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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 Patricia M. Lucas

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

Date: July 26, 2023

Time: 1:30 pm

Department: 19

Turner Complaint Filed: June 11, 2015

Rocquemore Complaint Filed: Jan 21, 2016

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

With this Motion, 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” and, thus, whether notice to the Class of the terms and conditions of the Settlement, and the scheduling of a formal fairness hearing, are worthwhile. 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 laws by failing to pay minimum wages, pay overtime, provide complaint 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 Complaint, 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. As such, the parties arrived at the \$1,050,000.00 Settlement of Plaintiffs’ claims.

Plaintiffs and their counsel believe that the Settlement provides compelling and certain

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

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 Class Members.

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

The Class Members are all current and former hourly-paid or non-exempt individuals who were employed by Defendant within the State of California at any time during the period of time from June 11, 2011 to the date of Preliminary Approval of the Settlement. (Settlement, ¶¶ I.C, I.K; Cottrell Decl., ¶ 11). The PAGA Group Members are all current and former hourly-paid or non-exempt individuals who were employed by Defendant within the State of California at any time during the period between January 21, 2015 through the date of Preliminary Approval of the Settlement. (Settlement, ¶ I.AA; Cottrell Decl., ¶ 12).

Plaintiffs allege that Defendant instituted a rounding policy that resulted in underpayment of wages, failed to pay split shift premiums, and failed to provide complaint meal/rest periods. (Cottrell Decl., ¶ 13). They allege that they and Class Members have been systematically denied compensation for all time worked including overtime and minimum wages, legally compliant meal and rest periods, and were not reimbursed for their business expenses. (*Id.*)

As such, Plaintiffs asserted claims for Defendant's failure to pay minimum wages, pay overtime, provide complaint 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. (Cottrell

Decl., ¶ 14).

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

B. Procedural History

On June 11, 2015, Plaintiff Adrian Turner filed his Class Action Complaint in Alameda Superior Court, Case No. RG15773846 ("*Turner Action*"), on behalf of himself and putative Class members. (Cottrell Decl., ¶ 16; Settlement, ¶ II.A)

On or around July 24, 2015, Plaintiff Turner and Defendant entered into a Stipulation to transfer the *Turner Action* from Alameda Superior Court to Santa Clara Superior Court. (Cottrell Decl., ¶ 17; Settlement, ¶ II.B) The Stipulation and Proposed Order to transfer was filed with the Alameda Superior Court on July 25, 2015, and the Order was signed by the Alameda Superior Court on July 29, 2015. (*Id.*)

On December 15, 2015, Plaintiff Turner filed his First Amended Class Action Complaint in the *Turner Action*, which narrowed the scope of the Class to all current and former hourly-paid or non-exempt individuals who were employed by Defendant within the State of California from June 11, 2011 to the present, and who currently reside in California. (Cottrell Decl., ¶ 18; Settlement, ¶ II.C).

In January 2016, Plaintiff Turner's counsel took multiple depositions, including that of Doug Knapp, Defendant's President. (Cottrell Decl., ¶ 19).

On March 2, 2016, the *Turner Action* was transferred to the Santa Clara Superior Court. (Cottrell Decl., ¶ 20; Settlement, ¶ II.D).

On January 21, 2016, Plaintiff Mykale Rocquemore filed a representative action on behalf

1 of the State of California entitled *Rocquemore v. Corinthian International Parking Services, Inc.*,
2 asserting a claim for civil penalties pursuant to the Private Attorneys General Act (“PAGA”) against
3 Defendant, in Alameda Superior Court, Case NO. RG16801065 (“*Rocquemore Action*”). (Cottrell
4 Decl., ¶ 21; Settlement, ¶ II.E). A true and correct copy of Plaintiff Rocquemore’s LWDA Notice is
5 attached hereto as **Exhibit 1**.

6 On August 4, 2016, Defendant filed a Petition for Coordination (“Petition”), which sought to
7 coordinate the *Turner Action* and the *Rocquemore Action*. (Cottrell Decl., ¶ 22; Settlement, ¶ II.F).

8 On October 28, 2016, the Court granted Defendant’s Petition for Coordination, ordered that
9 the proceedings be coordinated, and found that Santa Clara was the most appropriate forum for the
10 cases. (Cottrell Decl., ¶ 23; Settlement, ¶ II.G).

