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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JUANITA VILLA; JESSICA LESHER; SHERI AMIES as individuals, on behalf of the State of California, as a private attorney general, PLAINTIFF, v. DOLGEN CALIFORNIA, LLC; and DOES 1 thru 50, inclusive, DEFENDANTS.	CASE NO. 22STCV34189 [Case Assigned for All Purposes to Hon. Elihu M. Berle in Dept. 6] **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** *[Filed concurrently with Declaration of Liane Katzenstein Ly and Proposed Order]* Date: June 25, 2024 Time: 11:00 AM Dept.: 6 Complaint Filed: October 24, 2022 Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 25, 2024 at 11:00 a.m. in Department 6 of the above-entitled court, Plaintiffs JUANITA VILLA; JESSICA LESHER; SHERI AMIES will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement"), a copy of which is filed concurrently herewith.

The Motion will be made on the grounds that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Class and the Parties.

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Liane Katzenstein Ly, the Agreement, all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

DATED: April 24, 2024

KINGSLEY SZAMET & LY

By: ______________________________
Liane Katzenstein Ly
Attorneys for Plaintiffs, the proposed class, and all aggrieved employees

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs JUANITA VILLA; JESSICA LESHER, and SHERI AMIES (collectively, "Plaintiffs") submit this Memorandum of Points and Authorities in support of Plaintiffs' Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement") reached between Plaintiffs and Defendant Dolgen California, LLC ("Defendant") (Plaintiffs and Defendant together, the "Parties").

By this Motion, Plaintiffs request that the Court:

(1) Grant preliminary approval of the fully-executed Agreement. A true and correct copy of the Agreement is attached hereto as Exhibit "1";

(2) Approve the proposed Notice to Class Members, a copy of which is attached to the Agreement as Exhibit "A," and direct that the Notice be sent to Class Members and Aggrieved Employees in the manner set forth in the Agreement;

(3) Schedule a hearing on final approval of the proposed Settlement and Plaintiffs' counsel's application for an award of attorney's fees and litigation costs at which Class Members may be heard ("Final Approval Hearing").

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On October 24, 2022, Plaintiffs commenced a representative action by filing a Complaint alleging, among other things, violations of the California Labor Code Section 2802 ("Section 2802") and asserting related claims under the Private Attorneys General Act, codified as Labor Code §§ 2698, et seq. ("PAGA"), against Defendant DOLGEN CALIFORNIA, LLC ("Defendant" or "Dollar General"), Los Angeles Superior Court, Case No. 22STCV34189. (Hereafter, the "Action".) (Declaration of Liane Katzenstein Ly ("Ly Decl.") ¶4.) Plaintiffs in the Action requested permission to file a First Amended Complaint ("FAC") to dismissing all Labor Code claims except the Section 2802 claims without prejudice, and adding Section 2802 class allegations. (Ly Decl. ¶5.) Dollar General denies the allegations in the Operative Complaint and any FAC, denies any failure to comply with the laws identified in in the Operative Complaint and/or any FAC, and denies any and all liability for the causes of action alleged.

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs and others gave timely written notice to Dollar General and the Labor Workforce Development Agency ("LWDA") by sending the PAGA Notices. (Ly Decl. ¶6.) In particular, Dollar General received three PAGA notices related to alleged violations of Section 2802 (the PAGA Notices). (Ly Decl. ¶7.) Moreover, Dollar General specifically waives, for the purposes of settlement only, any defenses related to the timeliness of the PAGA Notices, and further specifically waives, for the purposes of settlement only, any defenses as to any failure to exhaust for earlier periods within the PAGA Pay Period that may be more than one year before the PAGA Notices as referenced herein.

On July 6, 2020, two other employees, Brian Gile and Randolph Gallegos, filed a class and PAGA action against Defendant alleging a Section 2802 claim, among other claims. (Ly Decl. ¶8.) That action is entitled, *Gile v. Dolgen California, LLC* (case number 5-20-cv-01863-MCS-SP) and it was pending in federal court. (Ly Decl. ¶9.) That Action was settled in combination with and as part of the settlement in this case. The discovery conducted in that action was extensive. (Ly Decl. ¶10.)

B. Discovery and Mediation

On February 16, 2023, the Parties participated in a mediation presided over by Honorable Amy D. Hogue (Retired), which led to this Agreement to settle all individual, Class, and PAGA Section 2802 claims including, without limitation, those filed in the Action, which settlement also led to the conclusion of overlapping Labor Lode and PAGA claims asserted in all other earlier-filed PAGA claims on these same Section 2802 issues (including the PAGA Notices). (Ly Decl. ¶11.)

