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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

**CORINTHIAN INTERNATIONAL WAGE
AND HOUR CASES**

Coordinated Actions:

*Turner v. Corinthian International Parking
Services, Inc.*

Santa Clara Superior Court
Case No. 16CV292208

*Rocquemore v. Corinthian International
Parking Services, Inc.*

Alameda Superior Court
Case No. RG 16801065

Case No. JCCP 4886

Honorable Theodore C. Zayner

**PLAINTIFFS' MEMORANDUM OF
POINTS AND AUTHORITIES IN SUPPORT
OF AMENDED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: September 13, 2023

Time: 1:30 p.m.

Dept.: 19

Turner Complaint Filed: June 11, 2015

Rocquemore Complaint Filed: Jan. 21, 2016

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Adrian Turner and Mykale Rocquemore, on behalf of the Class, Aggrieved Employees, and the State of California (“Plaintiffs”) request that the Court take the first step in the settlement approval process and grant preliminary approval of their class and representative action Settlement against Defendant Corinthian International Parking Services, Inc. (“Defendant”).¹ The purpose of the Court’s preliminary evaluation of the proposed Settlement is to determine whether it is within the “range of reasonableness.” Here, the proposed Settlement satisfies all the criteria for preliminary approval under California law and falls well within the range of reasonableness.

Plaintiffs allege that Defendant systematically violated California labor law by failing to pay minimum wages, pay overtime, provide compliant meal breaks, permit and/or authorize compliant rest breaks, furnish complete and accurate wages statements, furnish accurate records, timely pay wages owed during employment, timely pay final wages, and reimburse for all necessary business expenses. In their Complaints, Plaintiffs sought monetary damages, civil penalties, and other relief, on behalf of the Class, the State of California, and Aggrieved Employees.

Following significant investigation and discovery of the facts and law related to the allegations in the Complaints in formal and informal discovery over nearly eight years and three private mediations, the parties conducted extensive settlement negotiations. Plaintiffs also reviewed Defendant’s financial records with a certified public accountant and determined that taking this case to trial and obtaining a judgment would likely bankrupt Defendant, resulting in the Class and the State receiving nothing.

Plaintiffs and their counsel are confident that the resulting \$1,050,000 Settlement provides compelling and certain benefits for the Class, particularly in light of the significant risks of continuing with litigation and Defendant’s limited ability to pay, and request the Court to preliminarily approve it and permit notice of its terms to be disseminated to the Class.

II. BACKGROUND

A. Factual Background

Defendant is a valet and parking management company operating in California that provides services in all aspects of parking and ground transportation, including valet parking, concierge

¹ Unless otherwise defined herein, capitalized terms have the meaning ascribed to them in the Class Action Settlement Agreement (“Settlement”), attached as **Exhibit 1** to the Declaration of Carolyn H. Cottrell in Support of Plaintiffs’ Amended Motion for Preliminary Approval of Class Action Settlement (“Cottrell Decl.”), filed concurrently herewith.

1 service, coat check, transportation, and chauffeuring. Cottrell Decl., ¶ 9. Plaintiff Turner was
2 employed by Defendant as a Class A/B Commercial Driver and Casual Driver from approximately
3 September 2011 to approximately October 2012. *Id.*, ¶ 10. Plaintiff Rocquemore was employed by
4 Defendant as a Shuttle Driver during the class period. *Id.*, ¶ 10.

5 The Class Members are all current and former hourly-paid or non-exempt individuals who
6 were employed by Defendant within the State of California at any time between June 11, 2011 and
7 the date of Preliminary Approval of the Settlement. Settlement, ¶¶ I.C, I.K.² The PAGA Group
8 Members are all current and former hourly-paid or non-exempt individuals who were employed by
9 Defendant within the State of California at any time between January 21, 2015 and the date of
10 Preliminary Approval of the Settlement. *Id.*, ¶ I.AA.

11 Plaintiffs allege that Defendant instituted a rounding policy that resulted in underpayment of
12 wages, failed to pay split shift premiums, and failed to provide compliant meal and rest periods.
13 Cottrell Decl., ¶ 13. They allege that they and Class Members have been systematically denied
14 compensation for all time worked (including overtime and minimum wages), legally compliant meal
15 and rest periods, and reimbursement for their business expenses. *Id.* As such, Plaintiffs asserted
16 claims for Defendant's failure to pay minimum wages, pay overtime, provide complaint meal breaks,
17 permit and/or authorize compliant rest breaks, furnish complete and accurate wages statements,
18 furnish accurate records, timely pay wages owed during employment, timely pay final wages, and
19 reimburse for all necessary business expenses. *Id.*, ¶ 14.

20 **B. Procedural History**

21 On June 11, 2015, Plaintiff Adrian Turner filed his Class Action Complaint in Alameda
22 Superior Court, Case No. RG15773846 ("*Turner* Action"), on behalf of himself and putative Class
23 members. *Id.*, ¶ 16; Settlement, ¶ II.A. On July 24, 2015, Plaintiff Turner and Defendant entered
24 into a Stipulation to transfer the *Turner* Action from Alameda Superior Court to Santa Clara Superior
25 Court. Cottrell Decl., ¶ 17; Settlement, ¶ II.B. The Stipulation and Proposed Order to transfer was
26 filed with the Alameda Superior Court on July 25, 2015, and the Order was signed by the Alameda
27 Superior Court on July 29, 2015. *Id.*

28
29 ² Additionally, Plaintiffs assert claims on behalf of the following Subclasses: (1) rounding subclass,
30 all members of the Class who were subject to Defendant's rounding policy at any time during the
31 Class Period; (2) meal period subclass, all members of the Class who worked at least one shift of
32 more than five hours at any time during the Class Period; (3) rest period subclass, all members of
the Class who worked at least one shift of three and one-half hours or more at any time during the
Class Period; and (4) expense reimbursement subclass, all members of the Class who purchased
shoes and/or apparel to comply with Defendant's dress code policy at any time during the Class
Period. Cottrell Decl., ¶ 15.