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

28 On May 31, 2017, the parties participated in a private mediation with the Honorable Ronald

1 M. Sabraw (Ret.) and agreed to stay discovery during the pendency of the mediation. (Cottrell Decl.,
2 ¶ 26). The mediation was unsuccessful, and the Parties agreed to participate in a second meditation
3 session with Judge Sabraw. (*Id.*) The second session, held on January 8, 2018, was also unsuccessful.
4 (*Id.*)

5 On February 20, 2019, Plaintiff Turner filed a Motion for Class Certification (“MCC”).
6 (Cottrell Decl., ¶ 27; Settlement, ¶ II.H).

7 On April 29, 2019, the Court ordered that: (1) the MCC heard on March 22, 2019 was
8 continued to July 26, 2019, at which time the Court would issue a ruling; (2) Defendant was
9 permitted to conduct discovery only on the time-rounding and split-shift claims between April 29,
10 2019 and July 26, 2019; (3) the parties were to meet and confer concerning the filing of an amended
11 complaint that would include allegations concerning the time-rounding and split-shift claims; and
12 (4) a renewed motion for class certification on the time-rounding and split-shift claims would be
13 heard on August 30, 2019. (Cottrell Decl., ¶ 28; Settlement, ¶ II.I).

14 On July 1, 2019, Plaintiff Turner filed a Second Amended Class Action Complaint (the
15 “Operative Complaint”), which added allegations concerning the rounding claim. (Cottrell Decl., ¶
16 29; Settlement, ¶ II.J).

17 On July 31, 2019, Plaintiff Turner filed a Renewed Motion for Class Certification (“Renewed
18 MCC”). (Cottrell Decl., ¶ 30; Settlement, ¶ II.K).

19 On August 30, 2019, the Court issued an Order: (1) granting Plaintiff’s MCC in part, thereby
20 certifying the main class, the meal period subclass, the rest period subclass, and the expense
21 reimbursement subclass; (2) granting Plaintiff’s Renewed MCC, thereby certifying the rounding
22 subclass; (3) appointing Plaintiff Turner as representative of the certified class; and (4) appointing
23 Lawyers for Justice PC as counsel for the certified class. (Cottrell Decl., ¶ 31; Settlement, ¶ II.L).

24 On September 13, 2019, Defendant filed a Motion to Compel Arbitration and Enforce Class
25 Action Waiver (“Motion to Compel Arbitration”) that sought to compel members of the certified
26 class to participate in mediation and/or arbitration. (Cottrell Decl., ¶ 32; Settlement, ¶ II.M). That
27 motion was denied on December 20, 2019. (*Id.*)

28 On January 24, 2020, Defendant filed a notice of appeal of the Court’s denial of Defendant’s

1 Motion to Compel Arbitration. (Cottrell Decl., ¶ 33; Settlement, ¶ II.N). On September 29, 2021, the
2 Court of Appeal issued an unpublished decision affirming the trial court’s order. (*Id.*)

3 In July 2022, the parties participated in a third mediation, at which they agreed to explore
4 pre-trial settlement and stay all formal proceedings until August 18, 2022. (Cottrell Decl., ¶ 34).

5 On September 1, 2022, Defendant renewed its Motion to Compel Arbitration. (Cottrell Decl.,
6 ¶ 35; Settlement, ¶ II.O). On December 19, 2022, the Court denied Defendant’s renewed Motion to
7 Compel Arbitration. (*Id.*)

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

19 **III. TERMS OF THE SETTLEMENT**

20 **A. Monetary Terms**

21 The Settlement provides for a Gross Settlement Amount of \$1,050,000.00. (Cottrell Decl., ¶
22 37; Settlement, ¶¶ I.T, III.A). This amount is an all-in amount without any reversion to Defendant
23 and shall be inclusive of all payments contemplated in the Settlement, excluding any employer
24 payroll taxes, which shall not be paid from the Gross Settlement Amount and shall remain the sole
25 responsibility of Defendant. (*Id.*) All of the Gross Settlement Amount will be disbursed pursuant to
26 the Settlement without the need to submit a claim form. (*Id.*)