Prior to mediation, Plaintiffs and Plaintiffs' counsel obtained, through formal and informal discovery, information needed to inform settlement talks, including corporate representative depositions and voluminous data from Dollar General related to the settled claims. (Ly Decl. ¶12.) Moreover, the parties engaged expert witnesses who evaluated the voluminous data to inform settlement discussions. (Ly Decl. ¶13.) This case was heavily litigated in federal court. This litigation included the filing of a motion for class certification, depositions, voluminous document production, and extensive motion practice. (Ly Decl. ¶14.)

Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Action and/or FAC, disputes the damages and penalties claimed by Plaintiffs, and further contends that, for any purpose other than settlement, Plaintiffs' claims are not appropriate for class or representative action treatment. (Ly Decl. ¶15.) Defendant contends, among other things, that, at all times, it has complied with the California Labor Code, and the Industrial Wage Commission Orders. (*Id*.)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement Class Members and Aggrieved Employees in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶16.) Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid the cost of litigation. (*Id*.) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to Section 2802 claims as asserted in the Action and the FAC on the terms set forth in the Agreement. (*Id*.)

III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever "the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court . . . ." (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by "establishing a technique whereby the claims of many individuals can be resolved at the same time" thereby "eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress." (*Richmond v. Dart Industries, Inc*. (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." (*Linder v. Thrifty Oil Co*. (2000) 23 Cal.4th 429, 439–440.) A court ruling on a certification motion must determine "whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) "the existence of an ascertainable and sufficiently numerous class"; (2) "a well-defined community of interest"; and, (3) "substantial benefits from certification that render proceeding as a class superior to the alternatives." (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The "community of interest" requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the Class Representative have claims or defenses typical of the class; and (3) the Class Representative can adequately represent the class. (*Ibid*, *citing Fireside Bank, supra,* 40 Cal.4th at 1089.)

Class certification for settlement purposes is proper in this case as the proposed Settlement Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this Court should certify the putative settlement class.

A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

1. Ascertainability

Putative class members are deemed "ascertainable" when they may be "readily identified without unreasonable expense or time by reference to official records." (*Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court scrutinizes the class definition, the size of the class and the means of identifying class members. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

Here, Plaintiffs maintain that the proposed class is ascertainable for several reasons: First, Defendant has agreed to provide a class list to the Administrator containing the name, last known mailing address, social security number, and number of class period workweeks for all putative class members after issuance of the preliminary approval order. (Ly Decl. ¶17; Ex. 1 at ¶¶1.9 and 8.4.1.) Second, Class members consist of Defendant's employees, and Defendant is required to keep records of its employees. (*See* Wage Order 7-2001, subsection 7(c); Ly Decl. ¶18.) Third and finally, Defendant formally and informally produced voluminous time and pay data for Class Members containing Class Member contact information, which confirms that all Settlement Class Members may be readily identified based on Defendant's records. (Ly Decl. ¶19.)

2. Numerosity

There is no set number that is required as a matter of law to maintain a class action. (*See, e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement Class contains, based upon information and belief, approximately10,844 employees in the State of California. (Ex. 1 at ¶5.1.) Therefore, Plaintiffs are confident they will be able to establish that the proposed settlement Class is ascertainable and sufficiently numerous. (Ly Decl. ¶20.)

B. There Is a Well-Defined Community of Interest

1. There Are Predominant Questions of Law and Fact

In deciding whether questions of common or general interest predominate, a court must determine whether "the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238; *accord*, *Sav–On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a general matter, if the defendant's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v. AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

Here, Plaintiffs argue that there are questions of law and fact common to the proposed settlement Class that predominate over any questions affecting only individual Class Members. (Ly Decl. ¶21.)

Plaintiffs' challenge to Defendant's uniform policies and practices involves common factual and legal issues that are amenable to class treatment. (Ly Decl. ¶22.) As the California Supreme Court has emphasized, "[c]aims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (*Brinker*, *supra*, 53 Cal.4th at 1033; *see also Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004)

115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at 340.)

Here, Plaintiffs maintain that the proposed Class Members suffered the same injuries, in the same manner in that Class Members were not reimbursed for business-related expenses. (Ly Decl. ¶23.) Plaintiffs allege that Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the settlement Class. Accordingly, for purposes of settlement, certification for settlement purposes is appropriate. (Ly Decl. ¶24.)

2. <u>The Class Representative Has Claims Typical of the Proposed Class</u>

A putative class representative's claim must be "typical," but not necessarily identical, to the claims of the class. The test of typicality "is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the Class Representative, and whether other class members have been injured by the same course of conduct." (*Seastrom v. Neways, Inc*. (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*Seastrom v. Neways, Inc*. (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (*See, e.g.*, *Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc. (*2001) 91 Cal.App.4th 224, 238.)