1 On December 15, 2015, Plaintiff Turner filed his First Amended Class Action Complaint in
2 the *Turner* Action, which narrowed the scope of the Class to all current and former hourly-paid or
3 non-exempt individuals who were employed by Defendant within the State of California from June
4 11, 2011 to the present, and who currently reside in California. Cottrell Decl., ¶ 18; Settlement, ¶
5 II.C.³ In January 2016, Plaintiff Turner’s counsel took multiple depositions, including that of Doug
6 Knapp, Defendant’s President. Cottrell Decl., ¶ 19. On March 2, 2016, the *Turner* Action was
7 transferred to the Santa Clara Superior Court. Cottrell Decl., ¶ 20; Settlement, ¶ II.D.

8 Subsequently, the parties agreed to participate in private mediation. Cottrell Decl., ¶ 24. In
9 advance of the mediation, the Parties engaged in formal discovery and informal discovery—where
10 Defendants produced hundreds of documents relating to their policies, practices, and procedures
11 regarding paying non-exempt employees for all hours worked, overtime, meal and rest period
12 policies, and payroll and operational policies. *Id.*, ¶ 25. As part of Defendant’s production, Plaintiffs
13 reviewed time records, pay records, and information relating to the size and scope of the Class, as
14 well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. *Id.*
15 This allowed Plaintiffs’ counsel to formulate and assess potential damages and PAGA penalties
16 against the risk of continuing litigation. *Id.* It also allowed Plaintiffs’ counsel to calculate data points,
17 including that: (a) the putative Class consists of approximately 2,391 employees who worked
18 approximately 102,116 workweeks (from June 11, 2011 through May 2017) at an average hourly
19 rate of \$11.54 and overtime rate of \$17.31; (b) Defendant’s rounding policy resulted in
20 underpayment of wages for approximately 57.4% of putative Class members’ shifts; (c) 92% of meal
21 periods were noncompliant; (d) 100% of rest periods were noncompliant; and (e) Defendant failed
22 to reimburse employees for necessary business expenses incurred for purchase of and maintaining
23 employee uniforms and cell phone usage in connection with employee job duties. *Id.*

24 On May 31, 2017, the parties participated in a private mediation with the Honorable Ronald
25 M. Sabraw (Ret.) and agreed to stay discovery during the pendency of the mediation. *Id.*, ¶ 26. The
26 mediation was unsuccessful, and the Parties agreed to participate in a second meditation session
27

28 ³ On January 21, 2016, Plaintiff Mykale Rocquemoire filed a representative action on behalf of the
29 State of California entitled *Rocquemoire v. Corinthian International Parking Services, Inc.*, asserting
30 a claim for civil penalties pursuant to the Private Attorneys General Act (“PAGA”) against
31 Defendant, in Alameda Superior Court, Case No. RG16801065 (“*Rocquemoire* Action”). Cottrell
32 Decl., ¶ 21. On August 4, 2016, Defendant filed a Petition for Coordination, which sought to
coordinate the *Turner* Action and the *Rocquemoire* Action. *Id.*, ¶ 22. On October 28, 2016, the Court
granted Defendant’s Petition, ordered that the proceedings be coordinated, and found that Santa
Clara was the most appropriate forum for the cases. *Id.*, ¶ 23.

1 with Judge Sabraw. *Id.* The second session, held on January 8, 2018, was also unsuccessful. *Id.*

2 On July 1, 2019, Plaintiff Turner filed a Second Amended Class Action Complaint (the
3 “Operative Complaint”), which added allegations concerning the rounding claim. *Id.*, ¶ 29.

4 On July 31, 2019, Plaintiff Turner filed a Renewed Motion for Class Certification
5 (“RMCC”). *Id.*, ¶ 30.⁴ On August 30, 2019, the Court issued an Order: (1) granting Plaintiff’s RMCC
6 in part, and certifying the class, and the meal period, rest period, expense reimbursement, and
7 rounding subclasses; (2) appointing Plaintiff Turner as class representative; and (3) appointing
8 Lawyers for Justice PC as class counsel. *Id.*, ¶ 31.

9 On September 13, 2019, Defendant filed a Motion to Compel Arbitration and Enforce Class
10 Action Waiver (“Motion to Compel Arbitration”) that sought to compel members of the certified
11 class to participate in mediation and/or arbitration. *Id.*, ¶ 32. That motion was denied on December
12 20, 2019. *Id.* On January 24, 2020, Defendant filed a notice of appeal of the Court’s denial of
13 Defendant’s Motion to Compel Arbitration. *Id.*, ¶ 33. Following full briefing, on September 29,
14 2021, the Court of Appeal issued an unpublished decision affirming the trial court’s order. *Id.*

15 In July 2022, the parties participated in a third mediation, at which they agreed to explore
16 pre-trial settlement and stay all formal proceedings until August 18, 2022. *Id.*, ¶ 34.