27 With the motion for final approval, Class Counsel will seek fees not to exceed one-third of
28

1 the Gross Settlement Amount, or \$350,000.00, and actual costs not to exceed actual expenses
2 incurred in bringing this Action as documented in Class Counsel's billing records. (Cottrell Decl., ¶
3 38; Settlement, III.B.2). The Settlement sets aside reasonable fees and expenses for the costs of
4 settlement administration, not to exceed \$100,000.00. (Cottrell Decl., ¶ 39; Settlement, ¶ III.B.4).
5 The Settlement sets aside \$15,000.00 each for the Class Representative Service Payments to
6 Plaintiffs for their service to the Class. (Cottrell Decl., ¶ 40; Settlement, ¶¶ I.L, III.B.1). Additionally,
7 the Settlement sets aside \$50,000.00 to resolve the Class Members' claims arising under PAGA,
8 \$37,500.00 of which is payable to the LWDA as the LWDA's share of the settlement of civil
9 penalties, and \$12,500.00 is payable to the Participating Class Members. (Cottrell Decl., ¶ 41;
10 Settlement, ¶¶ I.W, III.B.3)

11 **B. Settlement Shares for Participating Class Members**

12 The estimated Gross Settlement Amount available to the approximately 3,825 Class
13 Members is approximately \$274.50 each. (Cottrell Decl., ¶ 42; Settlement, ¶ III.C.5.) The Settlement
14 Share for each Participating Class Member will be calculated by dividing the Net Settlement Amount
15 by the total number of workweeks worked by all Participating Class Members during the Class
16 Period and multiplying the result by each individual Participating Class Member's total number of
17 workweeks worked during the Class Period. (Cottrell Decl., ¶ 43; Settlement, ¶ III.C.2).

18 One-third of each Participating Class Member's Settlement Share is in settlement of wage
19 claims, one-third of each Participating Class Member's Settlement Share is in settlement of claims
20 for interest, and one-third of each Participating Class Member's Settlement Share is in settlement of
21 claims for penalties allegedly due to employees. (Cottrell Decl., ¶ 44; Settlement, ¶ III.C.3).

22 Settlement Share checks will remain valid for 180 days after mailing. (Cottrell Decl., ¶ 45;
23 Settlement, III.F.11). If a Participating Class Member's Settlement Share check is not cashed within
24 120 days after its last mailing, the Settlement Administrator will send the Participating Class Member
25 a 60-day reminder notice. (Cottrell Decl., ¶ 46; Settlement, III.F.11).

26 If a check remains uncashed by expiration of the check-cashing period, the funds will be
27 redistributed among Class Members who cashed their checks, using the same formula for the initial
28 distribution, provided the total amount of uncashed checks for all Class Members equals or exceeds

1 \$100,000.00. (Cottrell Decl., ¶ 47; Settlement, ¶ III.F.11). Any uncashed checks from this second
2 distribution will be paid to California Rural Legal Assistance, a 501(c)(3) non-profit organization
3 that provides legal assistance to low-income individuals and communities, as a *cy pres* recipient, in
4 compliance with Cal. Code Civ. Proc. § 384. (Cottrell Decl., ¶ 48; Settlement, ¶ III.F.11). If the total
5 amount of uncashed checks from the initial distribution, following final 60-day notice period, is less
6 than \$100,000.00, the funds from such uncashed checks will be paid to California Rural Legal
7 Assistance, as a *cy pres* recipient. (*Id.*)

8 Plaintiffs and Class Counsel do not have any financial or business relationships with
9 California Rural Legal Assistance. (Cottrell Decl., ¶ 49). Class Counsel submits that the *cy pres*
10 distribution fulfills the purposes of the lawsuit and is otherwise appropriate. (*Id.*); *see also State of*
11 *Cal. v. Levi Strauss & Co.*, 41 Cal.3d 460, 472 (Cal. 1986) (“The propriety of fluid recovery in a
12 particular case depends upon its usefulness in fulfilling the purposes of the underlying cause of
13 action.”); *In re Microsoft I-V Cases*, 135 Cal.App.4th 706, 722 (Cal. App. 2006); *Nachshin v. AOL,*
14 *Inc.*, 663 F.3d 1034, 1038-41 (9th Cir. 2011); *Dennis v. Kellogg Co.*, 697 F.3d 858, 865 (9th Cir.
2012).

