

**FILED**  
Superior Court of California  
County of Los Angeles

DEC 01 2023

David W. Slayton, Executive Officer/Clerk of Court

By: N. Navarro, Deputy

**SUPERIOR COURT OF CALIFORNIA**  
**COUNTY OF LOS ANGELES**

RONALD G. HAYES, on behalf of himself  
and all others similarly situated,

Plaintiff,

v.

AVIS RENT A CAR SYSTEM, LLC, a  
Delaware limited liability company; and  
DOES 1 to 10, inclusive,

Defendants.

JORGE A. SALGADO MENDEZ, on  
behalf of himself and other aggrieved  
employees,

Plaintiff,

v.

AVIS RENT A CAR SYSTEMS, LLC; and  
DOES 1 to 100, inclusive,

Defendants.

Case No.: 22STCV26153

*me*  
~~[TENTATIVE]~~ ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS ACTION  
SETTLEMENT

Date: December 1, 2023

Time: 9:00 AM

Dept.: SSC-17

1 **I. BACKGROUND**

2 Plaintiffs Ronald G. Hayes and Jorge G. Salgado Mendez sue their former  
3 employer, Defendant Avis Rent A Car System Inc for alleged wage and hour violations.  
4 Defendant is a car rental company. Plaintiffs seek to represent a class of Defendants'  
5 current and former non-exempt employees.

6 On August 12, 2022, Plaintiff Hayes filed a class action complaint against  
7 Defendants alleging causes of action for: (1) Failed to provide all legally-requisite meal  
8 periods (Labor Code §§ 226.7, 512(a)); (2) Failed to provide legally-compliant rest  
9 periods (Labor Code §§ 1194, 1197, 1197.1); (3) Failed to pay all vested vacation time  
10 (Labor Code § 227.3); (4) Failed to provide and/or maintain required uniforms (Labor  
11 Code § 450); (5) Failed to timely furnish accurate itemized wage statements (Labor  
12 Code 226(a)); (6) Violated Labor Code §§201-202; and (7) violation of Business and  
13 Professions Code §§ 17200, et seq.

14 On October 25, 2022, Hayes filed a First Amended Complaint adding a cause of  
15 action for violation of the Private Attorneys General Act (Labor Code § 2698, et seq.)  
16 ("PAGA").

17 On December 23, 2022, Plaintiff Mendez filed a PAGA only lawsuit. Prior to  
18 that, Salgado filed a class action complaint that was dismissed without prejudice on  
19 November 7, 2022. The Parties agreed that the two active lawsuits would be  
20 consolidated by stipulation before this Court. Plaintiffs filed a Consolidated Amended  
21 Complaint on July 5, 2023 (the "Operative Complaint"). The Operative Complaint  
22 includes all claims pled in Hayes' First Amended Complaint, Salgado's PAGA  
23 complaint, adds new class claims for unreimbursed business expenses (Labor Code §  
24 2802) and failure to pay all wages (Labor Code §194, 204, 510(a), 1182.12, 1197,  
25

1 1198) based on Salgado's PAGA claims, and states the new class claims are alleged to  
2 go back to August 12, 2018.

3 On May 2, 2023, the Settling Parties attended mediation with Mark Rudy, a  
4 mediator, and reached an agreement to settle after further negotiations. The terms were  
5 later finalized in the Joint Stipulation Re: Class Action and Representative Action  
6 Settlement, a copy of which is attached to the Declaration of Kevin T. Barnes ("Barnes  
7 Decl.") filed October 20, 2023 as Exhibit 1.

8 On November 2, 2023, the Court issued a checklist of items for counsel to  
9 address. In response, on November 17, 2023, counsel filed additional briefing and a  
10 fully executed Amended Settlement Agreement ("Amended Settlement") attached to  
11 the Supplemental Declaration of Kevin T. Barnes ("Barnes Supp. Decl.") as Exhibit 1.

12 Now before the Court is Plaintiffs' motion for preliminary approval of the  
13 settlement. For the reasons set forth below, the Court preliminarily grants approval for  
14 the settlement.

15  
16 **II. THE TERMS OF THE SETTLEMENT**

17 **A. SETTLEMENT CLASS AND RELATED DEFINITIONS**

18 "Class" or "Class Member(s)" means all current and former non-exempt  
19 employees of Defendant during the Class Period. (Amended Settlement, ¶I.D.)

20 "Class Period" means from August 12, 2018, through August 31, 2023, unless  
21 amended as provided in Section III (P)(3). (¶I.E.)

22 "PAGA Employees" means all current and former non-exempt employees of  
23 Defendant. during the PAGA Period. (¶I.R.)

24 "PAGA Period" is the time period from August 12, 2021, through August 31,  
25 2023, unless amended as provided in Section III(P)(3). (¶I.S.)

