

1 STAN S. MALLISON (Bar No. 184191)
2 Stanm@TheMMLawFirm.com
3 HECTOR R. MARTINEZ (Bar No. 206336)
4 Hectorm@TheMMLawFirm.com
5 DANIEL C. KELLER (Bar No. 332576)
6 Dkeller@TheMMLawFirm.com
7 MALLISON & MARTINEZ
8 1939 Harrison Street, Suite 730
9 Oakland, California 94612-3547
10 Telephone: (510) 832-9999
11 Facsimile: (510) 832-1101

12 Attorneys for Plaintiffs

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

15 LAGARION BROWN, ROY JACKSON,
16 YAPHETT SAUNDERS, ISAAC
17 SAUNDERS, HAKEEM ALLAMBIE, and
18 NICHOLON GARRETT, individually and on
19 behalf of those similarly situated,

20 Plaintiffs,

21 vs.

22 TETRA TECH, INC., JESCO
23 ENVIRONMENTAL AND GEOTECHNICAL
24 SERVICES, INC., and DOES 1-20,

25 Defendants.

Case No.: 2:20-CV-01133-DAD-DMC

CLASS ACTION

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

Date: November 16, 2022
Time: 10:00 am
Judge: Hon. Dennis M. Cota
Room: 304, 3rd Floor

Complaint Filed: June 3, 2020

26
27
28

TABLE OF CONTENTS

1

2 **I. INTRODUCTION 1**

3 **II. STATEMENT OF FACTS..... 3**

4 A. SUMMARY OF THE LITIGATION 3

5 B. SETTLEMENT NEGOTIATIONS..... 4

6 **III. SUMMARY OF SETTLEMENT TERMS..... 4**

7 A. THE MAXIMUM SETTLEMENT CONSIDERATION 4

8 B. CLASS NOTICE 6

9 C. TAX CONSEQUENCES OF SETTLEMENT PAYMENTS 6

10 D. PAYMENT OF SETTLEMENT SHARES..... 6

11 E. PAGA PENALTY PAYMENT TO THE STATE 7

12 F. DISTRIBUTION OF UN-CASHED CHECKS..... 7

13 G. SCOPE OF CLASS RELEASE..... 7

14 H. SETTLEMENT ADMINISTRATION..... 8

15 I. PAYMENT TO PLAINTIFFS, CLASS COUNSEL ATTORNEYS’ FEES PAYMENT, AND CLASS
COUNSEL’S COSTS PAYMENT 8

16 **IV. THE MOTION FOR PRELIMINARY APPROVAL SHOULD BE GRANTED 8**

17 A. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE..... 10

18 B. THE SETTLEMENT WAS THE PRODUCT OF INFORMED, NON-COLLUSIVE NEGOTIATIONS ... 11

19 C. THE PROPOSED SETTLEMENT HAS NO “OBVIOUS DEFICIENCIES” 11

20 D. THE SETTLEMENT FALLS WELL WITHIN THE RANGE OF POSSIBLE APPROVAL..... 12

21 *i. Liability is Contested, and the Settlement Provides Class Members Monetary Relief. 12*

22 *ii. The Class Member Release is Appropriate..... 14*

23 *iii. The Proposed Class Notice Packet and the Notice Plan are Fair and Adequate..... 15*

24 **V. CONDITIONAL CERTIFICATION OF A SETTLEMENT CLASS IS
APPROPRIATE..... 16**

25 A. THE NUMEROSITY REQUIREMENT IS MET 16

26 B. THE COMMONALITY REQUIREMENT IS MET..... 16

27 C. THE TYPICALITY REQUIREMENT IS MET 16

28 D. THE ADEQUACY OF REPRESENTATION REQUIREMENT IS MET 17

1 E. CLASS CERTIFICATION IS PROPER UNDER RULE 23(B)(3)..... 17

2 **VI. THIS CASE MEETS THE LENIENT STANDARD FOR CONDITIONAL FLSA**

3 **CERTIFICATION UNDER 28 U.S.C. § 216(B) 18**

4 **VII. CONCLUSION 18**

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cellphone Termination Fee Cases,
 186 Cal.App.4th 1380 (2010) -----12