15 **C. Settlement Administration**

16 The Parties have agreed to retain Atticus Administration, LLC, as the Settlement
17 Administrator. (Cottrell Decl., ¶ 50; Settlement, ¶ I.FF). Atticus is a qualified and experienced
18 Settlement Administrator with procedures in place to protect the security of class data and adequate
19 insurance in the event of a data breach or defalcation of funds. (*Id.*)

20 The Settlement Administrator will be responsible for conducting a National Change of
21 Address search to update Class Member addresses before mailing the Class Notice Packets; re-
22 mailing returned Class Notice Packets to the Class Member’s new address; setting up a toll-free
23 telephone number to receive calls from Class Members; receiving and reviewing for validity
24 completed Elections Not to Participate in Settlement; providing the Parties with weekly status reports
25 about the delivery of Class Notice Packets and receipt of completed Elections Not to Participate in
26 Settlement; calculating Settlement Shares; issuing the checks to effectuate the payments due under
27 the Settlement; issuing the tax reports required under the Settlement; printing and providing

1 Participating Class Members and Plaintiff W-2s and IRS 1099 forms as required under the Settlement
2 and applicable law; and otherwise administering the Settlement pursuant to the Settlement
3 Agreement. (Cottrell Decl., ¶ 51; Settlement, ¶ III.D).

4 No later than 14 days following preliminary approval, Defendant will provide the Settlement
5 Administrator the Class Data, which includes each Class Member's name, last-known mailing
6 address, Social Security number, employee identification number, and number of workweeks
7 employed during the Class Period as a Class Member. (Cottrell Decl., ¶ 52; Settlement, ¶¶ I.G,
8 III.F.2).

9 As soon as possible, and in no event later than 14 days after receiving the Class Data, the
10 Settlement Administrator will send the Notice of Pendency of Class Action Settlement and Hearing
11 Date for Final Court Approval, with Spanish translations ("Class Notice Packet") to Class Members
12 via first-class regular U.S. Mail using the mailing address information provided by Defendant, unless
13 modified by any updated address information that the Settlement Administrator obtains in the course
14 of administration of the Settlement. (Cottrell Decl., ¶ 53; Settlement, ¶¶ I.I, I.J, III.F.2).

15 If a Class Notice Packet is returned because of an incorrect address, the Settlement
16 Administrator will promptly, and not longer than 10 days from receipt of the returned packet, search
17 for a more current address for the Class Member and re-mail the Class Notice Packet to the Class
18 Member. (Cottrell Decl., ¶ 54; Settlement, ¶ III.F.2).

19 Class Members will have 45 days after the date the Settlement Administrator first mails the
20 Class Notice to submit objections to the Settlement, disputes regarding Workweeks, or requests for
21 exclusion. (Cottrell Decl., ¶ 55; Settlement, ¶ III.F.3). If 5% or more Class Members opt-out of the
22 Settlement, Defendant may, at its election, void the Settlement by notifying Class Counsel and the
23 Court of its election to void no later than 30 days after the expiration of the period to submit valid
24 Elections Not to Participate. (Cottrell Decl., ¶ 56; Settlement, ¶ III.F.4).

25 Defendant will fund the Gross Settlement Amount as follows: (i) \$600,000.00 will be paid
26 within 15 days of the Effective Date; and (ii) the remaining \$450,000.00 plus the amounts necessary
27 to pay Defendant's share (employer-side only) of payroll taxes will be paid quarterly over a two-
28 year period beginning 90 days after the first payment has been made. (Cottrell Decl., ¶ 57;

1 Settlement, ¶ III.F.9).

2 Within 15 days after Defendant funds the Gross Settlement Amount, the Settlement
3 Administrator will pay all amounts due under the Settlement. (Cottrell Decl., ¶ 58; Settlement, ¶
4 III.F.10).

5 **D. Release of Claims**

6 As of the Effective Date, Plaintiff and the Participating Class Members release the Released
7 Parties from the Released Claims for the Class Period. (Cottrell Decl., ¶ 59; Settlement, III.G).
8 “Released Claims” means all claims that were or could have been asserted based on the facts alleged
9 in the Second Amended Complaint by Plaintiffs and Class Members, including, but not limited to,
10 claims based on Defendant’s alleged: (1) failure to provide employees with meal and rest periods;
11 (2) failure to pay minimum wages and overtime; (3) failure to pay wages during employment at
12 termination; (4) failure to reimburse business expenses; (5) failure to provide seating; (6) civil
13 penalties under the Private Attorneys General Act (“PAGA”); and (7) unfair competition. (Cottrell
14 Decl., ¶ 60; Settlement, ¶ I.CC) “Released Claims” expressly excludes all other claims, including
15 claims for vested benefits, wrongful termination, unemployment insurance, disability, social
16 security, workers’ compensation, and claims arising outside of the Class Period. (*Id.*) The res judicata
effect of the Judgment will be the same as that of the Release. (*Id.*)

17 “Released Parties” means Defendant, together with all of Defendant’s past and present
18 parents, subsidiaries, predecessors, successors, affiliates and related entities, and their respective
19 shareholders, officers, directors, employees, administrators, fiduciaries, trustees, heirs,
20 representatives, principals, accountants, auditors, consultants, insurers and reinsurers, agents,
21 attorneys, and any other entities that may be considered joint employers. (Cottrell Decl., ¶ 61;
22 Settlement, ¶ I.DD).

