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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

LASHAYLA GIVENS, individually, and on
behalf of other members of the general
public similarly situated;

Plaintiff,

v.

KOOL RUNNINGS LLC, a California
limited liability company; and DOES 1
through 100, inclusive;

Defendants.

Case No.: CVRI2202735

Assigned for All Purposes to:
Honorable Harold W. Hopp
Department 1

CLASS ACTION

**NOTICE OF MOTION AND MOTION
FOR AN ORDER (1) PRELIMINARILY
APPROVING THE CLASS ACTION
SETTLEMENT; (2) APPROVING NOTICE
OF CLASS ACTION SETTLEMENT; AND
(3) SETTING HEARING FOR FINAL
APPROVAL**

*[Memorandum of Points and Authorities;
Compliance Chart; Declaration of Proposed
Class Counsel (Douglas Han); Declaration of
Proposed Administrator (Jodey Lawrence);
Declaration of Defense Counsel (Tim L.
Johnson); Declaration of Financial Expert
(Paul Zimmer, CPA); Declaration of Defendant
(Roland Sinclair); and [Proposed] Order filed
concurrently herewith]*

Hearing Date: May 9, 2024
Hearing Time: 8:30 a.m.
Hearing Place: Department 1

Complaint Filed: July 1, 2022
FAC Filed: June 8, 2023
Trial Date: None Set

1 **TO THE COURT AND DEFENDANT AND THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE on May 9, 2024 at 8:30 a.m., or as soon thereafter as this
3 matter may be heard, at Department 1, located at 4050 Main Street, Riverside, California 92501,
4 Plaintiffs Lashayla Givens, Francisco Carrillo, and Darien McGowan (“Plaintiffs”), on behalf of
5 themselves and all persons similarly situated, will and hereby does move this Court pursuant to
6 Code of Civil Procedure section 382 and California Rule of Court 3.769 for an order:

7 (1) Preliminarily approving the class action settlement reached between Plaintiffs and
8 Defendant Kool Runnings LLC (“Defendant”), including granting preliminary approval of the
9 following Class: “all current and former hourly-paid or non-exempt employees of Defendant
10 within the State of California at any time during the period from July 1, 2019 to July 30, 2023”
11 (“Class,” “Class Members,” and “Class Period”). “Class Members” shall not include any person
12 who submits a timely and valid Request for Exclusion Form;

13 (2) Approving the form of notice of class action settlement and procedure for notice
14 to the Class; and

15 (3) Setting the Final Approval Hearing.

16 Pursuant to Labor Code section 2699.3(b)(4), the Parties also seek approval of the
17 proposed settlement’s allocation of funds to claims made under the Labor Code section 2698, *et*
18 *seq.* (Private Attorneys General Act of 2004 (“PAGA”)).

19 Pursuant to the Joint Stipulation and Settlement Agreement (“Settlement Agreement” or
20 “Agreement”), filed concurrently herewith as **Exhibit 1** to the Declaration of Douglas Han In
21 Support of Motion For Preliminary Approval of Class Action Settlement, Defendant does not
22 oppose the preliminary approval of the settlement.

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1 Under the terms of the Agreement, the Parties agreed all claims brought on behalf of the
2 Class shall be fully and finally resolved for the total sum of \$100,000 (“Maximum Settlement
3 Amount”) to be paid on a non-reversionary basis. The amount remaining of the Maximum
4 Settlement Amount after the following deductions are made (“Net Settlement Amount”) shall be
5 available for distribution to Class Members who do not submit valid and timely Requests for
6 Exclusion from the Settlement:

- 7 • up to \$33,333.33 to Class Counsel as the attorneys’ fees;
- 8 • up to \$25,000 to Class Counsel as the attorneys’ costs for reimbursement of
9 attorneys’ costs and expenses incurred;
- 10 • up to \$5,000 to each Plaintiff as Class Representative Enhancement Payments
11 (totaling \$15,000);
- 12 • up to \$12,000 to Phoenix Class Action Administration Solutions, the Settlement
13 Administrator, as the Settlement Administration Costs; and
- 14 • \$10,000 as the PAGA Payment, seventy-five percent (75%) of which (\$7,500)
15 will be paid to the California Labor and Workforce Development Agency and twenty-five
16 percent (25%) of which (\$2,500) will be distributed to all current and former hourly-paid or non-
17 exempt employees of Defendant within the State of California at any time during the period from
18 May 12, 2022 to July 30, 2023, on a pro rata basis, as their Individual PAGA Payments in
19 accordance with the Settlement Agreement.

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1 This Notice of Motion is based on the fact this is a fair and reasonable settlement that
2 benefits the Class and was the product of informed, non-collusive negotiations by the Parties
3 who were represented by experienced and able counsel. (See *Dunk v. Ford Motor Co.* (1996) 48
4 Cal. App. 4th 1794, 1802; Manual for Complex Litigation (Second) (1985) § 30.44.) The
5 Agreement meets the legal standard for preliminary approval and is in the best interests of the
6 Class. The proposed form of notice explains the Agreement terms in a clear and straightforward
7 manner. The proposed procedures for notice provide the best practical notice to the Class.
8 Finally, Class Members will have an opportunity to participate in, object to, and/or opt-out of the
9 Agreement.

10 This Notice of Motion is based on this Notice, and the exhibits thereto (including the
11 Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form),
12 Memorandum of Points and Authorities, Declaration of Douglas Han, Declaration of Jodey
13 Lawrence, Declaration of Tim L. Johnson, Declaration of Paul Zimmer, Declaration of Roland
14 Sinclair, pleadings, records and files in the case, and such other oral and documentary evidence
15 which may be submitted at or before the hearing on this Motion.

16
17 Dated: April 17, 2024

JUSTICE LAW CORPORATION

18
19 By: 

Douglas Han
Attorneys for Plaintiffs

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AUTHORITIES IN SUPPORT OF MOTION
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Compliance Chart; Declaration of Proposed Class
Counsel (Douglas Han); Declaration of Proposed
Administrator (Jodey Lawrence); Declaration of
Defense Counsel (Tim L. Johnson); Declaration of
Financial Expert (Paul Zimmer, CPA); Declaration
of Defendant (Roland Sinclair); and [Proposed]
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Lashayla Givens, Francisco Carrillo, and Darien McGowan (“Plaintiffs,”
4 “Plaintiff Givens,” “Plaintiff Carillo,” and “Plaintiff McGowan”) filed a wage-and-hour class
5 action lawsuit and representative action against Defendant Kool Runnings LLC (“Defendant”)
6 (collectively, the “Parties”) in the Superior Court of California, County of Riverside, Case
7 Number CVRI2202735 (“Action”).