17 On September 1, 2022, Defendant renewed its Motion to Compel Arbitration. *Id.*, ¶ 35. On
18 December 19, 2022, the Court denied Defendant’s renewed Motion to Compel Arbitration. *Id.*

19 Shortly after the Court’s December 19, 2022 Order denying Defendant’s renewed Motion to
20 Compel Arbitration, the parties resumed settlement discussions. *Id.*, ¶ 36. As part of these settlement
21 discussions, Defendant represented that it lacked the financial ability to pay a judgment reflective
22 of the potential value of the claims at issue in this case. *Id.* To verify these contentions, Plaintiffs
23 requested Defendant’s relevant financial records and worked with Kenneth Creal, a forensic
24 accountant, to determine an amount Defendant was capable of paying a substantial settlement while
25 remaining financially solvent. *Id.* These records and Mr. Creal’s analysis confirmed that Defendant
26 only had approximately \$3.8 million cash on hand (as of December 31, 2021), and that if Defendant
27 continues to lose money, it will simply deplete that cash and decrease its ability to fund a settlement.
28 *Id.* Over several months of ongoing discussions, negotiations, drafts, and finalizing the long-form
29 settlement agreement, the parties agreed to the Settlement. *Id.*

30 Plaintiffs filed a Motion for Preliminary Approval of Class Action Settlement on May 23,

31
32 ⁴ On February 20, 2019, Plaintiff Turner filed a Motion for Class Certification. *Id.*, ¶ 27; Settlement,
¶ II.H. The Court subsequently continued the hearing for a renewed motion for class certification to
allow discovery to be conducted on Plaintiff’s time-rounding and split-shift claims. *Id.*, ¶ 28.

2023. *Id.*, ¶ 37. Given that the original Settlement provided that all payments to all participants would be made only after the full \$1,050,000 Gross Settlement Amount had been fully funded (over two years after final approval), on July 20, 2023, the parties filed a joint stipulation to extend the date of the hearing on Plaintiffs’ motion to amend the Settlement to ensure that class members receive at least a portion of their settlement awards before the full funding of the Gross Settlement Amount. *Id.*, ¶¶ 37-38. On July 28, 2023, the parties entered into an Amendment to Class Action Settlement Agreement (“Settlement Amendment”)⁵, in which the parties agreed to revise the above payment schedule such that disbursements will be made in two rounds, as discussed further *infra*. See generally, Settlement Amendment. The Court entered an order on July 24, 2023 extending the hearing date on this updated motion to September 13, 2023. Cottrell Decl., ¶ 40.

III. TERMS OF THE SETTLEMENT

A. Monetary Terms

The Settlement provides for a Gross Settlement Amount of \$1,050,000. *Id.*, ¶ 41; Settlement, ¶¶ I.T, III.A. This amount is an all-in, non-reversionary amount that is inclusive of all payments contemplated in the Settlement, except any employer’s side payroll taxes, which will be paid separately by Defendant. *Id.* The Gross Settlement Amount will be disbursed pursuant to the Settlement without the need to submit a claim form. *Id.* With the motion for final approval, Plaintiffs’ Counsel will seek fees not to exceed one-third of the Gross Settlement Amount, or \$350,000, and actual costs not to exceed actual expenses incurred in bringing this Action as documented in Plaintiffs’ Counsel’s billing records. Cottrell Decl., ¶ 42; Settlement, III.B.2. The Settlement sets aside reasonable fees and expenses for the costs of settlement administration, not to exceed \$100,000. Settlement, ¶ III.B.4. The Settlement sets aside \$15,000 each for the Class Representative Service Payments to Plaintiffs for their service to the Class. *Id.*, ¶¶ I.L, III.B.1. Additionally, the Settlement sets aside \$50,000 to resolve the Class Members’ claims arising under PAGA, \$37,500 of which is payable to the LWDA as the LWDA’s share of the settlement of civil penalties, and \$12,500 is payable to the Participating Class Members. *Id.*, ¶¶ I.W, III.B.3.

B. Settlement Shares for Participating Class Members

The estimated Gross Settlement Amount available to the approximately 3,825 Class Members is approximately \$274.50 each. Cottrell Decl., ¶ 46; Settlement, ¶ III.C.5. The Settlement Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount by the total number of workweeks worked by all Participating Class Members during the Class

⁵ The Settlement Amendment is attached as **Exhibit 2** to the Cottrell Decl.

1 Period and multiplying the result by each individual Participating Class Member's total number of
2 workweeks worked during the Class Period. Cottrell Decl., ¶ 47; Settlement, ¶ III.C.2.