23 As of the Effective Date, and upon Defendant fully funding the Settlement, all eligible and
24 Participating Class Members employed in the PAGA Period, and the State of California, shall be
25 deemed to have fully, finally, and forever released, relinquished, and will release, the Released
26 Parties from the Released Claims arising under PAGA during the PAGA Period. (Cottrell Decl., ¶
27 62; Settlement, ¶ III.H).

1 In exchange for their Class Representative Service Payments, Plaintiffs have agreed to a
2 California Civil Code § 1542 waiver and general release of all claims. (Cottrell Decl., ¶ 63;
3 Settlement, ¶ III.B.1). As of the date the Judgment becomes Final, Plaintiffs fully and finally release
4 Defendant and the Released Parties from any and all claims, losses, debts, charges, damages,
5 demands, obligations, causes of action, lawsuits, liabilities, breaches of duty, misfeasance,
6 malfeasance, promises, controversies, contracts, judgments, awards, penalties, costs, and expenses
7 of every nature and description whatsoever, known or unknown, asserted or that might have been
8 asserted, whether in tort, contract, or for violation of any local, state, or federal statute, rule,
9 regulation, ordinance, or common law, including but not limited to those claims raised in the Action
10 and/or that could have been raised in the Action, and those arising from or related to his/her work
11 with Defendant. (Cottrell Decl., ¶ 64; Settlement, ¶¶ III.I, III.J).

12 The Released Claims are proper under California class action law. “In a class action
13 settlement, a clause providing for the release of claims may refer to all claims, both potential and
14 actual, that may have been raised in the pending action with respect to the matter in controversy. A
15 court may release not only those claims alleged in the complaint and before the court, but also claims
16 which could have been alleged by reason of or in connection with any matter or fact set forth or
17 referred to in the complaint.” *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal.App.5th 521, 537 (Cal.
18 App. 2021); *Uribe v. Crown Bldg. Maint. Co.*, 70 Cal.App.5th 986, 1005 (Cal. App. 2021); *Robinson*
19 *v. Southern Counties Oil*, 53 Cal.App.5th 476 (Cal. App. 2020).

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

21 **A. Applicable Legal Standard**

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

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

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

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

14 Here, the material terms of the Settlement were reached through arm’s-length bargaining over
15 the course of three private mediations and subsequent negotiations. (Cottrell Decl., ¶¶ 24-26, 36).
16 The material terms of the Settlement were only agreed to by the Parties after significant investigation
17 and discovery of the facts and law related to the allegations in the Class Action Complaint and
18 Amended Class Action Complaint over nearly eight years. (Cottrell Decl., ¶¶ 24-26, 36; Settlement,
19 II.Q). The Parties engaged in formal discovery and informal discovery – where Defendants produced
20 hundreds of documents relating to their policies, practices, and procedures regarding paying non-
21 exempt employees for all hours worked, overtime, meal and rest period policies, and payroll and
22 operational policies. (*Id.*) As part of Defendant’s production, Plaintiffs reviewed time records, pay
23 records, and information relating to the size and scope of the Class, as well as data permitting
24 Plaintiffs to understand the number of workweeks in the Class Period. (*Id.*) This allowed Class
25 Counsel to formulate and assess potential damages and PAGA penalties against the risk of continuing
26 litigation. (*Id.*) The Parties agree that the above-described investigation and evaluations, as well as
27 the information exchanged during the settlement negotiations, are more than sufficient to assess the
28 merits of the respective Parties’ positions and to compromise on the issues on a fair and equitable

1 basis. (*Id.*)

2 Finally, Class Counsel are experienced and respected class action litigators. (Cottrell Decl.,
3 ¶¶ 6-8). Thus, the third factor is satisfied.²