8 The proposed settlement reflected in the Joint Stipulation and Settlement Agreement
9 (“Settlement Agreement” or “Agreement”) is fair, reasonable, and adequate, and in the best
10 interests of the Class. Consequently, Plaintiffs, with the consent of Defendant, move this Court
11 for an order: (1) granting preliminary approval of the proposed class action settlement, as
12 embodied in the Agreement; (2) approving the Notice of Class Action Settlement, Objection
13 Form, and Request for Exclusion Form (collectively, the “Notice Packet”) to be sent to Class
14 Members, and the notification schedule as set forth in the Agreement and the Proposed Order;
15 and (3) setting a hearing for final approval of the class action settlement.

16 **II. STATUS OF THE LITIGATION**

17 **A. Procedural History**

18 On July 1, 2022, Plaintiff Givens filed a wage-and-hour class action lawsuit in the
19 Superior Court of California, County of Riverside, alleging nine (9) causes of action.
20 (Declaration of Douglas Han In Support of Motion For Preliminary Approval of Class Action
21 Settlement (“Han Decl.”), ¶ 12.)

22 After engaging in discovery, investigations, and negotiations, on May 1, 2023, the Parties
23 remotely attended mediation with the mediator Paul Grossman, resulting in the settlement of this
24 matter via a mediator’s proposal. (Han Decl., *supra*, at ¶ 13.)

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1 Pursuant to the settlement, on May 12, 2023, Plaintiff Carrillo provided written notice to
2 the California Labor and Workforce Development Agency (“LWDA”) and Defendant. On June 8,
3 2023, Plaintiff Givens filed a First Amended Complaint that: (1) adjusted the Class definition;
4 (2) added Plaintiff Carrillo and Plaintiff McGowan as named plaintiffs; and (3) added a cause of
5 action for violation of Labor Code section 2698, *et seq.* (Private Attorneys General Act of 2004
6 (“PAGA”)). (Han Decl., *supra*, at ¶ 14.)

7 **B. Investigation and Discovery**

8 Before filing the lawsuit, Class Counsel investigated and researched the facts and
9 circumstances underlying the pertinent issues and law applicable. (Han Decl., *supra*, at ¶ 15.)
10 After conducting an initial investigation, Class Counsel determined the claims were suited for
11 class and representative action adjudication. (*Ibid.*)

12 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts
13 and claims giving rise to this Action. (Han Decl., *supra*, at ¶ 16.) This included:

- 14 • conducting informal discovery and meeting and conferring with Defendant’s
15 counsel several times throughout this litigation, which produced the following:
- 16 ○ Plaintiffs’ personnel records;
 - 17 ○ Policy documents, employee handbooks, and California state required
18 disclosures and addenda;
 - 19 ○ A twenty percent (20%) sampling class list that included putative class
20 members’ job title descriptions, hire rehire, and termination dates, position
21 statuses, worker category descriptions, and regular pay rate amount; and
 - 22 ○ A twenty percent (20%) sampling of putative class members’ time and pay
23 records within Microsoft Excel Worksheets (*i.e.*, pay periods start and end
24 dates, pay dates, pay frequencies, paid rates, descriptions, total amounts, and
25 hours) and PDFs (*i.e.*, earnings rates hours/units amounts, taxes, deductions,
26 net pays, times clocked in and clocked out, and total hours);

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- reviewing and analyzing the twenty percent (20%) sampling of time and payroll records, twenty percent (20%) sampling class list, Plaintiffs' personnel records, policy documents, employee handbooks, and California state required disclosures and addenda;
- locating and interviewing putative class members;
- researching the applicable law and potential defenses;
- constructing damage models based on interpretations of the law;
- discussing Defendant's current financial condition and the recent financial hardships it has been experiencing; and
- reviewing information provided by Defendant. (Han Decl., *supra*, at ¶ 16.)

The Class is ascertainable because the Class Members may be readily identified by reference to Defendant's records. (Han Decl., *supra*, at ¶ 17.) Class Counsel's investigation revealed there are about five hundred fifteen (515) Class Members, which was confirmed by Defendant. (*Ibid.*) Class Counsel's investigation also revealed there are approximately three hundred forty-eight (348) Eligible Aggrieved Employees. (*Ibid.*)

C. Settlement Efforts

Defendant contested liability, amount of claimed damages, and propriety of class certification. (Han Decl., *supra*, at ¶ 18.) Given the high level of risk present for both sides, the Parties elected to mediate the claims and explore the possibility of settlement. (*Ibid.*)

On May 1, 2023, the Parties remotely participated in full day mediation with a mediator. (Han Decl., *supra*, at ¶ 19.) The Parties discussed all aspects of the case, including Defendant's current financial condition and the financial hardships it has been experiencing in recent years. (*Ibid.*) From Class Counsel's review of the facts, strengths and weaknesses of the case, the risks and delays posed by further litigation, and Class Counsel's prior litigation experience, Class Counsel believe the recovery for each Class Member is fair and reasonable. (*Ibid.*) Based on the settlement negotiations, the Agreement was the product of a non-collusive settlement process. (*Ibid.*) This process forced the Parties to make significant compromises in the interest of reaching a full and complete settlement. (*Ibid.*)

///

1 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

2 The Parties executed an Agreement attached as **Exhibit 1** to Douglas Han’s declaration.
3 Defendant agreed to pay \$100,000 (“Maximum Settlement Amount”) on a non-reversionary
4 basis to settle and release all claims asserted in the operative complaints on behalf of the
5 proposed Class. (Han Decl., *supra*, at ¶ 21.) The Settlement Agreement defines the Class as “all
6 current and former hourly-paid or non-exempt employees of Defendant within the State of
7 California at any time during the period from July 1, 2019 to July 30, 2023” (“Class,” “Class
8 Members,” and “Class Period”). (Han Decl., *supra*, at ¶ 21.) “Class Members” shall not include
9 any person who submits a timely and valid Request for Exclusion Form. (*Ibid.*) The amount
10 remaining in Maximum Settlement Amount after the following deductions shall be distributed to
11 Class Members who do not opt out (“Net Settlement Amount”):

- 12 • up to one-third (1/3) of the Maximum Settlement Amount to Class Counsel as the
13 attorneys’ fees (\$33,333.33);
- 14 • up to \$25,000 to Class Counsel as the attorneys’ costs for the reimbursement of
15 actual costs and expenses incurred;
- 16 • up to \$5,000 to each Plaintiff as the Class Representative Enhancement Payments
17 (totaling \$15,000);
- 18 • up to \$12,000 as the Settlement Administration Costs to the Settlement
19 Administrator, Phoenix Class Action Administration Solutions (“Phoenix”); and
- 20 • up to \$10,000 as the PAGA Payment, seventy-five percent (75%) of which
21 (\$7,500) will be paid to the LWDA and twenty-five percent (25%) of which (\$2,500) will be
22 paid to Eligible Aggrieved Employees, on a pro rata basis, as their Individual PAGA Payment
23 even if they submit valid and timely Request for Exclusion Form (“PAGA Payment” and
24 “Individual PAGA Payment”). (Han Decl., *supra*, at ¶ 21.)

25 The Net Settlement Amount (approximately \$4,666.67) will be distributed to the Class
26 Members. (Han Decl., *supra*, at ¶ 22.)