1           **B.     THE MONETARY TERMS OF SETTLEMENT**

2           The essential monetary terms are as follows:

- 3           • The Gross Settlement Amount (“GSA”) is **\$3,250,000**. (¶I.N.) This includes  
4           payment of a PAGA penalty of **\$75,000** to be paid 75% to the LWDA (\$56,250)  
5           and 25% to the Aggrieved Employees (\$18,750) (¶III.C).
- 6           ○ Escalator: Defendant represented at the mediation that there were 105,598  
7           workweeks as of March 3, 2023 based on time records. Defendant has  
8           certified that the number of work weeks as of August 31, 2023 does not  
9           exceed 128,150 and thus does not trigger the escalator clause as  
10          contemplated by the parties’ MOU. (¶III.P.3)
- 11          • The Net Settlement Amount (“Net”) (\$1,992,750) is the GSA less:
- 12          ○ Up to **\$1,137,500** (35%) for attorney fees (¶III.B);
- 13          ○ Up to **\$30,000** for attorney costs (*Ibid.*);
- 14          ○ Up to **\$20,000 (\$10,000 each)** for service awards to the proposed class  
15          representatives (¶III.D); and
- 16          ○ Estimated **\$13,500** for settlement administration costs (¶III.E).
- 17          • Employer-side payroll taxes will be paid by Defendant separately and in addition  
18          to the Maximum Settlement Amount. (¶III.A).
- 19          • Assuming the Court approves all maximum requested deductions, approximately  
20          \$1,992,750 will be available for automatic distribution to participating class  
21          members. Assuming full participation, the average settlement share will be  
22          approximately \$1,659.24. ( $\$1,992,750 \text{ Net} \div 1201 \text{ class members} = \$1,659.24$ ).  
23          In addition, each PAGA member will receive a portion of the PAGA penalty,  
24          estimated to be \$26.45 per PAGA member. ( $\$18,750 \text{ or } 25\% \text{ of } \$75,000 \text{ PAGA}$   
25          penalty  $\div 709 \text{ PAGA members} = \$26.45$ ).

- 1 • There is no Claim Requirement (§III.L).
- 2 • The settlement is not reversionary (§I.O).
- 3 • Individual Settlement Share Calculation: Under the Settlement, each
- 4 Participating Class Member shall be entitled to payment of a pro rata portion of
- 5 the Net Settlement Amount (i.e. his or her Settlement Share). The amount that
- 6 each Class Member shall be eligible to receive under the Settlement shall be
- 7 determined by converting the Class Employee Fund into a Pay Period Value.
- 8 The Pay Period Value will be established by dividing the Class Employee Fund
- 9 by all Pay Periods for the Participating Class Members during the Class Period
- 10 based on Defendant's time records. The Individual Settlement Share for each
- 11 Participating Class Member will be determined by multiplying the Pay Period
- 12 Value by each Participating Class Member's individual Pay Period value
- 13 (§III.F.1).
- 14 • Tax Withholdings: Each Settlement Share of the Class Employee Fund shall be
- 15 apportioned as follows: 20% as wages and 80% for interest (§III.F.2).
- 16 • Funding of Settlement: Within ten business days of the Effective Date the
- 17 Settlement Administrator shall provide Class Counsel and Defendant's Counsel
- 18 with the account information so that Defendant can wire the Maximum
- 19 Settlement Amount and the Employer Taxes, and Defendant shall wire said
- 20 amounts within thirty (30) business days of the Effective Date (§III.G.1).
- 21 • Distribution: The Settlement Administrator shall distribute Individual Settlement
- 22 Payments to Participating Class Members the payment to the Labor and
- 23 Workforce Development Agency, the Court approved Class Representatives'
- 24 Service Awards to Plaintiffs, and Court-approved Class Counsel Fees and
- 25

1 Expenses to Class Counsel within ten (10) business days of receipt of payment  
2 from Defendant pursuant to this Paragraph (§III.G.2).

- 3 • Uncashed Settlement Payment Checks: Individual Settlement Payment checks  
4 issued to Participating Class Members shall remain valid for a period of 120  
5 calendar days after they issue, and shall be cancelled thereafter. Uncashed  
6 checks will be sent to the Controller of the State of California to be held pursuant  
7 to the Unclaimed Property Law California Code of Civil Procedure Section 1500  
8 et seq., in the name of the individual to whom the uncashed check was  
9 addressed. for the benefit of those individuals who did not cash their checks until  
10 such time as they claim their property (§III.G.3).