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

5 This is a recovery that falls within the range of reasonableness. (Cottrell Decl., ¶ 67); see
6 *Viceral v. Mistras Grp., Inc.*, 2016 U.S. Dist. LEXIS 140759 at *7 (N.D. Cal. 2016) (approving wage
7 and hour settlement which represented approximately 8% of the total verdict value); *Balderas v.*
8 *Massage Envy Franchising, LLP*, 2014 WL 3610945 at *5 (N.D. Cal. 2014) (gross settlement
9 amount of 8% of maximum recovery and net settlement amount of 5%); *In re Omnivision Techs.*
10 *Inc.*, 559 F.Supp.2d 1036, 1042 (N.D. Cal. 2008) (approving settlement of 6-8% of estimated
11 damages); *In re Uber FCRA Litig.*, 2017 U.S. Dist. LEXIS 101552 at *23- 24 (N.D. Cal. 2017)
12 (granting preliminary approval to class action settlement where gross settlement fund was 7.5% of
13 total possible verdict); *Cruz v. Sky Chefs, Inc.*, 2014 WL 7247065 at *5 (N.D. Cal. 2014) (granting
14 final approval where gross settlement amount represented 8.6% of the maximum potential recovery
15 from the class claims and estimated amount distributable to class after accounting for attorneys' fees
16 and other deductions represented approximately 6.1% of maximum potential recovery).³

17 Class Counsel's damages analysis also supports the Settlement. (Cottrell Decl., ¶¶ 67-83).
18 The Gross Settlement Amount is approximately 5% of the total estimated undiscounted exposure
19 for the substantive Class claims. (Cottrell Decl., ¶ 80).

20 **D. The Proposed Settlement Provides Compelling Benefits to the Class as Compared to** 21 **the Significant Risks of Continued Litigation**

22 It is well-settled that a proposed settlement is not to be measured against a hypothetical ideal
23 result that might have been achieved. *See, e.g., 7-Eleven Owners for Fair Franchising v. Southland*
24 *Corp.*, 85 Cal.App.4th 1135, 1150 (Cal. App. 2000). "[I]t is the very uncertainty of outcome in
25 litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The

26 ² After preliminary approval and notice to the Class, Plaintiffs expect that the fourth factor will also be satisfied.

27 ³ Courts routinely approve settlements that provide a fraction of the maximum potential recovery. *See, e.g., Officers for*
Justice v. Civil Serv. Com., 688 F.2d 615, 628 (9th Cir. 1982). "It is well-settled law that a cash settlement amounting
28 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 proposed settlement is not to be judged against a hypothetical or speculative measure of what might
2 have been achieved by the negotiators.” *Id.* (quoting *Linney v. Cellular Alaska P’ship*, 151 F.3d 1234,
3 1242 (9th Cir. 1998)).

4 Here, the certain benefits of the Settlement must be considered in conjunction with the risks
5 of continuing litigation, which Class Counsel carefully assessed. (Cottrell Decl., ¶¶ 83-89).

6 Plaintiffs and Class Counsel recognize the expense and length of continued proceedings
7 necessary to continue the litigation against Defendant through summary adjudication,
8 decertification, trial, and multiple appeals. (Cottrell Decl., ¶ 83; Settlement, ¶ II.R). Plaintiffs and
9 Class Counsel have also taken into account the uncertainty and risk of further litigation, the potential
10 impact of arbitration agreements signed by Plaintiffs and Class Members, the potential outcome, and
11 the difficulties and delays inherent in such litigation. (*Id.*) Plaintiffs and Class Counsel have
12 conducted extensive settlement negotiations. (*Id.*) Plaintiffs and Class Counsel are also mindful that,
13 having reviewed Defendant’s financial records with a certified public accountant, it is likely that
14 taking this case to trial and obtaining a judgment would likely bankrupt Defendant, resulting in the
15 Class and the State receiving nothing. (*Id.*) Based on the foregoing, Plaintiffs and Class Counsel
16 believe the Settlement is a fair, adequate, and reasonable settlement, and is in the best interests of
17 the Class Members and the State. (*Id.*)

18 Defendant recognizes that the defense of this litigation will be protracted and expensive.
19 (Cottrell Decl., ¶ 85; Settlement, ¶ II.S). Substantial amounts of time, energy, and resources of
20 Defendant have been and, unless the Settlement is made, will continue to be devoted to the defense
21 of the claims asserted by Plaintiffs. (*Id.*) Defendant, therefore, has agreed to settlement to put to rest
22 the Released Claims. (*Id.*)