Churchill Village, LLC v. General Electric,
 361 F.3d 566 (2004)-----15

Class Plaintiffs v. City of Seattle,
 955 F.2d 1268 (9th Cir. 1992) ----- 8, 9

Consumer Priv. Cases,
 175 Cal.App.4th 545 (2009)-----11

Dunk v. Ford Motor Co.,
 48 Cal.App.4th 1794 (1996)-----10

Fry v. Hayt, Hayt & Landau,
 198 F.R.D. 461 (E.D. PA. 2000)----- 16, 17

Gay v. Waiters’ & Dairy Lunchmen’s Union,
 489 F. Supp. 282 (N.D. Cal. 1980)-----16

Hanlon v. Chrysler Corp.,
 150 F.3d 1011 (9th Cir. 1998) ----- 9, 15, 16, 17

Howell v. Advantage RN, LLC,
 401 F.Supp.3d 1078 (S.D. Cal. Aug. 16, 2019) -----18

In re Tableware Antitrust Litig.,
 484 F. Supp. 2d 1078 (N.D. Cal. 2007)----- 9

In re Tableware Antitrust Litigation,
 484 F.Supp.2d 1078 (N.D. Cal. 2007) -----12

In re Traffic Exec. Ass’n,
 627 F.2d 631 (2d Cir. 1980)----- 9

Kullar v. Foot Locker Retail, Inc.,
 168 Cal.App.4th 116 (2008)----- 10, 13

Leuthold v. Destination Am.,
 224 F.R.D. 462 (N.D. Cal. 2004)-----18

Litty v. Merrill Lynch & Co., Inc.,

1	2015 WL4698475 (C.D. Cal. Apr. 27, 2015)-----	18
2	<i>Magadia v. Wal-Mart Associates, Inc.</i> ,	
3	384 F.Supp.3d 1058 (N.D. Cal. 2019)-----	7, 11
4	<i>Mendoza v. U.S.</i> ,	
5	623 F.2d 1338 (1980)-----	15
6	<i>Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles</i> ,	
7	186 Cal.App.4th 399 (2010)-----	13
8	<i>North County Contractor’s Assn., Inc. v. Touchstone Ins. Svcs.</i> ,	
9	27 Cal. App.4th 1085 (1994)-----	9, 10
10	<i>Officers for Justice v. Civil Serv. Comm’n</i> ,	
11	688 F.2d 615 (9th Cir. 1982)-----	10
12	<i>Schiller v. David’s Bridal, Inc.</i> ,	
13	2010 WL 2793650 (E.D. Cal. July 14, 2010)-----	14
14	<i>Troester v. Starbucks Corp.</i> ,	
15	5 Cal.5th 829 (2018)-----	11
16	<i>Van Bronkhorst v. Safeco Corp.</i> ,	
17	529 F.2d 943 (9th Cir. 1976)-----	8
18	<u>STATUTES</u>	
19	Cal. Lab. Code § 203-----	10
20	Cal. Lab. Code § 226(e)(1)-----	10
21	Cal. Lab. Code § 2699(e)(2)-----	7, 11
22	Fed. R. Civ. P. 23(a)-----	16, 17
23	Fed. R. Civ. P. 23(b)-----	16, 17
24	Fed. R. Civ. P. 23(c)-----	16
25	Fed. R. Civ. P. 23(e)-----	8
26	Fed. R. Civ. P. 54-----	12
27	<u>TREATISES</u>	
28	4 Newberg on Class Actions 4th (2002) § 11.25-----	9, 10
	4 Newberg on Class Actions 4th (2002) § 11.41-----	8, 9
	Manual for Complex Litigation, Third (Fed. Judicial Center 1995) (“Manual”) § 30.41)-----	8, 9

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.