#### 11 12 **C. TERMS OF RELEASES**

- 13 • Class Release: Upon the Effective Date and Defendant's full funding of the  
14 Maximum Settlement Amount, Defendant and the other Released Parties shall be  
15 entitled to a release from the Plaintiffs and the Class Members who do not opt  
16 out, for all of the Released Claims which occurred during the Class Period.  
17 "Released Claims" means all claims for violations of the following Labor Code  
18 sections that were actually alleged or that could have been alleged in the Action  
19 based on the facts alleged therein, including in the Operative Complaint, on  
20 behalf of the Class Member for the entire Class Period, as well as any and all  
21 wage and hour claims and that were asserted or could have been asserted based  
22 on the factual or legal allegations contained in Plaintiffs Operative Complaint in  
23 the consolidated actions, arising at any time during the Class Period. including:  
24 (a) failure to pay wages including overtime and minimum wage for all hours  
25 worked; (b) failure to provide meal periods or pay a premium in lieu thereof; (c)

failure to provide rest periods or pay a premium in lieu thereof; (d) failure to timely pay wages during employment and at termination; (e) failure to provide accurate wage statements; (f) failure to indemnify for necessary business expenses; (g) failure to pay out vacation pay; (h) failure to provide required uniforms; (i) unfair business practices (Business and Professions Code section 17200 et seq.) related to the above labor code claims; (j) claims for violation of the provisions of Wage Order 9 related to the above labor code claims; (k) claims for the attorney's fees and costs incurred in the prosecution of this Action on behalf of the Class Members; (l) any other claims, remedies, penalties, or interest that could have been plead based on the facts alleged in the Complaints filed in the Action; and (m) all claims that Plaintiffs. [sic] the Class Members may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney's fees and costs to Plaintiffs' Counsel pursuant to this Settlement Agreement: and (ii) the payment, taxation, and allocation of Plaintiffs' Payment pursuant to this Settlement Agreement. The release of the Released Claims shall be effective as to the entire Class Period; and expressly excludes all other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, and California class claims outside of the Class Period. Participating Class Members may discover facts in addition to those they know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date and Defendant's full funding of the Maximum Settlement Amount, Participating Class Members shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all of the Released

1 Claims without regard to the subsequent discovery or existence of such different  
2 or additional facts. Participating Class Members agree not to sue or otherwise  
3 make a claim against any of the Released Parties that seeks recovery for any of  
4 the Released Claims. It is the intent of the Parties that the Judgment entered by  
5 the Court shall have full *res judicata* effect and be final and binding upon  
6 Participating Class Members regarding the Released Claims (§III.I.1).

- 7 • PAGA Release: Upon the Effective Date and Defendant's full funding of the  
8 Maximum Settlement Amount, Defendant and the other Released Parties shall be  
9 entitled to a release from the Plaintiffs, the State of California, and all PAGA  
10 Employees with respect to the PAGA Released Claims which occurred during  
11 the PAGA Period. "PAGA Released Claims" means all claims for the recovery  
12 of civil money penalties for violations of the following Labor Code sections  
13 alleged in the Operative Complaint, and/or Plaintiffs' PAGA letters: 201-203,  
14 204, 204b, 204.1, 204.2, 205, 205.5, 210, 226, 226.3, 226.7, 227.3, 450, 510,  
15 512, 516, 558, 1194, 1194.2, 1197, 1197.1, 1197.5, 1198, 2699 et. seq., 2802,  
16 sections 3, 4, 6, 8, 10, 11 and 14 of Wage Order 9. The release of the PAGA  
17 Released Claims shall be effective as to the entire PAGA Period. It is the intent  
18 of the Parties that the Judgment entered by the Court shall have full *res judicata*  
19 effect and be final and binding upon Plaintiffs, the state of California and the  
20 PAGA Employees regarding the PAGA Released Claims. (§III.I.3).
- 21 • Released Parties: "Released Parties" means Defendant, its members, its parent,  
22 affiliates and subsidiaries, and each of their company-sponsored employee  
23 benefit plans, and their respective successors and predecessors in interest, all of  
24 their respective officers, directors, managerial employees, administrators,  
25 fiduciaries, trustees and agents, and each of their past, present and future

officers, directors, shareholders, managerial employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and attorneys (§I.W)

- The named Plaintiff(s) will also provide a general release and a waiver of the protections of Cal. Civ. Code §1542. (§III.I.2)
- The releases are effective upon the Effective Date and Defendant's full funding of the Maximum Settlement Amount. (§III.I.1).

#### **D. SETTLEMENT ADMINISTRATION**

- The proposed Settlement Administrator is Rust Consulting, Inc, which has provided evidence that no counsel are affiliated with it and that it has adequate procedures in place to safeguard the data and funds to be entrusted to it. (Declaration of Eric Bishop, ¶17, attached at Exhibit 2 to the Barnes Decl.).
- Settlement administration costs are estimated to be \$13,500 (§III.E).
- Notice: The manner of giving notice is described below.
- Response Deadline: not later than forty-five (45) calendar days after the date that the Settlement Administrator first mails the Class Notice (§III.L.1). The Response Deadline shall be either the original Response Deadline or fifteen (15) calendar days after the remailing of a Class Notice in accordance with the Agreement, whichever is later. (§III.K.2) This deadline applies to opt outs (§III.L.1), objections (§III.L.2), and disputes (§III.M.1).
  - Defendant has the right to cancel the Settlement if more than ten percent (10%) of the Class Members submit timely and valid Opt-Out Notices from the Settlement (§III.P.1).
- Notice of Final Judgment will be posted on the Settlement Administrator's website (Bishop Decl., ¶15).