23 Throughout this litigation, Defendants have vigorously denied the allegations in Plaintiffs’
24 complaints, and have denied any and all liability. (Cottrell Decl., ¶ 85). Defendant generally and
25 specifically denies any and all liability or wrongdoing of any sort with regard to any of the claims
26 alleged, makes no concessions or admissions of liability of any sort, and contends that for any
27 purpose other than settlement, the Class Action is not appropriate for class or representative
28 treatment. (Cottrell Decl., ¶ 85; Settlement, ¶ II.T). Defendant asserts a number of defenses to the

1 claims, and has denied any wrongdoing or liability arising out of any of the alleged facts or conduct
2 in the Class Action. (*Id.*)

3 Litigating the class claims will require substantial additional preparation and discovery and
4 ultimately would involve the depositions of Class Members and experts, the presentation of
5 percipient and expert witnesses at trial, as well as the consideration, preparation, and presentation of
6 voluminous documentary evidence and the preparation and analysis of expert reports. (Cottrell Decl.,
7 ¶ 87).

8 While Plaintiffs believe that they would have prevailed on these issues and others, they also
9 realistically recognize the risk that a fact finder may have found for Defendants on one or more of
10 these issues and or found damages to be significantly less than what Plaintiffs claim. (Cottrell Decl.,
11 ¶ 88). Given the broad scope and magnitude of risks, Class Counsel concluded that the Settlement
12 here that provides a material percentage of the substantive damages estimate is a beneficial and just
13 result for the Class. (Cottrell Decl., ¶ 88).

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

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

18 Here, Plaintiffs have substantially contributed their time and efforts over a period of eight
19 years, in pursuing the Class claims and the enforcement claims on behalf of the State of California,
20 and Plaintiffs' roles were crucial in this case. (Cottrell Decl., ¶ 90). As demonstrated in Plaintiffs'
21 declarations, Plaintiffs had numerous discussions with Class Counsel, worked with Class Counsel to
22 review facts and answer questions, responded to numerous discovery requests, assisted Class
23 Counsel in their mediation efforts, and remained apprised of the case at all times since electing to
24 become Class Representatives. (Cottrell Decl. ¶ 90).

25 Moreover, Plaintiffs took the significant risk of coming forward to represent the interests of
26 their fellow employees. (Cottrell Decl., ¶ 91). They stepped into this matter so that the Class claims
27 could proceed out of a sincere desire to see through the adjudication of Defendants' treatment of its
28

employees. (*Id.*) As a result of their service, they subjected themselves to considerable risk with regards to having their names and suit in the public forum. (*Id.*) Plaintiffs' Class Representatives' Service Payments in the amount of \$15,000.00 each is reasonable considering the efforts they made and the risks they took in prosecuting this action to obtain the Settlement. (Cottrell Decl., ¶ 92). Furthermore, Defendant does not oppose a payment in this amount. (Cottrell Decl., ¶ 93; Settlement, ¶ III.B.1).

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

Plaintiffs seek reasonable attorneys' fees from the Gross Settlement Amount to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, and all post-Settlement compliance procedures. (Cottrell Decl., ¶ 94; Settlement, ¶ I.E) Under the terms of the Settlement, Class Counsel will seek an award not to exceed one-third of the Gross Settlement Amount, or \$350,000.00. (Cottrell Decl., ¶ 95; Settlement, ¶ III.B.2).

In this case, there was no guarantee of compensation or reimbursement. (Cottrell Decl., ¶ 96). Rather, Class Counsel has undertaken all the risks of this litigation on a completely contingent fee basis. (*Id.*) The inherent risk of proving liability and damages on a class-wide basis and Defendant's representation by skillful counsel confronted Class Counsel with the prospect of recovering nothing or close to nothing for their commitment to and investment in the case. (*Id.*) Nevertheless, Plaintiffs and Class Counsel have committed themselves to developing and pressing Plaintiffs' legal claims to enforce the employees' rights and maximize the Class recovery. (*Id.*)

Attorneys who litigate on a wholly or partially contingent basis expect to receive significantly higher effective hourly rates in cases where compensation is contingent on success, particularly in hard-fought cases where, like in the case at bar, the result is uncertain. (Cottrell Decl., ¶ 97). 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

1 hours of labor simply makes those fee awards consistent with the legal marketplace, and in so doing,
2 helps to ensure that meritorious cases will be brought to enforce important public interest policies
3 and that clients who have meritorious claims will be better able to obtain qualified counsel. (*Id.*)