3 One-third of each Participating Class Member's Settlement Share is in settlement of wage
4 claims subject to an IRS W-2, and two-thirds of each Participating Class Member's Settlement Share
5 is in settlement of claims for interest and penalties subject to an IRS 1099. Settlement, ¶ III.C.3.
6 Settlement Share checks will remain valid for 180 days after mailing. *Id.*, ¶ III.F.11. If a Participating
7 Class Member's Settlement Share check is not cashed within 120 days after its last mailing, the
8 Settlement Administrator will send the Participating Class Member a 60-day reminder notice. *Id.*, ¶
9 III.F.11. If a check remains uncashed by expiration of the check-cashing period, the funds will be
10 redistributed among Class Members who cashed their checks, using the same formula for the initial
11 distribution, provided the total amount of uncashed checks for all Class Members equals or exceeds
12 \$100,000. *Id.*, ¶ III.F.11. Any uncashed checks from this second distribution will be paid to
13 California Rural Legal Assistance ("CRLA"), a 501(c)(3) non-profit organization that provides legal
14 assistance to low-income individuals and communities, as a *cy pres* recipient, in compliance with
15 Cal. Code Civ. Proc. § 384. Cottrell Decl., ¶ 52; Settlement, ¶ III.F.11. If the total amount of
16 uncashed checks from the initial distribution, following final 60-day notice period, is less than
17 \$100,000, the funds from such uncashed checks will be paid to CRLA. *Id.*

18 Plaintiffs and Plaintiffs' Counsel do not have any financial or business relationships with
19 CRLA. Cottrell Decl., ¶ 53. Plaintiffs' Counsel submits that the *cy pres* distribution fulfills the
20 purposes of the lawsuit and is otherwise appropriate. *Id.*; *see also State of Cal. v. Levi Strauss &*
21 *Co.*, 41 Cal.3d 460, 472 (Cal. 1986) ("The propriety of fluid recovery in a particular case depends
22 upon its usefulness in fulfilling the purposes of the underlying cause of action."); *In re Microsoft I-*
23 *V Cases*, 135 Cal.App.4th 706, 722 (Cal. App. 2006); *Nachshin v. AOL, Inc.*, 663 F.3d 1034, 1038-
24 41 (9th Cir. 2011); *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir. 2012).

25 **C. Settlement Administration**

26 The Parties agreed to retain Atticus Administration, LLC ("Atticus"), as the Settlement
27 Administrator. Cottrell Decl., ¶ 54; Settlement, ¶ I.FF. Atticus will be responsible for conducting a
28 National Change of Address search to update Class Member addresses before mailing the Class
29 Notice of Settlement ("Class Notice");⁶ re-mailing returned Class Notices to Class Members' new
30 addresses; setting up a toll-free telephone number to receive calls from Class Members; receiving
31 and reviewing for validity completed requests for exclusion; providing the Parties with weekly status
32

⁶ The proposed Class Notice is attached as **Exhibit B** to the Settlement Amendment.

1 reports about the delivery of Class Notices and receipt requests for exclusion; calculating Settlement
2 Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax
3 reports required under the Settlement; printing and providing Participating Class Members and
4 Plaintiffs tax forms; and otherwise administering the Settlement. Settlement, ¶ III.D.

5 No later than 14 days following preliminary approval, Defendant will provide Atticus the
6 Class Data, including each Class Member's name, last-known mailing address, Social Security
7 number, employee identification number, and number of workweeks employed during the Class
8 Period as a Class Member. *Id.*, ¶¶ I.G, III.F.2. As soon as possible, and in no event later than 14 days
9 after receiving the Class Data, Atticus will send the Class Notice to Class Members via first-class
10 regular U.S. Mail using the mailing address information provided by Defendant, unless modified by
11 any updated address information that Atticus obtains in the course of administration of the
12 Settlement. *Id.*, ¶¶ I.I, I.J, III.F.2. If a Class Notice is returned because of an incorrect address, Atticus
13 will promptly, and not longer than 10 days from receipt of the returned notice, search for a more
14 current address for the Class Member and re-mail the Class Notice to the Class Member. *Id.*, ¶ III.F.2.

15 Class Members will have 45 days after the date Atticus first mails the Class Notice to submit
16 objections to the Settlement, disputes regarding workweeks, or requests for exclusion. *Id.*, ¶ III.F.3.
17 If 5% or more Class Members opt-out of the Settlement, Defendant may, at its election, void the
18 Settlement by notifying Plaintiffs' Counsel and the Court of its election to void no later than 30 days
19 after the expiration of the period to submit valid Elections Not to Participate. *Id.*, ¶ III.F.4.

20 Defendant will fund the Gross Settlement Amount as follows: (i) \$600,000 will be paid
21 within 15 days of the Effective Date; and (ii) the remaining \$450,000 plus Defendant's payment of
22 necessary employer's side payroll taxes will be paid quarterly over a two-year period beginning 90
23 days after the first payment has been made. *Id.*, ¶ III.F.9. Within 15 days after Defendant funds the
24 first installment of \$600,000 of the Gross Settlement Amount, Atticus will make the first round of
25 payments representing 57% of Participating Class Members' Settlement Shares and PAGA awards
26 (if any), Class Representative Service Payments, Class Counsel Fees Payment and Litigation
27 Expenses Payment, LWDA Payment to the LWDA, and Settlement Administration Expenses.
28 Settlement Amendment, at p. 1.⁷ Within 15 days after Defendant completes funding of the remaining
29 \$450,000 of the Gross Settlement Amount, Atticus will make the second round of payments
30

31 ⁷ To the extent any of the first \$600,000 installment of the Gross Settlement Amount is not exhausted
32 by the first round of payments, the remaining funds shall remain in the Qualified Settlement Fund
established by Atticus and shall be distributed with the second round of payments. *Id.*; *see also*,
Settlement, ¶ III.F.10.