1  
2 **III. SETTLEMENT STANDARDS AND PROCEDURE**

3 California Rules of Court, rule 3.769(a) provides: “A settlement or compromise  
4 of an entire class action, or of a cause of action in a class action, or as to a party,  
5 requires the approval of the court after hearing.” “Any party to a settlement agreement  
6 may serve and file a written notice of motion for preliminary approval of the settlement.  
7 The settlement agreement and proposed notice to class members must be filed with the  
8 motion, and the proposed order must be lodged with the motion.” See Cal. Rules of  
9 Court, rule 3.769(c).

10 “In a class action lawsuit, the court undertakes the responsibility to assess  
11 fairness in order to prevent fraud, collusion or unfairness to the class, the settlement or  
12 dismissal of a class action. The purpose of the requirement [of court review] is the  
13 protection of those class members, including the named plaintiffs, whose rights may not  
14 have been given due regard by the negotiating parties.” *Consumer Advocacy Group,*  
15 *Inc. v. Kintetsu Enterprises of America* (2006) 141 Cal. App.4th 46, 60 [internal  
16 quotation marks omitted]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224,  
17 245, disapproved on another ground in *Hernandez v. Restoration Hardware, Inc.* (2018)  
18 4 Cal. 5th 260 (“*Wershba*”), [Court needs to “scrutinize the proposed settlement  
19 agreement to the extent necessary to reach a reasoned judgment that the agreement is  
20 not the product of fraud or overreaching by, or collusion between, the negotiating  
21 parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all  
22 concerned.”] [internal quotation marks omitted].

23 “The burden is on the proponent of the settlement to show that it is fair and  
24 reasonable. However, “a presumption of fairness exists where: (1) the settlement is  
25 reached through arm's-length bargaining; (2) investigation and discovery are sufficient

1 to allow counsel and the court to act intelligently; (3) counsel is experienced in similar  
2 litigation; and (4) the percentage of objectors is small.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
3 245 [citing *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802 ].

4 Notwithstanding an initial presumption of fairness, “the court should not give  
5 rubber-stamp approval.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th  
6 116, 130 (“*Kullar*”). “[W]hen class certification is deferred to the settlement stage, a  
7 more careful scrutiny of the fairness of the settlement is required.” *Carter v. City of*  
8 *Los Angeles* (2014) 224 Cal.App.4th 808, 819. “To protect the interests of absent class  
9 members, the court must independently and objectively analyze the evidence and  
10 circumstances before it in order to determine whether the settlement is in the best  
11 interests of those whose claims will be extinguished.” *Kullar*, 168 Cal. App. 4<sup>th</sup> at 130.  
12 In that determination, the court should consider factors such as “the strength of  
13 plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation,  
14 the risk of maintaining class action status through trial, the amount offered in  
15 settlement, the extent of discovery completed and stage of the proceedings, the  
16 experience and views of counsel, the presence of a governmental participant, and the  
17 reaction of the class members to the proposed settlement.” *Id.* at 128. “Th[is] list of  
18 factors is not exclusive and the court is free to engage in a balancing and weighing of  
19 factors depending on the circumstances of each case.” *Wershba*, 91 Cal. App. 4<sup>th</sup> at  
20 245.

21 At the same time, “[a] settlement need not obtain 100 percent of the damages  
22 sought in order to be fair and reasonable. Compromise is inherent and necessary in the  
23 settlement process. Thus, even if ‘the relief afforded by the proposed settlement is  
24 substantially narrower than it would be if the suits were to be successfully litigated,’  
25 this is no bar to a class settlement because ‘the public interest may indeed be served by

1 a voluntary settlement in which each side gives ground in the interest of avoiding  
2 litigation.” *Id.* at 250.

3  
4 **IV. ANALYSIS OF SETTLEMENT AGREEMENT**

5  
6 **A. THERE IS A PRESUMPTION OF FAIRNESS**

7 The settlement is entitled to a presumption of fairness for the following reasons:

8  
9 **1. The settlement was reached through arm’s-length bargaining**

10 On May 2, 2023, the Settling Parties attended mediation with Mark Rudy, a  
11 mediator, and reached an agreement to settle after further negotiations. (Barnes Decl.,  
12 ¶4.)