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1 The Agreement amount was a compromise, factoring in risks related to certification,
2 liability, and damages. (Han Decl., *supra*, at ¶ 25.) Considering the circumstances of the Action,
3 Class Counsel believe the Agreement is fair and reasonable. (*Ibid.*)

4 **A. Number of Class Members**

5 There are around five hundred fifteen (515) Class Members and three hundred forty-eight
6 (348) Eligible Aggrieved Employees. (Han Decl., *supra*, at ¶¶ 17, 90(a).)

7 **B. Attorney's Estimate of the Recovery by the Average Class Member if the**
8 **Settlement Agreement Were Approved**

9 If the Agreement is approved, it is estimated the gross *average* Individual Settlement
10 Payment will be about \$9.06. (Han Decl., *supra*, at ¶ 22.) Individual Settlement Payments will
11 be calculated and apportioned from the Net Settlement Amount based on the number of
12 Workweeks a Class Member worked during the Class Period as an hourly-paid or non-exempt
13 employee in California. (*Id.* at ¶ 23.) Individual PAGA Payments will be calculated and
14 apportioned from the twenty-five percent (25%) of the PAGA Payment based on the number of
15 Workweeks an Eligible Aggrieved Employee worked during the PAGA Period as an hourly-paid
16 or non-exempt employee in California. (*Ibid.*)

17 **C. Discovery Exchanged**

18 Section II.B. The description of Class Counsel's investigation above provides a detailed
19 description regarding the discovery that was exchanged.

20 **D. Other Pending Litigation**

21 After conducting reasonably diligent research and inquiries, Class Counsel are unaware
22 of any class, representative, or other collective action in any other court in this or any other
23 jurisdiction that asserts claims like those asserted in this Action on behalf of a class or group of
24 individuals some or all of whom would also be members of the class defined in this Action.
25 (Han Decl., *supra*, at ¶ 20.)

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1 **E. Defendant’s Counsel’s Declaration**

2 Defendant’s counsel’s declaration is being submitted concurrently with this Motion.

3 **F. Settlement Administrator**

4 The Settlement Agreement provides for up to \$12,000 to be paid to the Settlement
5 Administrator as the Settlement Administration Costs. (Han Decl., *supra*, at ¶ 86.)

6 Class Counsel obtained bids from Phoenix, CPT Group, Inc., and ILYM Group, Inc. for
7 the administration of this Action. (Han Decl., *supra*, at ¶ 87.) Phoenix had the most competitive
8 (lowest) bid of \$10,000 when compared to the bids from CPT Group, Inc. and ILYM Group that
9 were \$10,500 and \$11,829.60 respectively. (*Ibid.*)

10 Phoenix has extensive experience in administering employment class action settlements.
11 (Declaration of Jodey Lawrence, ¶¶ 5-15; Exhibits A, B.)

12 **G. Uncashed Checks, Unpaid Residue, or Other Unclaimed or Abandoned Funds**

13 Class Members will receive checks for their Individual Settlement Payments and
14 Individual PAGA Payments. (Han Decl., *supra*, at ¶ 88.) Checks will remain negotiable for one
15 hundred eighty (180) calendar days. (*Ibid.*) The funds from the uncashed checks representing
16 Individual Settlement Payments shall be distributed by the Settlement Administrator to the State
17 Controller’s Unclaimed Property Fund while funds from the uncashed checks representing
18 Individual PAGA Payments shall be distributed by the Settlement Administrator to the LWDA.
19 (*Ibid.*)

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1 **H. Release by Class Members is Limited**

2 Pursuant to the terms set forth in the Settlement Agreement, Class Members' Released
3 Claims include the following:

4 [A]ll causes of action and factual or legal theories stated in the operative
5 complaints and those based solely upon the facts alleged in the operative
6 complaints. This includes all of the following claims for relief: (a) failure to
7 pay all regular wages, minimum wages, and overtime wages due; (b) failure to
8 provide proper meal and rest breaks and to properly provide premium pay in
9 lieu thereof; (c) failure to provide complete, accurate, or properly formatted
10 wage statements and payroll records; (d) failure to reimburse necessary
11 business expenditures; (e) failure to pay waiting time penalties; (f) failure to
12 timely pay wages during employment and after employment; (g) engaging in
13 unfair business practices that could have been premised on the claims, causes
14 of action or legal theories of relief described above or any of the claims,
15 causes of action or legal theories of relief pleaded in the operative complaints;
(h) all claims under PAGA, which shall only bind Plaintiffs and the State of
California, that were described in Plaintiff Carrillo's notice letter sent to the
LWDA on May 12, 2023 and only to the extent these claims were alleged in
the operative complaints; and (i) all damages, penalties, interest, and other
amounts recoverable under said claims, causes of action or legal theories of
relief. The period of the Released Claims shall extend to the limits of the
Class Period ("Released Claims").

16 (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 33.)

17 Pursuant to the terms set forth in the Settlement Agreement, Released Parties include
18 Defendant together with its past and present officers, directors, owners, employees, business
19 partners, contracting partners, and clients ("Released Parties"). (Han Decl., *supra*, at ¶ 2; Exhibit
20 1, *supra*, at ¶ 34.)

21 **I. The Proposed Notice Packet Provides Adequate Notice to the Class Members**

22 Within thirty (30) calendar days of entry of the Court's Order Granting Preliminary
23 Approval, Defendant will provide the Class List to the Settlement Administrator. (Han Decl.,
24 *supra*, at ¶ 73.) Prior to mailing, the Settlement Administrator will perform a search based on the
25 National Change of Address Database for information to update and correct for any known or
26 identifiable address changes. (*Id.* at ¶ 74.) Within ten (10) calendar days after the Settlement
27 Administrator receives the Class List, the Settlement Administrator will mail a Notice Packet to
28 the Class via regular First-Class U.S. Mail in English. (*Ibid.*)

1 The Notice Packet fully apprises Class Members of the nature of the lawsuit, claims
2 involved, material terms of the Agreement, Class Members' options thereunder, and how Class
3 Members can obtain additional information about this case. (Han Decl., *supra*, at ¶ 75.) The
4 Notice Packet also provides for a specific procedure to seek exclusion from the Class and for
5 lodging objections to the Agreement. (*Ibid.*)

6 **J. Settlement Does Not Require Any Class Members to Submit Claim Forms**

7 Class Members are not required to submit claim forms to receive their share of the
8 Individual Settlement Payments. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 17.)

9 **K. Settlement Does Not Provide Any Reversion to Defendant**

10 Pursuant to the Agreement, no portion of the Maximum Settlement Amount will revert to
11 Defendant. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 20(c).)

12 **L. Employer's Share of Payroll Taxes and the Allocation of Settlement Payments**

13 All Individual Settlement Payments will be allocated as follows: (a) twenty percent
14 (20%) as wages; and (b) eighty percent (80%) as interest and penalties. (Han Decl., *supra*, at ¶
15 2; Exhibit 1, *supra*, at ¶ 47(d).) All Individual PAGA Payments will be allocated as one hundred
16 percent (100%) penalties. (*Id.* at ¶ 48(c).)