1 representing the remaining 43%. *Id.*

2 **D. Release of Claims**

3 As of the Effective Date, Plaintiff and the Participating Class Members release the Released
4 Parties from the Released Claims for the Class Period. Settlement, III.G. “Released Claims” means
5 all claims that were or could have been asserted based on the facts alleged in the Second Amended
6 Complaint by Plaintiffs and Class Members, including, but not limited to, claims based on
7 Defendant’s alleged: (1) failure to provide employees with meal and rest periods; (2) failure to pay
8 minimum wages and overtime; (3) failure to pay wages during employment at termination; (4)
9 failure to reimburse business expenses; (5) failure to provide seating; (6) civil penalties under the
10 Private Attorneys General Act (“PAGA”); and (7) unfair competition. *Id.*, ¶ I.CC. This expressly
11 excludes all other claims, including claims for vested benefits, wrongful termination, unemployment
12 insurance, disability, social security, workers’ compensation, and claims arising outside of the Class
13 Period. *Id.* The *res judicata* effect of the Judgment will be the same as that of the Release. *Id.*

14 “Released Parties” means Defendant, together with all of Defendant’s past and present
15 parents, subsidiaries, predecessors, successors, affiliates and related entities, and their respective
16 shareholders, officers, directors, employees, administrators, fiduciaries, trustees, heirs,
17 representatives, principals, accountants, auditors, consultants, insurers and reinsurers, agents,
18 attorneys, and any other entities that may be considered joint employers. *Id.*, ¶ I.DD.

19 In the event that (1) Defendant does not fully fund the Gross Settlement Amount following
20 the Effective Date, and (2) any funding installment for the Gross Settlement Amount required to be
21 paid by Defendant pursuant to the terms of the Settlement (as amended) remains unpaid for a period
22 of at least 90 days after it is due, Plaintiff may file the necessary motion(s) to vacate the Court’s
23 approval of the Settlement, vacate the Court’s entry of judgment, and/or proportionally reduce any
24 release of claims based on the *pro rata* amount of the Gross Settlement Amount that remains unpaid.
25 Settlement Amendment, at pp. 1-2; see also, Settlement, ¶ III.G.

26 As of the Effective Date, and upon Defendant fully funding the Settlement, all eligible and
27 Participating Class Members employed in the PAGA Period, and the State of California, shall be
28 deemed to have fully, finally, and forever released, relinquished, and will release, the Released
29 Parties from the Released Claims arising under PAGA during the PAGA Period. Settlement, ¶ III.H.
30 In exchange for their Class Representative Service Payments, Plaintiffs have agreed to a California
31 Civil Code § 1542 waiver and general release of all claims. *Id.*, ¶¶ III.B.1, III.I, III.J.

32 The Released Claims are proper under California class action law. “In a class action

1 settlement, a clause providing for the release of claims may refer to all claims, both potential and
2 actual, that may have been raised in the pending action with respect to the matter in controversy. A
3 court may release not only those claims alleged in the complaint and before the court, but also claims
4 which could have been alleged by reason of or in connection with any matter or fact set forth or
5 referred to in the complaint.” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521, 537 (Cal.
6 App. 2021); *Uribe v. Crown Bldg. Maint. Co.*, 70 Cal.App.5th 986, 1005 (Cal. App. 2021); *Robinson*
7 *v. Southern Counties Oil*, 53 Cal.App.5th 476 (Cal. App. 2020).

8 **IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

9 **A. Applicable Legal Standard**

10 The decision to approve or reject a proposed settlement is committed to a court’s broad
11 discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-35 (Cal. App. 2001). To grant
12 preliminary approval of a class action settlement, courts need find only that the settlement falls
13 within the range of possible final approval, also described as “the range of reasonableness.” *See,*
14 *e.g., North County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.*, 27 Cal.App.4th 1085, 1089-90
15 (Cal. App. 1994); *see also Newberg on Class Actions*, § 11:25.

16 To make this determination, courts must consider several relevant factors, including “the
17 strength of [the] plaintiffs’ case, the risk, expense, complexity and likely duration of further
18 litigation, the risk of maintaining class action status through trial, the amount offered in settlement,
19 the extent of discovery completed and the stage of the proceedings, [and] the experience and views
20 of counsel.” *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794, 1801 (Cal. App. 1996). “The list of
21 factors is not exclusive, and the court is free to engage in a balancing and weighing of the factors
22 depending on the circumstances of each case.” *Wershba*, 91 Cal.App.4th at 245. Under the relevant
23 factors, the Settlement warrants preliminary approval.

24 **B. The Proposed Settlement is Entitled to a Presumption of Fairness**

25 A presumption of fairness exists where: (1) the settlement is reached through arm’s-length
26 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
27 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
28 small.⁸ *Dunk*, 48 Cal.App.4th 1802.

29 Here, the material terms of the Settlement were reached through arm’s-length bargaining
30 over the course of three private mediations and subsequent negotiations. Cottrell Decl., ¶¶ 24-26,
31 36. The material terms of the Settlement were only agreed to by the Parties after significant
32

⁸ After notice to the Class, Plaintiffs expect that the fourth factor will also be satisfied.