13  
14 **2. The investigation and discovery were sufficient**

15 Counsel represent that prior to mediation, formal and informal discovery  
16 included Defendant providing documentation of their policies and practices and data  
17 related to the claims asserted in this case, including a sample of pay and time data for  
18 approximately 25% of the Class and other information necessary for Plaintiff to create a  
19 damages exposure analysis. (*Id.* at ¶15.) According to Counsel, the number of class  
20 member records received from Defendant attains a 5% margin of error and a 95%  
21 confidence level per Raosoft.com. (*Ibid.*) Counsel also represent that they hired an  
22 expert, Berger Consulting Group – Economic Data Analysts, to prepare damage  
23 calculations and an exposure analysis for the mediation. (*Ibid.*)

24 This is sufficient to value the case for settlement purposes.  
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**3. Counsel is experienced in similar litigation**

Class Counsel represent that they are experienced in class action litigation, including wage and hour class actions. (Barnes Decl., ¶¶ 37-42; Lavi Decl., ¶¶ 8-10; Katri Decl., ¶¶ 2-5; Ruggles Decl., *passim*.)

**4. Percentage of the class objecting**

This cannot be determined until the final fairness hearing. Weil & Brown et al., Cal. Prac. Guide: Civ. Pro. Before Trial (The Rutter Group 2019) ¶ 14:139.18 [“Should the court receive objections to the proposed settlement, it will consider and either sustain or overrule them at the fairness hearing.”].

**B. THE SETTLEMENT MAY PRELIMINARILY BE CONSIDERED FAIR, ADEQUATE, AND REASONABLE**

Notwithstanding a presumption of fairness, the settlement must be evaluated in its entirety. The evaluation of any settlement requires factoring unknowns. “As the court does when it approves a settlement as in good faith under Code of Civil Procedure section 877.6, the court must at least satisfy itself that the class settlement is within the ‘ballpark’ of reasonableness. See *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499–500. While the court is not to try the case, it is ‘called upon to consider and weigh the nature of the claim, the possible defenses, the situation of the parties, and *the exercise of business judgment* in determining whether the proposed settlement is reasonable.’ (*City of Detroit v. Grinnell Corporation*, *supra*, 495 F.2d at p. 462, *italics added*.)” *Kullar*, 168 Cal.App.4th at 133 (emphasis in original).

## 1. Amount Offered in Settlement

The most important factor is the strength of the case for plaintiffs on the merits, balanced against the amount offered in settlement.” (*Id.* at 130.)

Class Counsel estimated Defendant’s maximum exposure at \$24,674,426 and realistic exposure at \$5,861,910.30, including penalties, based on the following analysis:

| Violation                      | Maximum Exposure       | Realistic Exposure    |
|--------------------------------|------------------------|-----------------------|
| Unpaid Regular Wages           | \$219,863.00           | \$109,931.50          |
| Meal Break Violations          | \$6,092,930.00         | \$2,437,172.00        |
| Rest Break Violations          | \$13,571,030.00        | \$2,714,206.00        |
| Business Expense Reimbursement | \$59,595.00            | \$60,000.00           |
| Vacation Pay                   | \$0.00                 | \$0.00                |
| Illegal Uniform Policies       | \$0.00                 | \$0.00                |
| Wage Statement Violations      | \$2,388,050.00         | \$238,805.00          |
| Waiting Time Penalties         | \$2,267,958.00         | \$226,795.80          |
| PAGA                           | \$75,000.00            | \$75,000.00           |
| <b>TOTAL</b>                   | <b>\$24,674,426.00</b> | <b>\$5,861,910.30</b> |

(Barnes Decl., ¶¶14-32.)

Class Counsel obtained a gross settlement valued at \$3,250,000. This is approximately 13.17% of Defendant’s maximum exposure and 55.44% of Defendant’s realistic exposure.

## 2. The Risks of Future Litigation

The case is likely to be expensive and lengthy to try. Procedural hurdles (e.g., motion practice and appeals) are also likely to prolong the litigation as well as any

1 recovery by the class members. Even if a class is certified, there is always a risk of  
2 decertification. *Weinstat v. Dentsply Intern., Inc.* (2010) 180 Cal.App.4th 1213, 1226  
3 [“Our Supreme Court has recognized that trial courts should retain some flexibility in  
4 conducting class actions, which means, under suitable circumstances, entertaining  
5 successive motions on certification if the court subsequently discovers that the propriety  
6 of a class action is not appropriate.”].) Further, the settlement was negotiated and  
7 endorsed by Class Counsel who, as indicated above, are experienced in class action  
8 litigation. Based upon their investigation and analysis, the attorneys representing  
9 Plaintiff and the class are of the opinion that this settlement is fair, reasonable, and  
10 adequate. (Barnes Decl., ¶14.)

11 The Court also notes that Plaintiff brings a PAGA claim on behalf of the LWDA,  
12 which was sent a copy of the Settlement Agreement on July 24, 2023 and has not yet  
13 objected. (Barnes Decl., Exhibit 3 thereto.) Any objection by it will be considered at the  
14 final fairness hearing.