17 Defendant shall pay the employer's share of applicable payroll taxes due on the portion
18 of Individual Settlement Payments allocated to wages separately and in addition to the Maximum
19 Settlement Amount. (Han Decl., *supra*, at ¶ 2; Exhibit 1, *supra*, at ¶ 20(b).)

20 **M. Notice of Class Action Settlement, Objection Form, and Request for Exclusion**
21 **Form**

22 The Notice of Class Action Settlement, Objection Form, and Request for Exclusion Form
23 are attached as **Exhibits A-C** respectively in the Agreement and Proposed Order, filed
24 concurrently herewith, and were drafted to be reasonably understood by the Class Members.

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1 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

2 Express judicial policy favors maintaining wage-and-hour actions as class actions.
3 (*Prince v. CLS Transp., Inc.* (2004) 118 Cal.App.4th 1320, 1328; *Richmond v. Dart Industries,*
4 *Inc.* (1981) 29 Cal.3d 462.) Any doubt as to the appropriateness of class treatment should be
5 resolved in favor of class certification, subject to later modification if necessary. (*Richmond*, at
6 pp. 473-475.) The decision to certify a class is a procedural one, and should be based on the
7 allegations in the operative complaint, and not in the perceived factual or legal merit of the class
8 claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439-441.)

9 To certify a settlement class, the Court must find the two (2) primary requirements for
10 maintaining a class action: (1) there must be an ascertainable class; and (2) there must be a well-
11 defined community of interest in the questions of law and fact involving the parties to be
12 represented. (See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 805-809; *Daar v. Yellow Cab*
13 *Company* (1967) 67 Cal.2d 695, 704.) The criteria are met herein.

14 **A. There Is A Numerous and Ascertainable Class**

15 Ascertainability is determined by examining the class definition, class size, and means to
16 identify the class members. (See *Vasquez v. Superior Court*, *supra*, 4 Cal.3d at pp. 821-822;
17 *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.App.3d 1263, 1271.) Class
18 members are deemed to be “ascertainable” if they may be readily identified without
19 unreasonable expense or time.

20 Plaintiffs contend, and Defendant does not dispute, the requirement of numerosity is met.
21 The documents and information exchanged reflect a Class of approximately five hundred fifteen
22 (515) Class Members. (Han Decl., *supra*, at ¶ 90(a).) The Class Members were identified by
23 Defendant’s payroll and personnel records. (*Id.* at ¶ 90(b).)

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1 **B. There Is A Well-Defined Community of Interest**

2 A community of interest is established by the predominance of common issues of law and
3 fact. (See *Vasquez v. Superior Court, supra*, 4 Cal.3d at p. 811.) The requirement of a
4 community of interest:

5 [D]oes not depend upon an identical recovery, and the fact that each member
6 of the class must prove his separate claim to a portion of any recovery by the
7 class is only one factor to be considered ... The mere fact that separate
8 transactions are involved does not of itself preclude a finding of the requisite
9 community of interest so long as every member of the alleged class would not
10 be required to litigate numerous and substantial questions to determine his
individual right to recover subsequent to the rendering of any class judgment
which determined in plaintiffs' favor whatever questions were common to the
class.

11 (*Vasquez v. Superior Court, supra*, 4 Cal.3d. at p. 809.)

12 Plaintiffs contend, and Defendant does not dispute, common issues of fact and law
13 predominate as to each of the claims alleged. Because Plaintiffs alleged a single scheme, "the
14 relevant proof [does] not vary among class members" and "clearly presents a common question
15 fundamental to all class members." (See *In Re NASDAQ Market-Makers Antitrust Litigation*
16 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
17 (SDNY 1997) 169 F.R.D. 493, 518).) California courts show "no hesitancy" in inferring class-
18 wide causation, class-wide injury, and class-wide damages when a common course of action has
19 been shown. (*B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 1350.) This inference
20 "eliminates the need for each class member to prove individually the consequences of the
21 defendants' actions to him or her." (*Id.* at p. 1351 (quoting *Rosack v. Volvo of America Corp*
22 (1982) 131 Cal.App.3d 741, 753 [emphasis added]).)

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1 This Action involves, *inter alia*, a determination about Defendant’s alleged: (1) failure to
2 provide meal and rest breaks and pay premium wages; (2) failure to reimburse business
3 expenses; (3) failure to pay minimum wages; (4) failure to pay and properly calculate overtime
4 wages; (5) failure to pay final wages when required; (6) failure to provide accurate wage
5 statements; and (7) largely derivative claims under the Business & Professions Code and PAGA.
6 (Han Decl., *supra*, at ¶ 90(e).) Plaintiffs contend these practices affected Class Members in the
7 same way. (*Ibid.*) While Defendant maintained otherwise, these issues will not be decided based
8 on facts peculiar to each Class Member but based on facts common to the Class. Finally, these
9 issues of liability can be determined on a class-wide basis.

10 C. The Plaintiffs’ Claims Are Typical

11 A class representative’s claims are typical when they arise from the same event, practice,
12 or course of conduct that gives rise to the claims of other putative class members, and if their
13 claims rest on the same legal theories. The class representative’s claims must be “typical” but not
14 necessarily identical to the claims of other class members. It is sufficient that the representative
15 is similarly situated so that he or she will have the motive to litigate on behalf of all class
16 members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-*
17 *Illinois, Inc.*, *supra*, 191 Cal.App.3d at p. 1347 (“[I]t has never been the law in California that the
18 class representative must have identical interests with the class members.”).) Therefore, it is not
19 necessary that the class representative should have personally incurred all the damage suffered
20 by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
21 224, 228.)

22 Plaintiffs contend, and Defendant does not dispute, the claims are typical of Class
23 Members’ claims because they arose from the same factual basis and are based on the same legal
24 theories. (Han Decl., *supra*, at ¶ 90(c).) Plaintiffs were employed by Defendant during the Class
25 Period and subject to the allegedly unlawful meal and rest break policies and pay practices at
26 issue. (*Ibid.*) The central issues of this litigation, which would arise if this were an individual
27 action brought by Plaintiffs, apply to the other Class Members. (*Ibid.*) Thus, the answer to these
28 questions would determine Defendant’s liability to the Class. (*Ibid.*)

1 **D. Adequacy of Class Counsel and Class Representatives**

2 Class Counsel are experienced in class actions, have represented their clients zealously,
3 and have no conflicts of interest. (Han Decl., *supra*, at ¶¶ 3-11, 90(d); Exhibit 2.) Moreover,
4 Plaintiffs’ interests are aligned with those of the Class Members, suffered the same injuries as the
5 Class Members, and have no conflicts of interest. (*Id.* at ¶ 90(d).)