1 investigation and discovery of the facts and law related to the allegations in the Class Action
2 Complaint and Amended Class Action Complaint over nearly eight years. *Id.*, ¶¶ 24-26, 36;
3 Settlement, II.Q. The Parties engaged in formal discovery and informal discovery – where
4 Defendants produced hundreds of documents relating to their policies, practices, and procedures
5 regarding paying non-exempt employees for all hours worked, overtime, meal and rest period
6 policies, and payroll and operational policies. *Id.* As part of Defendant’s production, Plaintiffs
7 reviewed time records, pay records, and information relating to the size and scope of the Class, as
8 well as data permitting Plaintiffs to understand the number of workweeks in the Class Period. *Id.*
9 This allowed Plaintiffs’ Counsel to formulate and assess potential damages and PAGA penalties
10 against the risk of continuing litigation. *Id.* The Parties agree that the above-described investigation
11 and evaluations, as well as the information exchanged during the settlement negotiations, are more
12 than sufficient to assess the merits of the respective Parties’ positions and to compromise on the
13 issues on a fair and equitable basis. *Id.*

14 Finally, Plaintiffs’ Counsel are experienced and respected class action litigators. Cottrell
15 Decl., ¶¶ 6-8. Thus, the third factor is satisfied.

16 **C. The Proposed Settlement is Within the Range of Fairness**

17 This is a recovery that falls within the range of reasonableness. Cottrell Decl., ¶ 70; *see, e.g.*,
18 *Viceral v. Mistras Grp., Inc.*, 2016 U.S. Dist. LEXIS 140759 at *7 (N.D. Cal. 2016) (approving wage
19 and hour settlement which represented approximately 8% of the total verdict value); *Balderas v.*
20 *Massage Envy Franchising, LLP*, 2014 WL 3610945 at *5 (N.D. Cal. 2014) (gross settlement
21 amount of 8% of maximum recovery and net settlement amount of 5%); *In re Omnivision Techs.*
22 *Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6-8% of estimated
23 damages); *In re Uber FCRA Litig.*, 2017 U.S. Dist. LEXIS 101552 at *23-24 (N.D. Cal. 2017)
24 (granting preliminary approval to class action settlement where gross settlement fund was 7.5% of
25 total possible verdict); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065 at *5 (N.D. Cal. 2014) (granting
26 final approval where gross settlement amount represented 8.6% of the maximum potential recovery
27 from the class claims and estimated amount distributable to class after accounting for attorneys’ fees
28 and other deductions represented approximately 6.1% of maximum potential recovery).⁹ The Gross
29

30 ⁹ Courts routinely approve settlements that provide a fraction of the maximum potential recovery.
31 *See, e.g., Officers for Justice v. Civil Serv. Com.*, 688 F.2d 615, 628 (9th Cir. 1982). “It is well-
32 settled law that a cash settlement amounting to only a fraction of the potential recovery does not per
se render the settlement inadequate or unfair.” *In Re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459
(9th Cir. 2000).

1 Settlement Amount here represents approximately 5% of the total estimated undiscounted exposure
2 for the substantive Class claims. Cottrell Decl., ¶¶ 71-87.

3 Critically, Defendant's financial condition limits its ability to pay a larger settlement amount,
4 and thereby reinforces the reasonableness of the Settlement. (*Cf. Dunk v. Ford Motor Co.*, 48
5 Cal.App.4th 1794, 1801 (1996) (noting a court must include the risk of insolvency and inability to
6 pay a larger settlement in its assessment of the reasonableness of a class action settlement); *see also*,
7 *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 720 F. Supp. 1379, 1387 (D. Ariz. 1989), *aff'd*
8 *sub nom. Class Plaintiffs v. City of Seattle*, 955 F.2d 1268 (9th Cir. 1992) (analyzing defendant's
9 ability to pay a judgment larger than the amount provided by the proposed settlement in settlement
10 approval context).

11 **D. The Proposed Settlement Provides Compelling Benefits to the Class as Compared to**
12 **the Significant Risks of Continued Litigation**

13 It is well-settled that a proposed settlement is not to be measured against a hypothetical ideal
14 result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland*
15 *Corp.*, 85 Cal.App.4th 1135, 1150 (Cal. App. 2000). "[I]t is the very uncertainty of outcome in
16 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The
17 proposed settlement is not to be judged against a hypothetical or speculative measure of what might
18 have been achieved by the negotiators." *Id.* (quoting *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234,
19 1242 (9th Cir. 1998)).

20 Here, the certain benefits of the Settlement must be considered in conjunction with the risks
21 of continuing litigation, which Plaintiffs' Counsel carefully assessed. Cottrell Decl., ¶¶ 87-93.
22 Plaintiffs and Plaintiffs' Counsel recognize the expense and length of continued proceedings
23 necessary to continue the litigation against Defendant through summary adjudication,
24 decertification, trial, and multiple appeals. *Id.*, ¶ 87; Settlement, ¶ II.R. Plaintiffs and Plaintiffs'
25 Counsel have also taken into account the uncertainty and risk of further litigation, the potential
26 impact of arbitration agreements signed by Plaintiffs and Class Members, the potential outcome,
27 and the difficulties and delays inherent in such litigation. *Id.* Plaintiffs and Plaintiffs' Counsel have
28 conducted extensive settlement negotiations. *Id.* Plaintiffs and Plaintiffs' Counsel are also mindful
29 that, having reviewed Defendant's financial records with a certified public accountant, it is likely
30 that taking this case to trial and obtaining a judgment would likely bankrupt Defendant, resulting in
31 the Class and the State receiving nothing. *Id.* Based on the foregoing, Plaintiffs and Plaintiffs'
32 Counsel believe the Settlement is a fair, adequate, and reasonable settlement, and is in the best