### 15 16 **3. The Releases Are Limited**

17 The Court has reviewed the Releases to be given by the absent class members and  
18 the named plaintiffs. The releases, described above, are tailored to the pleadings and  
19 release only those claims in the pleadings. There is no general release by the absent  
20 class. The named plaintiff’s general releases are appropriate given that each was  
21 represented by counsel in its negotiation.

### 22 23 **4. Conclusion**

24 Class Counsel estimated Defendant’s maximum exposure at \$24,674,426 at realistic  
25 exposure at \$5,861,910.30. Class Counsel obtained a gross settlement valued at

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1 \$3,250,000. This is approximately 13.17% of Defendant's maximum exposure and  
2 55.44% of Defendant's realistic exposure, which, given the uncertain outcomes,  
3 including the potential that the class might not be certified, that liability is a contested  
4 issue, and that the full amount of penalties would not necessarily be assessed even if the  
5 class is certified and liability found, the settlement is within the "ballpark of  
6 reasonableness."

7  
8 **C. CONDITIONAL CLASS CERTIFICATION MAY BE GRANTED**

9 A detailed analysis of the elements required for class certification is not required,  
10 but it is advisable to review each element when a class is being conditionally certified.  
11 *Amchem Products, Inc. v. Winsor* (1997) 521 U.S. 591, 620, 622-627. The party  
12 advocating class treatment must demonstrate the existence of an ascertainable and  
13 sufficiently numerous class, a well-defined community of interest, and substantial  
14 benefits from certification that render proceeding as a class superior to the alternatives."  
15 *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.

16 **1. The Proposed Class is Numerous**

17 There are 1,201 putative Class Members. (Barnes Decl., ¶11) Numerosity is  
18 established. *Franchise Tax Bd. Limited Liability Corp. Tax Refund Cases* (2018) 25  
19 Cal.App.5th 369, 393: stating that the "requirement that there be many parties to a  
20 class action is liberally construed," and citing examples wherein classes of as little as  
21 10, *Bowles v. Superior Court* (1955) 44 Cal.2d 574, and 28, *Hebbard v. Colgrove*  
22 (1972) 28 Cal.App.3d 1017, were upheld).

23 **2. The Proposed Class Is Ascertainable**

24 "A class is ascertainable, as would support certification under statute  
25 governing class actions generally, when it is defined in terms of objective

1 characteristics and common transactional facts that make the ultimate identification  
2 of class members possible when that identification becomes necessary.” *Noel v. Thrifty*  
3 *Payless, Inc.* (2019) 7 Cal.5th 955, 961 (*Noel*).

4 The class is defined above. Class Members are ascertainable through  
5 Defendant’s employment and payroll records. (Barnes Decl., ¶11.)

### 6 **3. There Is A Community of Interest**

7 “The community of interest requirement involves three factors: ‘(1) predominant  
8 common questions of law or fact; (2) class representatives with claims or defenses typical  
9 of the class; and (3) class representatives who can adequately represent the class.’”  
10 *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

11 As to predominant questions of law or fact, Counsel contend that the main issues  
12 involve the legality of Defendant’s employment policies regarding the claims for alleged  
13 failure to pay the required minimum wage and overtime for all time worked, alleged  
14 failure to properly provide meal periods or pay a premium in lieu thereof, alleged failure  
15 to properly authorize and permit rest breaks or pay a premium in lieu thereof, alleged  
16 failure to timely pay wages at termination or during employment, alleged failure to  
17 provide compliant wage statements, alleged failure to reimburse expenses, alleged failure  
18 to pay out vacation, alleged failure to provide uniforms, and alleged violations of  
19 California Business & Professions Code section 17200. (MPA at 5:20-27.)

20 As to typicality, Counsel contend that the proposed Class Representatives worked  
21 for Defendant as non-exempt employees under Defendant’s uniform employment policies  
22 applicable to all non-exempt employees during the Class Period, defined as from August  
23 12, 2018, through August 31, 2023. Both Class Representatives worked at Defendant’s  
24 airport car rental locations like the other Class Members and were subject to the same  
25 policies. (Barnes Decl., ¶12.)

As to adequacy, Plaintiffs represent that they have no claims or other interests that are antagonistic to the Class, will continue to act diligently for the class, and represent the interests of the other Class Members before their own. (Barnes Decl., ¶13; Declaration of Ronald G. Hayes, ¶¶ 2-9; Declaration of Jorge A. Salgado Mendez, ¶¶4-9.) As previously stated, Class Counsel have experience in class action litigation.

#### **4. Substantial Benefits Exist**

Given the relatively small size of the individual claims, a class action is superior to separate actions by the class members.

#### **D. THE PROPOSED NOTICE PLAN MEETS THE REQUIREMENTS OF DUE PROCESS**

The purpose of notice is to provide due process to absent class members. A practical approach is required, in which the circumstances of the case determine what forms of notice will adequately address due process concerns. *Noel*, 7 Cal.5th at 982. California Rules of Court, rule 3.766 (e) provides that in determining the manner of the notice, the court must consider: (1) the interests of the class; (2) the type of relief requested; (3) the stake of the individual class members; (4) the cost of notifying class members; (5) the resources of the parties; (6) the possible prejudice to class members who do not receive notice; and (7) the res judicata effect on class members.

