, executors, administrators, or
19 guardians) of any employee described in paragraph 1, above; and

20 3. Heirs of any employee described in paragraph 1, above, who has died and who does not
21 have a legal successor-in-interest as defined in paragraph 2, above

22 **IV. APPROVAL OF CLASS NOTICE**

23 **A. Manner of Giving Notice**

24 Given the small size of the Settlement Class, the Court finds that mailed notice is the best
25 practicable notice to the class and reasonably calculated, under the circumstances, to apprise all
26 Settlement Class members of the relevant facts regarding this settlement and its consequences,
27 including the right to opt out and the right to object. In sum, the Court finds that such manner of
28

1 giving notice is reasonable; that it constitutes due, adequate and sufficient notice to all persons
2 entitled to be provided with notice; and that it meets the due process requirements of the United
3 States Constitution and complies with applicable law and with the Rules of the Court.

4 **B. Form of Notice**

5 On the same basis, the Court hereby approves the form of notice and envelope attached
6 hereto as part of the Settlement Agreement for use in the mailing to Settlement Class members.

7 No later than three (3) business days after receipt of the Class Data, the Administrator shall
8 notify Class Counsel that the list has been received and state the number of Class Members,
9 PAGA Members, Workweeks, and Pay Periods in the Class Data.

10 Using best efforts to perform as soon as possible, and in no event later than 14 days after
11 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
12 Data, via first-class United States Postal Service

13 Not later than 3 business days after the Administrator's receipt of any Class Notice
14 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
15 forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the
16 Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the
17 most current address obtained.

18 **V. PROCEDURE FOR FINAL FAIRNESS HEARING**

19 **A. Final Fairness Hearing**

20 The Court shall conduct a hearing ("Final Fairness Hearing") to determine; (a) whether the
21 settlement of the Action on the terms agreed should be approved as fair, reasonable, and adequate;
22 (b) whether judgment should be entered pursuant to the terms of the Settlement Agreement; and
23 (c) the appropriate amount of any incentive payment to the Class Representative and payment of
24 attorneys' fees and reimbursement of costs to Class Counsel. The Final Fairness Hearing shall
25 commence at ____ on _____, in Department ____ of the Superior Court of the State
26 of California, County of San Francisco.

27 **B. Administration of Class Notice Process**

1 1. Plaintiff shall promptly use Simpluris, as the Claims Administrator for the purpose of
2 serving notice on the Settlement Class members in accordance with this Order and processing the
3 responses thereto. The costs of the Claims Administrator will be paid by Plaintiff, and will be
4 financed by the funds from the Settlement Sum.

5 2. Defendant, within 30 days of the court's order granting preliminary approval for the
6 Class Settlement, shall promptly provide the Claims Administrator with the Settlement Class
7 members' contact information as set forth in the Settlement Agreement. Except for providing this
8 information, Defendant shall have no responsibility or liability for any aspect of the notice
9 process. It shall be the duty of the Claims Administrator to use its best efforts to ascertain the
10 identities and current mailing addresses of Settlement Class members to the extent the same
11 cannot be determined from the information supplied by Defendant.

12 3. Within 15 days of after receipt of Class Members information, Plaintiff shall cause,
13 through the Claims Administrator, the Class Notice, in both English and Spanish, to be mailed by
14 first-class mail in the prescribed envelope to all Settlement Class members.

15 4. In the event any mailed class notice is returned as undeliverable, the Claims
16 Administrator shall take all reasonable steps to locate the addressee and shall promptly send a new
17 class notice to the new address via first-class mail in the prescribed envelope.

18 5. The Claims Administrator shall communicate regularly with Class Counsel and counsel
19 for Defendants regarding the status of its administration of the process leading to the Final
20 Fairness Hearing, including without limitation providing relevant information concerning each
21 item of returned mail and each inquiry and request for exclusion received by the Claims
22 Administrator.

23 6. Each class member shall have until _____, to serve any objections as to the
24 proposed settlement or to opt out of the class. The Claims Administrator shall give Defendants and
25 Class Counsel the names and addresses of any Settlement Class member who has opted out of the
26 settlement.

27 **C. Exclusion from the Class**
28

1 Any Settlement Class member who wishes to be excluded from the Settlement Class must
2 mail a written request for exclusion, as prescribed in the class notice attached as Appendix A to
3 the Settlement Agreement, within ninety (60) days from the date the Class Notice is mailed. Any
4 Settlement Class member who does not make a timely written request for exclusion shall be bound
5 by this and by all subsequent proceedings, orders, and judgments in this Action regarding the
6 Settlement Agreement.

7 **D. Objections to Settlement and Appearance at Final Fairness Hearing**

8 Any Settlement Class member who does not make a written request for exclusion and who
9 wishes to object to any aspect of the proposed settlement must, no later than ninety (60) days from
10 the date the Class Notice is mailed, serve on Class Counsel and Counsel for Defendant, and file
11 with the Court, a statement of each objection, including the specific reasons therefor and the
12 evidence and legal authorities supporting the objection. Settlement Class members may do so
13 either on their own or through an attorney retained at their own expense. Any Settlement Class
14 member who timely files and serves a written objection may appear at the Final Fairness Hearing,
15 either in person or through an attorney retained at that Settlement Class member's expense. Any
16 Settlement Class member who fails to comply with the provisions of this paragraph shall be
17 deemed to have waived and forfeited any rights he or she may have to appear separately and/or
18 object, and shall be bound by all the terms of the Settlement Agreement, as finally approved, and
19 by all proceedings, orders and judgments in this Action.

20 **E. Stay of Proceedings**

21 All proceedings in the Action are stayed until further order of the Court, except as may be
22 necessary to implement the settlement or to comply with the terms of the Settlement Agreement.

23 **F. Service of Papers**

24 At or before the Final Fairness Hearing, Class Counsel and Counsel for Defendant shall
25 serve on each other, and on any Settlement Class member (or his or her counsel) who has made an
26 individual appearance in this Action, any further documents in support of the proposed settlement,
27 including responses to any papers filed by Settlement Class members.
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H. Termination of Settlement

In that event, the Parties and the Action shall be restored as nearly as possible to the status quo ante and this Order and the Settlement Agreement and all the negotiations, statements and findings relating to this Order and/or Settlement Agreement shall be without prejudice to the rights of any of the parties.

DATED: _____

Judge of the Superior Court