1 interests of the Class Members and the State. *Id.*

2 Defendant recognizes that the defense of this litigation will be protracted and expensive.
3 Cottrell Decl., ¶ 88; Settlement, ¶ II.S. Substantial amounts of time, energy, and resources of
4 Defendant have been and, unless the Settlement is made, will continue to be devoted to the defense
5 of the claims asserted by Plaintiffs. *Id.* Defendant, therefore, has agreed to settlement to put to rest
6 the Released Claims. *Id.* Throughout this litigation, Defendants have vigorously denied the
7 allegations in Plaintiffs' complaints, and have denied any and all liability. Cottrell Decl., ¶ 89.
8 Defendant generally and specifically denies any and all liability or wrongdoing of any sort with
9 regard to any of the claims alleged, makes no concessions or admissions of liability of any sort, and
10 contends that for any purpose other than settlement, the Class Action is not appropriate for class or
11 representative treatment. *Id.*; Settlement, ¶ II.T. Defendant asserts a number of defenses to the
12 claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct
13 in the Class Action. Cottrell Decl., ¶ 89.

14 Litigating the class claims will require substantial additional preparation and discovery and
15 ultimately would involve the depositions of Class Members and experts, the presentation of
16 percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation
17 of voluminous documentary evidence and expert reports. *Id.*, ¶ 90. While Plaintiffs believe that they
18 would have prevailed on these issues and others, they also realistically recognize the risk that a fact
19 finder may have found for Defendant on one or more of these issues and or found damages to be
20 significantly less than what Plaintiffs claim. *Id.*, ¶ 91. Given the broad scope and magnitude of risks,
21 Plaintiffs' Counsel concluded that the Settlement provides a material percentage of the substantive
22 damages estimate and is a beneficial and just result for the Class. *Id.*

23 **E. The Proposed Class Representatives' Service Payments Are Reasonable**

24 Incentive awards "are intended to compensate class representatives for work done on behalf
25 of the class, to make up for financial or reputational risk undertaken in bringing the action, and,
26 sometimes, to recognize their willingness to act as a private attorney general." *Cellphone*
27 *Termination Fee Cases*, 186 Cal.App.4th 1380, 1393–94 (Cal. App. 2010).

28 Here, Plaintiffs have substantially contributed their time and efforts over a period of eight
29 years, in pursuing the Class claims and the enforcement claims on behalf of the State of California,
30 and Plaintiffs' roles were crucial in this case. Cottrell Decl., ¶ 94. Plaintiffs had numerous
31 discussions with Plaintiffs' Counsel, worked with Plaintiffs' Counsel to review facts and answer
32 questions, responded to numerous discovery requests, assisted Plaintiffs' Counsel in their mediation

1 efforts, and remained apprised of the case at all times since electing to become Class
2 Representatives. *Id.*; *see also*, Declaration of Plaintiff Adrian Turner, ¶¶ 4-16; Declaration of
3 Plaintiff Mykale Rocquemoire, ¶¶ 4-16.

4 Moreover, Plaintiffs took the significant risk of coming forward to represent the interests of
5 their fellow employees. Cottrell Decl., ¶ 95. They stepped into this matter so that the Class claims
6 could proceed out of a sincere desire to see through the adjudication of Defendants' treatment of its
7 employees. *Id.* As a result of their service, they subjected themselves to considerable risk with
8 regards to having their names and suit in the public forum. *Id.* Plaintiffs' Class Representatives'
9 Service Payments in the amount of \$15,000.00 each is reasonable considering the efforts they made
10 and the risks they took in prosecuting this action to obtain the Settlement. *Id.*, ¶ 96. Furthermore,
11 Defendant does not oppose a payment in this amount. *Id.*, ¶ 97; Settlement, ¶ III.B.1.

12 **F. The Proposed Payment of Attorneys' Fees and Costs is Reasonable**

13 Plaintiffs will seek reasonable attorneys' fees from the Gross Settlement Amount to
14 compensate Plaintiffs' Counsel for their legal work in connection with the Action, including their
15 pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work,
16 and all post-Settlement compliance procedures. Cottrell Decl., ¶ 98; Settlement, ¶ I.E. Under the
17 terms of the Settlement, Plaintiffs' Counsel will seek an award not to exceed one-third of the Gross
18 Settlement Amount, or \$350,000.00. Cottrell Decl., ¶ 99; Settlement, ¶ III.B.2.¹⁰

19 Plaintiffs' Counsel's fee request of one-third of the settlement fund is well within the range
20 customarily approved by California and federal courts in comparable class actions. Cottrell Decl., ¶
21 102; *see e.g.*, *Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (Cal. 2016) ("33 1/3 percent of
22

23 ¹⁰ In this case, there was no guarantee of compensation or reimbursement. Cottrell Decl., ¶ 100.
24 Plaintiffs' Counsel undertook all the risks of this litigation on a completely contingent fee basis. *Id.*
25 Although the inherent risk of proving liability and damages on a class-wide basis and Defendant's
26 representation by skillful counsel confronted Plaintiffs' Counsel with the prospect of recovering
27 nothing or close to nothing for their commitment to and investment in the case, Plaintiffs' Counsel
28 have committed themselves to developing and pressing Plaintiffs' legal claims to enforce the
29 employees' rights and maximize the Class recovery. *Id.* Attorneys who litigate on a wholly or
30 partially contingent basis expect to receive significantly higher effective hourly rates in cases where
31 compensation is contingent on success, particularly in hard-fought cases where, like in the case at
32 bar, the result is uncertain. *Id.*, ¶ 101. This does not result in any windfall or undue bonus. *Id.* In the
legal marketplace, a lawyer who assumes a significant financial risk on behalf of a client rightfully
expects that his or her compensation will be significantly greater than if no risk was involved (*i.e.*,
if the client paid the bill monthly), and that the greater the risk, the greater the "enhancement." *Id.*
Adjusting court-awarded fees upward in contingent fee cases to reflect the risk of recovering no
compensation whatsoever for hundreds of hours of labor simply makes those fee awards consistent
with the legal marketplace, and in so doing, helps to ensure that meritorious cases will be brought
to enforce important public interest policies and that clients who have meritorious claims will be
better able to obtain qualified counsel. *Id.*

the common fund is consistent with, and in the range of, awards in other class action lawsuits”).¹¹