##### **1. Method of class notice**

Within ten (10) business days after the Court grants preliminary approval of the Settlement, Defendant shall provide to the Settlement Administrator the last-known contact information that it has for the Class Members. including their full name, mailing addresses, telephone numbers, Social Security numbers, start and end dates of

1 employment, and the number of Pay Periods actually worked during the Class Period  
2 and during the PAGA Period ("Class Data List"). A redacted version of the Class Data  
3 List, without any personal contact information or Social Security numbers, shall be  
4 provided to Class Counsel, and this list shall be used for no purpose other than to  
5 monitor the administration of the Settlement. All data and information provided to the  
6 Settlement Administrator and Class Counsel by way of the Class Data List shall be  
7 treated as confidential and shall not be disclosed to anyone, except as may be required  
8 to applicable tax authorities, pursuant to Defendant's express written consent, by order  
9 of the Court, or to carry out the reasonable steps described in this Settlement to locate  
10 missing Class Members. (§III.K.1)

11       Within fourteen (14) calendar days after receiving the Class Data List from  
12 Defendant, the Settlement Administrator shall mail the Class Notice to all identified  
13 Class Members via first-class U.S. Mail, using the last known address information  
14 provided by Defendant, unless such address is modified by any updated address  
15 information that the Settlement Administrator obtains in the course of administration of  
16 the Settlement. Prior to completing this mailing, the Settlement Administrator shall  
17 perform a National Change of Address ("NCOA") search to confirm the validity of and  
18 update Class Members' mailing addresses. (§III.K.2)

19       If any Class Notice is returned as undeliverable with a forwarding address within  
20 thirty (30) days of the mailing of the Class Notice, the Settlement Administrator shall  
21 have five (5) calendar days to re-mail the Class Notice to the forwarding address. If any  
22 Class Notice is returned as undeliverable without a forwarding address within thirty  
23 (30) calendar days of the mailing of the Class Notice, the Settlement Administrator  
24 shall have five (5) calendar days from receipt of the returned Class Notice to search for  
25 a more current address for the Class Member and to re-mail the Class Notice to the

1 Class Member. This inquiry shall include a skip-trace search. The Settlement  
2 Administrator shall be responsible for taking all reasonable steps consistent with its  
3 agreed upon job parameters, Court orders and fee, according to the deadlines set forth  
4 in this Settlement to administer the Settlement, including, inter alia, to tracking all  
5 undelivered mail, performing an address search for all mail returned without a  
6 forwarding address, and promptly re-mailing the Class Notice to Class Members as set  
7 forth herein. If the Class Notice is re-mailed, the Claims Administrator shall note for its  
8 own records the date and address of each such re-mailing and so notify Class Counsel  
9 and Defendants' counsel. The obligation to trace and resend returned Class Notices  
10 shall cease after two mailings or thirty (30) calendar days after the initial mailing,  
11 whichever occurs first. The Response Deadline shall be either the original Response  
12 Deadline or fifteen (15) calendar days after the remailing of a Class Notice in  
13 accordance with the Agreement, whichever is later. (§III.K.2)

## 14 15 **2. Content of class notice.**

16 A copy of the proposed class notice is attached to the Settlement Agreement as  
17 Exhibit A. The notice includes information such as: a summary of the litigation; the  
18 nature of the settlement; the terms of the settlement agreement; the maximum  
19 deductions to be made from the gross settlement amount (i.e., attorney fees and costs,  
20 the enhancement award, and claims administration costs); the procedures and deadlines  
21 for participating in, opting out of, or objecting to, the settlement; the consequences of  
22 participating in, opting out of, or objecting to, the settlement; and the date, time, and  
23 place of the final approval hearing. See Cal Rules of Court, rule 3.766(d). It is to be  
24 given in both English and Spanish (§III.J.1).

25 //

1                   **3. Settlement Administration Costs**

2                   Settlement administration costs are estimated at **\$13,500**, including the cost of  
3 notice (§III.E). Prior to the time of the final fairness hearing, the settlement  
4 administrator must submit a declaration attesting to the total costs incurred and  
5 anticipated to be incurred to finalize the settlement for approval by the Court.

6  
7                   **E. ATTORNEY FEES AND COSTS**

8                   California Rule of Court, rule 3.769(b) states: “Any agreement, express or  
9 implied, that has been entered into with respect to the payment of attorney fees or the  
10 submission of an application for the approval of attorney fees must be set forth in full in  
11 any application for approval of the dismissal or settlement of an action that has been  
12 certified as a class action.”