6 **E. Predominance and Superiority**

7 Individual issues do not predominate over those common to the Class. (Han Decl., *supra*,
8 at ¶ 90(f).) Furthermore, the class action mechanism is superior to individualized actions because
9 Class Members have little incentive to bring claims that are small. (*Id.* at ¶ 90(g).)

10 **V. THE TWO-STEP APPROVAL PROCESS**

11 Any settlement of class litigation must be reviewed and approved by the Court. This is
12 done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after
13 notice has been distributed to the class members for their comment or objections. The Manual for
14 Complex Litigation (Third) states:

15 “Approval of class action settlements involves a two-step process. First, counsel
16 submits the proposed terms of settlement and the court makes a preliminary
17 fairness evaluation. If the preliminary evaluation of the proposed settlement
18 does not disclose grounds to doubt its fairness or other obvious deficiencies,
19 such as unduly preferential treatment of class representatives or of segments of
20 the class, or excessive compensation for attorneys, and appears to fall within the
range of possible approval, the court should direct that notice ... be given to the
class members of a formal fairness hearing, at which arguments and evidence
may be presented in support of and in opposition to the settlement.” (§ 30.41.)

21 Preliminary approval by the court is a conditional finding that the settlement appears to
22 be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength
23 of the findings made by a judge at a preliminary hearing or conference concerning a tentative
24 settlement proposal may vary. The court may find the settlement proposal contains some merit,
25 is within the range of reasonableness required for a settlement offer, or is presumptively valid
26 subject only to any objections that may be raised at a final hearing.” (4 Alba Conte & Herbert B.
27 Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).)

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1 The procedures for the Parties' submission of a proposed settlement for preliminary
2 approval by the court also are discussed in Newberg on Class Actions:

3 When the parties to an action reach a monetary settlement, they will usually
4 prepare and execute a joint stipulation of settlement, which is submitted to the
5 court for preliminary approval. The stipulation should set forth the central terms
6 of the agreement, including but not limited to, the amount of settlement, form of
payment, manner of determining the effective date of settlement and any
recapture clause, Newberg on Class Actions. (§ 11.24.)

7 **VI. THE SETTLEMENT IS FAIR AND ADEQUATE**

8 As a matter of public policy, the courts both encourage the use of the class action device
9 and favor settlement over continued litigation. (See e.g. *Linder v. Thrifty Oil Co.*, *supra*, 23
10 Cal.4th at p. 434 ("Courts have long acknowledged the importance of class actions as a means to
11 prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955
12 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex
13 class action litigation is concerned.").)

14 The courts presume the absence of fraud or collusion in the negotiation of a settlement
15 unless evidence to the contrary is offered. There is a presumption the negotiations were
16 conducted in good faith. (*Newberg*, § 11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August
17 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d
18 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when
19 settlement was reached by experienced counsel familiar with the litigation. (*Rodriguez*, at p. 24;
20 *Hammon v. Barry* (D.D.C. 1990) 752 F.Supp. 1087.)

21 In *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128, the court laid out
22 several factors that should be analyzed in determining if a class action settlement should be
23 approved. These factors include: (1) strength of plaintiff's case; (2) risk, expense, complexity,
24 and likely duration of further litigation; (3) risk of maintaining class action status through trial;
25 (4) amount offered in settlement; (5) extent of discovery completed and stage of the proceedings;
26 (6) experience and views of counsel; (7) presence of a governmental participant; and (8) class
27 members' reaction to the proposed settlement.

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1 The Agreement satisfies these factors. Class Counsel conducted extensive discoveries
2 before entering meaningful settlement negotiations, including a detailed analysis of the policies
3 and a considerable sample of time and pay records. (Han Decl., *supra*, at ¶¶ 15-16.) This
4 discovery permitted Class Counsel to evaluate the strengths and weaknesses of the case and the
5 risks associated with ongoing litigation. (*Id.* at ¶ 19.) The Parties also discussed Defendant's
6 current financial condition and the financial hardships it has been experiencing in recent years.
7 (*Ibid.*) In addition, Class Counsel are experienced in the handling of wage-and-hour class actions
8 and support the Settlement. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.)

9 **A. The Strength of Plaintiffs' Case.**

10 The claims in this action include failure to provide meal and rest breaks, failure to pay
11 minimum wages, failure to pay and properly calculate overtime wages, failure to pay final wages
12 when due, failure to provide accurate wage statements, failure to reimburse necessary business
13 expenses, and related claims for violations of the Business & Professions Code and for penalties
14 under PAGA. (Han Decl., *supra*, at ¶ 27.)

15 Class Counsel felt confident the claims would be certified given Defendant's policies and
16 practices were applicable to all Class Members. (Han Decl., *supra*, at ¶¶ 28-66.)

17 **B. The Risks Associated with the Merits.**

18 Plaintiffs contend employees were unable to take compliant meal and rest breaks due to
19 Defendant assigning employees a high volume of packages to deliver, prioritizing the timely
20 delivery of packages, and being understaffed. (Han Decl., *supra*, at ¶¶ 29, 32-33.) This was
21 purportedly made worse by supervisors interrupting employees' meal and rest breaks and
22 ordering employees to resume completing their deliveries. (*Ibid.*) Defendant supposedly even
23 attempted to conceal instances of noncompliant meal breaks by editing / adjusting employees'
24 time records to give the appearance of compliant breaks. (*Ibid.*) Defendant countered it always
25 maintained compliant meal and rest break policies, rarely, if ever, assigned employees a high
26 volume of deliveries to complete, and was not understaffed. (*Id.* at ¶¶ 30, 34.) In other words,
27 employees were choosing to forgo taking compliant meal and rest breaks rather than being
28 prevented from doing so. (*Ibid.*) By extension, Defendant may even produce evidence to

1 demonstrate employees were advised of their right to take additional breaks, but most employees
2 did not work the requisite hours to qualify for additional breaks. (Han Decl., *supra*, at ¶¶ 30,
3 34.) Defendant also added that it never tampered with employees' time records with the intent of
4 concealing instances of noncompliant meal breaks. (*Ibid.*) Finally, Defendant contended Class
5 Counsel will have to gather declarations from putative class members to prove the existence of
6 improper, uniform policies and practices. (*Ibid.*)

7 Plaintiffs also alleged Defendant failed to pay and properly calculate all applicable waged
8 owed, including minimum wages, and overtime wages. (Han Decl., *supra*, at ¶¶ 36, 39.)
9 Defendant purportedly expected employees to don and doff their uniforms off-the-clock, perform
10 pre-shift and post-shift inspections of their vehicles, and attend pre-shift mandatory company-
11 wide meetings. (*Ibid.*) This was supposedly made worse by Defendant paying employees non-
12 discretionary bonuses but failing to factor them into employees' regular rate of pay for purposes
13 of overtime compensation. (*Ibid.*) Defendant countered these claims are not suitable for class
14 treatment. (*Id.* at ¶¶ 37, 39.) Instead, Defendant argued its policies expressly prohibited off-the-
15 clock work, permitted employees to don and doff their uniforms on-the-clock, and had no
16 knowledge of employees working off-the-clock. (*Ibid.*) In addition, Defendant contended any
17 payment of bonuses was completely discretionary, meaning the bonuses did not need to be
18 factored into employees' regular rates of pay. (*Ibid.*) Finally, Defendant asserted any unrecorded
19 hours would likely be subject to individual inquiries and unlikely to be certified. (*Ibid.*)