Furthermore, Plaintiffs seek reasonable litigation expenses from the Gross Settlement Amount, which are ordinarily included with an award of attorneys’ fees pursuant to California wage and hour law. Cottrell Decl., ¶ 103; Settlement, ¶¶ I.F, III.B.2; *Serrano v. Priest*, 20 Cal.3d 25, 35 (Cal. 1977); *Rider v. County of San Diego*, 11 Cal.App.4th 1410, 1424 (Cal. App. 1992). Plaintiffs’ counsel’s expenses were reasonable, were necessary to the prosecution, and are customarily billed to fee-paying clients. Cottrell Decl., ¶ 104. Furthermore, Defendant does not oppose these requests for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. *Id.*; Settlement, ¶ III.B.2. Thus, the requested Attorneys’ Fees and Costs are reasonable compensation for the excellent recovery achieved and should be preliminarily approved. Cottrell Decl. ¶ 105.

V. THE COURT HAS ALREADY CERTIFIED THE PROPOSED SETTLEMENT CLASS AND SUBCLASSES

The Court conducted a rigorous class certification analysis, found that the requirements for class certification have been met, and certified the main Class, the meal period subclass, the rest period subclass, expense reimbursement subclass, and rounding subclass on August 30, 2019. Cottrell Decl., ¶¶ 31, 106. In that Order, the Court also appointed Plaintiff Turner as representative of the certified Class and appointed Lawyers for Justice as counsel for the certified Class. *Id.*, ¶ 107.

VI. THE PROPOSED NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS

“Adequate notice is critical to court approval of a class settlement....” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1025 (9th Cir. 1998). A class action settlement notice “is satisfactory if it generally describes the terms of the settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come forward and be heard.” *Churchill Village LLC v. General*

¹¹ See also *Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (Cal. App. 2008); Eisenberg & Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, J. OF EMPIRICAL LEGAL STUDIES, Vol. 1, Issue 1, 27-78, March 2004, at 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total recovery is consistent with market rates); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb. 1, 2007) No. BC319588(approving 33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.* (Alameda County Super. Ct., No. RG05210418, Nov. 27, 2006) (approving 33% fee award with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets* (Stanislaus County Super. Ct., No. 312026, Aug. 3, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean’s 11 Casino, Inc.* (San Diego County Super. Ct., No. GIC795732, Feb. 10, 2004) (approving 33% fee award with no mention of lodestar crosscheck); *Vorise v. 24 Hour Fitness USA, Inc.*, Contra Costa County Superior Court, Case No. C 15-02051 (33.33% fee awarded on a PAGA case); *Garcia v. Pep Boys, Orange County Superior Court*, Case No. 30-2014-00720574-CU-OE-CJC (33.33% fee awarded on a PAGA-only case); *Perez v. Staffmark Investment, LLC*, Riverside County Superior Court, Case No. MCC1401137 (33.33% fee awarded on a \$650,000 settlement of a PAGA only case).

1 *Electric*, 361 F.3d 566, 575 (9th Cir. 2004).

2 Here, Defendant will identify all Class Members, and the Settlement Administrator will send
3 the Class Notice in English, with Spanish translations, via first-class regular U.S. Mail to each Class
4 Member. Cottrell Decl., ¶ 108. Prior to mailing the Class Notice to Class Members, the Settlement
5 Administrator will run the addresses in the data provided by Defendant through the National Change
6 of Address Database for any address updates and update the data as necessary. *Id.* The Settlement
7 Administrator will engage in address searches consistent with its normal practices in administering
8 settlements of wage claims, including skip tracing. *Id.* The proposed Class Notice is clear and
9 straightforward, and provides information on the case, the meaning and nature of the proposed
10 Settlement, its terms and provisions, and the rights of the Class Members to participate, opt out, and
11 object. *Id.*, ¶ 109. It describes the monetary awards that the Settlement will provide to Class
12 Members and PAGA Group Members, how the awards were calculated, and the Class release. *Id.* It
13 also provides the date, time, and location of the Final Approval Hearing, and the identity and contact
14 information for Plaintiffs' Counsel. *Id.* The proposed Class Notice fulfills the requirement of
15 neutrality in class notices. *Id.*, ¶ 106; see *Newberg on Class Actions* at §§ 8:21 and 8:39; *Manual for*
16 *Complex Litig.* at §§ 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the
17 standards of fairness, completeness, and neutrality required of a settlement class notice disseminated
18 under authority of the Court. Cottrell Decl., ¶ 111.

19 **VII. CONCLUSION**

20 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for
21 Preliminary Approval and enter an order consistent with the Proposed Order submitted herewith.

22
23 Dated: August 21, 2023

24
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