4 Class Counsel's fee request of one-third of the settlement fund is well within the range
5 customarily approved by California and federal courts in comparable class actions. (Cottrell Decl.,
6 ¶ 99); *see e.g., Laffitte v. Robert Half Int'l Inc.*, 1 Cal. 5th 480, 506 (Cal. 2016) ("33 1/3 percent of
7 the common fund is consistent with, and in the range of, awards in other class action lawsuits").⁴

8 Furthermore, Plaintiffs seek reasonable litigation expenses from the Gross Settlement
9 Amount, which are ordinarily included with an award of attorneys' fees pursuant to California wage
10 and hour law. (Cottrell Decl., ¶ 99; Settlement, ¶¶ I.F, III.B.2); *Serrano v. Priest*, 20 Cal.3d 25, 35
11 (Cal. 1977); *Rider v. County of San Diego*, 11 Cal.App.4th 1410, 1424 (Cal. App. 1992). Class
12 counsel's expenses were reasonable, were necessary to the prosecution, and are customarily billed
13 to fee-paying clients. (Cottrell Decl., ¶ 10). Furthermore, Defendant does not oppose these requests
14 for a Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment. (Cottrell Decl.,
15 ¶ 100; Settlement, ¶ III.B.2). Thus, the requested Attorneys' Fees and Costs are reasonable
16 compensation for the excellent recovery achieved and should be preliminarily approved. (Cottrell
17 Decl. ¶ 101).

18 **V. THE COURT HAS ALREADY CERTIFIED THE PROPOSED SETTLEMENT** 19 **CLASS AND SUBCLASSES.**

20 In its August 30, 2019 Order, the Court conducted a rigorous class certification analysis,
21 found that the requirements for class certification have been met, and certified the main Class, the

22 ⁴ *See also Chavez v. Netflix, Inc.*, 162 Cal.App.4th 43, 66 n.11 (Cal. App. 2008); Eisenberg & Miller, *Attorney Fees in*
23 *Class Action Settlements: An Empirical Study*, J. OF EMPIRICAL LEGAL STUDIES, Vol. 1, Issue 1, 27-78, March 2004, at
24 35 (independent studies of class action litigation nationwide conclude that fees representing one-third of the total
25 recovery is consistent with market rates); *Ochoa v. Haralambos Beverage Co.* (Los Angeles Super. Ct., Feb. 1, 2007)
26 No. BC319588 (approving 33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*
27 (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).

meal period subclass, the rest period subclass, expense reimbursement subclass, and rounding subclass. (Cottrell Decl., ¶¶ 31, 102-103). In this Order, the Court also appointed Plaintiff Turner as representative of the certified Class and appointed Lawyers for Justice PC as counsel for the certified Class. (*Id.*)

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

Here, Defendant will identify all Class Members, and the Settlement Administrator will send the Class Notice Packet in English, with Spanish translations, via first-class regular U.S. Mail to each Class Member at their last known addresses provided by Defendant. (Cottrell Decl., ¶ 104). Prior to mailing the Notice to Class Members, the Settlement Administrator will run the addresses in the data provided by Defendant through the National Change of Address Database for any address updates and update the data as necessary. (*Id.*) The Settlement Administrator will engage in address searches consistent with its normal practices in administering settlements of wage claims, including skip tracing. (*Id.*)

The proposed Class Notice is clear and straightforward, and provides information on the case, the meaning and nature of the proposed Settlement, its terms and provisions, and the rights of the Class Members to participate, opt out, and object. (Cottrell Decl., ¶ 105). It describes the monetary awards that the Settlement will provide to Class Members and PAGA Group Members, how the awards were calculated, and the Class release. (*Id.*) It also provides the date, time, and location of the Final Approval Hearing, and the identity and contact information for Class Counsel. (*Id.*) The proposed Class Notice fulfills the requirement of neutrality in class notices. (Cottrell Decl. ¶ 106); see *Newberg on Class Actions* at §§ 8:21 and 8:39; *Manual for Complex Litig.* at §§ 21:311 and 21:312. Based on the foregoing, the Class Notice complies with the standards of fairness,

1 completeness, and neutrality required of a settlement class notice disseminated under authority of
2 the Court. (Cottrell Decl., ¶ 108).

3 **VII. CONCLUSION**

4 For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion for
5 Preliminary Approval and enter an order consistent with the [Proposed] Order submitted herewith.
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7
8

9 Dated: May 23, 2023

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11 

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