20 **C. The Risks Associated with Paystub Violations and Waiting Time Penalties**

21 To establish liability for wage statement violations and waiting time penalties, Plaintiffs
22 would first have to establish liability for the underlying claims. But Defendant argued the claim
23 for further Labor Code section 226(e) penalties would depend on the underlying rest break, meal
24 break, and wage claims, meaning it would be subject to the same defenses. (Han Decl., *supra*, at
25 ¶ 43.) In addition, Defendant added the above-mentioned violations did not occur every pay
26 period and that section 226(e) penalties are not automatic. (*Ibid.*) Thus, Defendant concluded
27 employees need to show they suffered injury due to Defendant's noncompliance and that such
28 noncompliance was knowing and intentional. (Han Decl., *supra*, at ¶ 43.)

1 Similarly, Defendant also countered the claim for section 203 penalties is dependent on
2 the underlying meal and rest break and wage claims, meaning it would be subject to the same
3 defenses. (Han Decl., *supra*, at ¶¶ 47-48.) With these penalties, there is always the risk the trier
4 of fact would not have held Defendant's actions were done "willfully." A good faith belief in a
5 legal defense can preclude a finding of willfulness. (*Gonzalez v. Downtown LA Motors* (2013)
6 215 Cal.App.4th 36, 54; 8 C.C.R. § 13520.) As discussed above, Plaintiffs allege Defendant
7 failed to pay for all hours worked and premiums for noncompliant meal and rest breaks. (Han
8 Decl., *supra*, at ¶¶ 29, 32-33, 36, 39.) By extension, Plaintiffs contend the Class Members are
9 entitled to minimum wages, overtime wages, and premium wages, which were allegedly not paid
10 at the time of their termination or resignation. (*Id.* at ¶¶ 45-46.) Defendant counters that it
11 provided employees with reasonable opportunities to take meal and rest breaks, asked employees
12 to confirm the accuracy of their time records, and had good-faith defenses under *Brinker* and its
13 progeny. (*Id.* at ¶ 48.)

14 **D. The Risks Associated with the PAGA Penalties.**

15 Labor Code section 2699.3 gives aggrieved employees the right to recover civil penalties
16 for specific Labor Code violations by way of a civil action. The PAGA provides a penalty
17 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
18 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
19 subsequent violation. (Labor Code § 2699, subd. (e)(2).) If a civil penalty is provided in a
20 specified amount by the Labor Code section relating to the underlying alleged Labor Code
21 violation, that amount shall apply. (Labor Code § 2699, subd. (e)(2).) PAGA also gives the
22 Court discretion to award any lesser amount than the maximum civil penalty. (*Id.* ["[A] court
23 may award a lesser amount than the maximum civil penalty amount specified by this part if,
24 based on the facts and circumstances of the particular case, to do otherwise would result in an
25 award that is unjust, arbitrary and oppressive, or confiscatory."]).)

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1 The provisions of the Labor Code potentially triggering PAGA penalties include Labor
2 Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 510, 512(a), 558,
3 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 54.)
4 Defendant asserted, regardless of the results of the underlying causes of action, PAGA penalties
5 are only permissive and discretionary. (*Ibid.*) Defendant maintained, in addition to its strong
6 arguments against the underlying claims, it had a strong argument it would be unjust to award
7 maximum PAGA penalties given the law’s unsettled state. (Han Decl., *supra*, at ¶ 54; See
8 *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112 (reducing
9 penalties by 30% under this authority).) Without stacking and limited to the initial violation,
10 PAGA penalties would be **\$34,800** (348 employees x \$100 initial violation) on the low end and
11 **\$208,800** (348 employees x \$100 initial violation x 6 theories of recovery) on the high end.
12 (Han Decl., *supra*, at ¶¶ 55-58.)

13 Plaintiffs recognized the risks any PAGA award could be reduced. (Han Decl., *supra*, at
14 ¶ 59.) The maximum penalties for each pay period are not justified, and it was arguable the Court
15 would award the maximum penalties under the law. (*Ibid.*) Thus, allocating \$10,000 to PAGA
16 civil penalties was reasonable based on a rate of **\$2.68** per pay period [$\$10,000 \div 3,735$ pay
17 periods within the PAGA Period] given that Defendant is paying an additional \$90,000 in the
18 class settlement.¹ (*Ibid.*) If PAGA penalties are negotiated in good faith and “there is no
19 indication that [the] amount was the result of self-interest at the expense of other Class
20 Members,” such amounts are considered reasonable.² (*Ibid.*)

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24 ¹ (See *Carrington v. Starbucks Corp.* (2018) 30 Cal.App.5th 504, 529 (affirming a rate of
25 \$5 per violation and a total PAGA penalty of \$150,000 while the plaintiff requested a rate of
\$25 to \$75 per violation and a total PAGA penalty of \$70,000,000).)

26 ² (*Hopson v. Hanesbrands Inc.* (N.D. Cal. Apr. 3, 2009) Case No. 08-00844, 2009 U.S.
27 Dist. LEXIS 33900, at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579
28 (“[T]rial court did not abuse its discretion in approving a settlement which does not allocate
any damages to the PAGA claims.”).)

1 Finally, Class Counsel are confident they would successfully prove Defendant's alleged
2 wage-and-hour violations were knowing and intentional. (Han Decl., *supra*, at ¶ 60.) Plaintiffs
3 allege Defendant knowingly frequently assigned employees a high volume of deliveries to
4 complete each shift. (*Ibid.*) By extension, Defendant would discourage employees from taking
5 their meal and rest breaks by intentionally interrupting employees' breaks. (*Ibid.*) Defendant
6 also knowingly attempted to conceal these violations by instructing supervisors to force
7 employees to clock out for compliant breaks and continue working and permitting managers to
8 edit / adjust employees' time records. (*Ibid.*) Plaintiffs assert Defendant knowingly and
9 intentionally failed to pay premium wages for noncompliant meal and rest breaks. (*Ibid.*)
10 Plaintiffs assert Defendant knew employees were expected to begin working before clocking in
11 and continue working after clocking out. (*Ibid.*) Finally, Plaintiffs contend Defendant
12 intentionally paid employees bonuses that were non-discretionary in nature but knowingly failed
13 to factor just payments into their regular rate of pay. (*Ibid.*)

14 **E. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

15 Given the risks outlined above, the issues in this case were complex and the risk for
16 Plaintiffs and Class Members associated with this litigation was high. (Han Decl., *supra*, at ¶¶
17 67-71.) A class trial would have required extensive preparations, thereby requiring the Parties to
18 expend a substantial amount of time. (*Ibid.*) Given the complexity and unsettled nature of the
19 issues, it is likely any outcome at trial would have resulted in a lengthy and costly appeal. (*Ibid.*)
20 Finally, an appeal would result in further delay for the Class Members who have already waited
21 years for resolution in this matter. (*Ibid.*)

22 **F. The Risk of Maintaining Class Action Status Through Trial.**

23 In class actions, decertification is always a possibility. There is always a risk a trial of this
24 magnitude can become unmanageable. Given cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59
25 Cal.4th 1, 34 that deal with the complexity of using statistical samples in class actions,
26 decertification is a real risk Class Counsel must consider.