13                   Ultimately, the award of attorney fees is made by the court at the fairness  
14 hearing, using the lodestar method with a multiplier, if appropriate. *PLCM Group, Inc.*  
15 *v. Drexler* (2000) 22 Cal.4<sup>th</sup> 1084, 1095-1096; *Ramos v. Countrywide Home Loans, Inc.*  
16 (2000) 82 Cal.App.4<sup>th</sup> 615, 625-626; *Ketchum III v. Moses* (2000) 24 Cal.4<sup>th</sup> 1122,  
17 1132-1136. In common fund cases, the court may use the percentage method. If  
18 sufficient information is provided a cross-check against the lodestar may be conducted.  
19 *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5<sup>th</sup> 480, 503. Despite any  
20 agreement by the parties to the contrary, “the court ha[s] an independent right and  
21 responsibility to review the attorney fee provision of the settlement agreement and  
22 award only so much as it determined reasonable.” *Garabedian v. Los Angeles Cellular*  
23 *Telephone Company* (2004) 118 Cal.App.4<sup>th</sup> 123, 128.

24                   The question of class counsel’s entitlement to **\$1,137,500** (35%) in attorney fees  
25 will be addressed at the final fairness hearing when class counsel brings a noticed

1 motion for attorney fees. If a lodestar analysis is requested class counsel must provide  
2 the court with current market tested hourly rate information and billing information so  
3 that it can properly apply the lodestar method and must indicate what multiplier (if  
4 applicable) is being sought.

5 Fee Split: Class Counsel represent that they have entered a fee-sharing  
6 agreement, approved in writing by both Plaintiffs. (Barnes Decl., ¶44.) The fee  
7 division is as follows: 17.5% to Lavi & Ebrahimian, LLP; 20.625% to Vanessa  
8 Ruggles; 20.625% to Gregg Lander; 16.5% to Law Offices of Kevin T. Barnes; and  
9 24.75% to Law Offices of Raphael A. Katri. (*Ibid.*)

10 Class counsel should also be prepared to justify the costs sought (capped at  
11 \$30,000) by detailing how they were incurred.

#### 12 13 **F. SERVICE AWARDS**

14 The Settlement Agreement provides for a service award of up to \$20,000  
15 (\$10,000 each) for the class representatives. Trial courts should not sanction  
16 enhancement awards of thousands of dollars with “nothing more than *pro forma* claims  
17 as to ‘countless’ hours expended, ‘potential stigma’ and ‘potential risk.’ Significantly  
18 more specificity, in the form of quantification of time and effort expended on the  
19 litigation, and in the form of reasoned explanation of financial or other risks incurred by  
20 the named plaintiffs, is required in order for the trial court to conclude that an  
21 enhancement was ‘necessary to induce [the named plaintiff] to participate in the suit . . .  
22 .’” *Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 806-807,  
23 italics and ellipsis in original.

24 The Court will decide the issue of the enhancement award at the time of final  
25 approval.

1 **V. CONCLUSION AND ORDER**

2 The Court hereby:

3 (1) Grants preliminary approval of the settlement as fair, adequate, and  
4 reasonable;

5 (2) Grants conditional class certification;

6 (3) Appoints Ronald G. Hayes and Jorge A. Salgado Mendez as Class  
7 Representatives;

8 (4) Appoints Vanessa M. Ruggles and Gregg Lander of VANESSA M.  
9 RUGGLES, ESQ.; Raphael A. Katri of LAW OFFICES OF RAPHAEL A.  
10 KATRI; Kevin T. Barnes of LAW OFFICES OF KEVIN T. BARNES; and  
11 Joseph Lavi, Vincent C. Granberry, and Danielle E. Montero of LAVI &  
12 EBRAHIMIAN. LLP as Class Counsel;

13 (5) Appoints Rust Consulting Inc. as Settlement Administrator;

14 (6) Approves the proposed notice plan; and

15 (7) Approves the proposed schedule of settlement proceedings as follows:

- 16 • Preliminary approval hearing: December 1, 2023
- 17 • Deadline for Defendant to provide class list to settlement administrator:
- 18 December 15, 2023 (within 10 business days from preliminary approval)
- 19 • Deadline for settlement administrator to mail notices: December 29, 2023
- 20 (within 14 calendar days from preliminary approval)
- 21 • Deadline for class members to opt out: February 12, 2024 (45 calendar days
- 22 from the initial mailing of the Notice Packets)
- 23 • Deadline for class members to object: February 12, 2024 (45 calendar days from
- 24 the initial mailing of the Notice Packets)
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• Deadline for class counsel to file motion for final approval:  
\_\_\_\_\_ <sup>24</sup>2/26, 202~~3~~ (16 court days prior to final fairness hearing)

*M*

• Final fairness hearing: \_\_\_\_\_ <sup>3/19</sup>3/19, 202~~3~~, at <sub>4/</sub>9:00 a.m.

Dated: 12/1/23

Maren E. Nelson

MAREN E. NELSON

Judge of the Superior Court