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G. The Amount Offered in Settlement.

There is no doubt the Agreement is the result of vigorous, adversarial, non-collusive, and arm's-length negotiations. To determine the approximate potential damages owed to each Class Member, Class Counsel analyzed a sampling of time and pay records. Using this information, Class Counsel estimated the full value of the case if Plaintiffs prevailed at trial.

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$2,747,867.64** on the low end and **\$2,899,417.64** on the high end. (Han Decl., *supra*, at ¶ 62.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$263,153.54	70%	60%	\$31,578.42
Meal Break Premiums	\$57,798.09	60%	50%	\$11,559.62
Overtime/Minimum Wage: Off-the-Clock	\$302,925 to \$454,475	50%	50%	\$75,731.25 to \$113,618.75
Regular Rates	\$41,103.61	30%	40%	\$17,263.52
Unreimbursed Business Expenses	\$72,345	40%	80%	\$8,681.40
Wage Statement Penalty	\$365,400	70%	70%	\$32,886
Waiting Time Penalty	\$1,645,142.40	70%	70%	\$148,062.82
MAXIMUM TOTAL EXPOSURE	\$2,747,867.64 to \$2,899,417.64			\$325,763.03 to \$363,650.53

The total estimated realistic exposure for this case would be approximately **\$325,763.03** on the low end and **\$363,650.53** on the high end. (Han Decl., *supra*, at ¶ 63.) The Maximum Settlement Amount is about three percent (3.45%) of the high end total potential exposure at trial and around twenty-seven percent (27.50%) of the high end total realistic exposure at trial. (*Ibid.*) This is a reasonable settlement when considering Defendant's present financial condition and the financial hardships it has been experiencing in recent years. (*Ibid.*)

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1 The allocation of wages, penalties, and interest indicated above was based on the realistic
2 exposure Plaintiffs could expect to receive for meal and rest break premiums and unpaid wages.
3 (Han Decl., *supra*, at ¶ 64.) Plaintiffs added the realistic exposure for rest break premiums and
4 meal break premiums ($\$31,578.42 + \$11,559.62 = \$43,138.04$). (*Ibid.*) Plaintiffs then added the
5 $\$43,138.04$ to the low end realistic exposure for unpaid wages due to off-the-clock work and
6 underpaid overtime wages ($\$43,138.04 + \$75,731.25 + \$17,263.52 = \$136,132.81$). (Han Decl.,
7 *supra*, at ¶ 64.) The realistic exposure of $\$136,132.81$ Plaintiffs can expect to receive if they
8 were to prevail at trial for meal and rest break premiums, low end unpaid wages due to off-the-
9 clock work, and underpaid overtime wages represents about nineteen percent (19.21%) of the
10 low end total realistic exposure and PAGA penalties ($\$136,132.81 \div \$708,563 = 0.19213 \times 100 =$
11 19.21%). (*Ibid.*) Because this represents about twenty percent (20%) of wages, allocating twenty
12 percent (20%) as wages and eighty percent (80%) as interest and penalties pursuant to the
13 Settlement Agreement is appropriate. (*Ibid.*)

14 Class Members have been represented by experienced counsel with many years of
15 experience in employment class action litigation. (Han Decl., *supra*, at ¶¶ 3-10; Exhibit 2.) Class
16 Counsel devoted a considerable amount of time to the prosecution of this case. (*Id.* at ¶¶ 15-19.)
17 This included, among other things: (1) interviewing Plaintiffs at length on repeated occasions;
18 (2) drafting pleadings, conducting discovery, and meeting and conferring with Defendant's
19 counsel; (3) reviewing and analyzing personnel records, policy documents, employee handbooks,
20 Class list, and sampling of time and pay records; (4) researching the law; (5) interviewing
21 putative class members; (6) preparing for and attending mediation; and (7) negotiating and
22 finalizing the Settlement Agreement. (Han Decl., *supra*, *passim*.)

23 Finally, Class Counsel believe the Settlement Agreement serves the best interests of the
24 Class. The court can consider counsel's recommendations if counsel have been involved in
25 litigation for some period, appear to be competent, and have experience with this type of
26 litigation, and significant discovery has been completed. (See *Newberg*, § 11.47.)

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1 **VII. THE CLASS REPRESENTATIVE ENHANCEMENT PAYMENTS ARE FAIR**
2 **AND REASONABLE**

3 It is appropriate to provide a relatively modest additional incentive payment to the class
4 representative. (See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995)
5 901 F.Supp. 294.)

6 Plaintiffs are entitled to reasonable service payments for their efforts in this matter. (Han
7 Decl., *supra*, at ¶ 81.) Plaintiffs spent significant time better apprising themselves of their rights,
8 deciding whether remedial action should be taken, and contacting Class Counsel. (*Ibid.*)

9 By suing Defendant, Plaintiffs increased the risk of retaliation by future employers. (Han
10 Decl., *supra*, at ¶ 82.) The lawsuit has cost Defendant considerable resources, and such conduct
11 will not be lost on prospective employers. (*Ibid.*) This risk of losing employment opportunities
12 is real in the information age that contains quick background checks. (*Ibid.*)

13 But Plaintiffs did not allow fears of the potential repercussions of being class
14 representatives to deter them from acting for the benefit of Class Members. (Han Decl., *supra*, at
15 ¶ 83.) Plaintiffs have been intimately involved in this case since its inception and have devoted a
16 substantial amount of time helping Class Counsel at every stage. (*Ibid.*)

17 Plaintiffs spent hours with Class Counsel detailing his knowledge of Defendant's
18 practices. (Han Decl., *supra*, at ¶ 84.) Plaintiffs diligently, adequately, and fairly represented
19 Class Members and did not place their interests above the Class Members. (*Ibid.*) The Class
20 Representative Enhancement Payments are intended to recognize Plaintiffs' time and effort, and
21 the amounts requested are fair and appropriate based on their contributions. (*Ibid.*)

22 Therefore, Class Counsel believe the Class Representative Enhancement Payments of
23 \$5,000 to each Plaintiff are fair and reasonable. (Han Decl., *supra*, at ¶ 85.)

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1 **VIII. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS**
2 **REASONABLE AND SHOULD BE APPROVED**

3 Under the Agreement, Class Counsel request, without opposition from Defendant, an
4 award of Attorneys' Fees and Costs consisting of: (1) up to \$33,333.33 as the attorneys' fees;
5 and (2) up to \$25,000 as the attorneys' costs. (Han Decl., *supra*, at ¶ 78.) The requested fees are
6 fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-
7 consuming litigation on a contingent basis. (*Id.* at ¶¶ 78-79.)

8 California courts look to the federal courts on class action approvals. The Ninth Circuit
9 recognized an appropriate method for awarding attorneys' fees in class actions is to award a
10 percentage of the "common fund" created as a result of the settlement. (*Vincent v. Hughes Air*
11 *West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of the common fund/percentage
12 approach is to "spread litigation costs proportionally among all the beneficiaries so that the
13 active beneficiary does not bear the entire burden alone." (*Ibid.*) Courts have discretion to choose
14 either the percentage-of-the-fund method or the lodestar method. (*In re Wash. Pub.Power Supply*
15 *Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-1296.)

16 Courts have expressed frustration with the lodestar approach to deciding fee awards. The
17 percentage approach can be preferable in certain situations because it: (1) aligns the interests of
18 class counsel and absent class members; (2) encourages efficient resolution of the litigation by
19 providing an incentive for early, yet reasonable, settlement; and (3) reduces the demands on
20 judicial resources. (*In re Activision Securities Litigation*, 723 F.Supp. 1373, 1378-1379.) The
21 Ninth Circuit has used the percentage of the common fund approach to determine the award of
22 attorneys' fees. (*In re Pacific Enterprises Securities Litigation* (9th Cir. 1994) 47 F.3d 373, 378-
23 379 (approving attorneys' fee of 33 1/3% of settlement fund).)

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1 When considering the facts and circumstances herein, the request for attorneys' fees is
2 within the range of reasonableness. Historically, courts have awarded percentage fees in the
3 range of twenty percent (20%) to fifty percent (50%) of the common fund, depending on the
4 circumstances of the case. (*Newberg*, at § 14.03; see also *In re Activision Securities Litigation*,
5 *supra*, 723 F.Supp. at p. 1378.) *Newberg* further notes: "[A]chievement of a substantial recovery
6 with modest hours expended should not be penalized but should be rewarded for considerations
7 of time saved by superior services performed." (*Newberg*, at §§ 14-10:14-11.)

8 The attorneys' fees request provided for in the Agreement is commensurate with judicial
9 precedent. State and federal courts regularly approve fee awards equal to or greater than the
10 percentage requested herein. (See e.g. *In re Pacific Enterprises Securities Litigation, supra*, 47
11 F.3d at p. 379 (affirming an award equal to 33% of the common fund); *In re Activision Securities*
12 *Litigation, supra*, 723 F.Supp. at p. 1375 (awarding plaintiffs' counsel 32.8% of the common
13 fund created to settle the litigation); *In re Ampicillin Antitrust Litigation* (D. D.C. 1981) 526
14 F.Supp. 494 (awarding 45% of \$7.3 million settlement fund); and *Parker v. City of Los Angeles*
15 (1974) 44 Cal.App.3d 556, 557-568 (affirming fee award to counsel of 1/3 of recovery
16 achieved).)

17 In similar lawsuits, courts approved attorney's fees consistent with or greater than the
18 percentage requested herein. (See *Estrada v. Dr. Pepper/Seven-Up*, Los Angeles County
19 Superior Court, Case No. BC 262247 (May 2005) (Honorable Anthony J. Mohr); *Moreno v.*
20 *Miller Brewing*, Los Angeles County Superior Court, Case No. BC 278170 (April 2004)
21 (Honorable Douglas M. Minning); *Josiah Eaton v. Adolph Coors Company* (2003) Orange
22 County Superior Court, Case No. 01CC00140 (Honorable Stephen J. Sundvold); *Kimbell v.*
23 *Abercrombie & Fitch Stores, Inc.*, Los Angeles County Superior Court, Case No. BC 277359
24 (Sept. 2006) (Honorable Kenneth R. Freeman); and *Daum v. Claim Jumper Restaurants*, Orange
25 County Superior Court, Case No.02CC10201 (2006) (Honorable Ronald L. Bauer).)

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1 Class Counsel have borne the entire risk and costs of litigation and will not receive any
2 compensation until recovery is obtained. (Han Decl., *supra*, at ¶¶ 78-79.) The Court should also
3 consider the benefit obtained by Class Counsel on behalf of the Class. Consequently, the
4 requested attorneys' fees award is reasonable.

5 **A. Fee Splitting Agreement**

6 Class Counsel are not splitting the costs associated with the settlement with any other
7 individuals or firms. (Han Decl., *supra*, at ¶ 89.)

8 **IX. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY**
9 **APPROVAL**

10 The Parties respectfully request this Court, as part of the preliminary approval process, to
11 grant the following relief and make the following orders:

12 1. Review and approve the Settlement Agreement attached to Douglas Han's
13 declaration as **Exhibit 1**;

14 2. Review and approve the Notice of Class Action Settlement, Objection Form, and
15 Request for Exclusion Form attached to the Proposed Order as **Exhibits A-C** respectively;

16 3. Consider and determine the proposed class action settlement as set forth in the
17 Settlement Agreement preliminarily appears fair, reasonable, and adequate;

18 4. Conditionally certify the action as a class action for settlement purposes only and
19 preliminarily approving the proposed class action settlement and Settlement Agreement;

20 5. Approve and appoint Douglas Han and Shunt Tatavos-Gharajeh of Justice Law
21 Corporation to serve as Class Counsel for settlement purposes;

22 6. Approve and appoint Phoenix as the Settlement Administrator to handle the
23 notice procedures as set forth in the Settlement Agreement;

24 7. Approve the proposed allocation of funds to the claims made under PAGA;

25 8. Order Defendant to disclose the Class List to the Settlement Administrator in
26 accordance with the manner set forth in the Settlement Agreement;

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- 1 9. Order the Settlement Administrator to mail the Notice Packet to Class Members;
2 and
3 10. Set a date for the Final Approval Hearing.
4

5 Dated: April 17, 2024

JUSTICE LAW CORPORATION

6
7 By: 
8 Douglas Han
9 Shunt Tatavos-Gharajeh
10 Haig Hogdonian
11 *Attorneys for Plaintiffs*
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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Ave., Ste. 101 Pasadena, California 91103. My electronic service address is ccastro@justicelawcorp.com

On April 17, 2024, I served the foregoing document described as

NOTICE OF MOTION AND MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT; AND (3) SETTING HEARING FOR FINAL APPROVAL

for the following case: **Givens v. Kool Runnings LLC**
LWDA/Court Case No.: **LWDA-CM-954620-23**
CIVRI2202735
Riverside County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

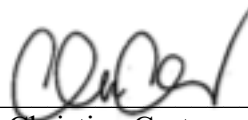
[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 17, 2024, at Pasadena, California.


Christina Castro