Plaintiffs worked as key carriers for Defendant during the Class Period. (Ly Decl. ¶25.) Plaintiffs allege that they worked without being reimbursed for costs associated with cell phone usage, mileage, or other business expenses incurred during the course of their employment with DOLLAR GENERAL during the PAGA Period. (Ly Decl. ¶26.)

3. <u>Plaintiffs Contend That As Class Representatives They Have and Will Fairly Represent the Interests of the Class Members</u>

A putative class representative must show that she can adequately represent the class. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative, through qualified counsel, must be capable of "vigorously and tenaciously" protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

Plaintiffs believe that they are capable of fairly representing and adequately protecting the interests of the proposed Class Members. (Ly Decl. ¶27.) Plaintiffs' interests in this litigation are coextensive with the interests of the proposed Class Members. The members of the proposed settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant's alleged violations of the law. (Ly Decl. ¶28.) Moreover, Plaintiffs have agreed to serve as Class Representatives and have retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Ly Decl. ¶29.) Plaintiffs have provided their Counsel with all necessary and pertinent information. (Ly Decl. ¶30.) They have been a very active participant in the litigation including having frequent contact with Class Members and working closely with Class Counsel to develop the theories of liability. (Ly Decl. ¶31.) Therefore, Plaintiffs believe that they have and will continue to adequately represent the proposed Class Members. (Ly Decl. ¶32.)

C. <u>The Class Action Vehicle Is Superior to the Alternatives</u>

"The ultimate question in every case of this type is whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (*Lockheed Martin*, *supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion "an effective and inclusive group remedy." (*Richmond v. Dart Indus., Inc*. (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g.*, *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiffs submit that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiffs maintain that class treatment would be the superior method of managing this case. A class action is superior to individual litigation "when numerous parties suffer injury of insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer." (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin*, *supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of Class Members' claims may not be economically viable. (Ly Decl. ¶33.) The only alternative to certification would be to force over 10,000 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶34.) Plaintiffs maintain that this economic reality would result in a windfall for Defendant if this case were not certified. (Ly Decl. ¶35.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Agreement, the settlement class is defined as all employees who are or were Key Carriers for DOLLAR GENERAL in the state of California who worked as a Key Carrier one or more pay periods during the Class Period ("Class"). (Ly Decl. ¶36; Ex. 1 at ¶1.6.)

The Class Period is July 6, 2016 to the date the preliminary approval order is entered by the Court. (Ly Decl. ¶37; Ex. 1 at ¶1.12.) Based on documents and other information produced and reviewed by Defendant as of the date of this filing, there are approximately 10,844 Class Members. (Ly Decl. ¶38; Ex. 1 at ¶5.1.)

B. The Aggrieved Employees

For purposes of Agreement, the aggrieved employees are defined as any employee who is or was a Key Carrier for Defendant in the state of California who worked one or more PAGA Pay Periods. ("Aggrieved Employees".) (Ly Decl. ¶39; Ex. 1 at ¶¶1.4.)

The PAGA Period is June 22, 2017 to the date the preliminary approval order is entered by the Court. (Ly Decl. ¶40; Ex. 1 at ¶1.32.) Based on documents and other information produced and reviewed by Defendant as of the date of this filing, there are approximately 10,038 Aggrieved Employees. (Ly Decl. ¶41; Ex. 1 at ¶5.1.)

C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $1,190,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the Class Representative Service Payments, the Class Counsel Fees

Payment, Class Counsel Litigation Expenses Payment, LWDA PAGA Payment, and the Administration Expenses Payment. (Ly Decl. ¶42; Ex. 1 at ¶¶ 1.23 and 4.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, Individual PAGA Payments, LWDA PAGA Payment, and Administration Expenses Payment. (Ly Decl. ¶43; Ex. 1 at ¶1.29.)

The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	$	1,190,000.00
Less Plaintiff enhancement:	$	15,000.00 *($5,000 allocated to each Plaintiff)*
Less Class Counsel's Fees:	$	396,666.66
Less Class Counsel's Costs:	$	105,000.00
Less PAGA Penalties Payment:	$	50,000.00 *($37,500.00 to the LWDA and $12,500.00 to the Aggrieved Employees)*
Less administration Expenses Payment:	$	60,000.00
Anticipated Net Settlement Amount	$	563,333.34

(Ex. 1 at ¶4.)

D. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is based on the number of compensable Workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at ¶1.24; *see also* Ex. A to the Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Amount and shall be paid by using the following payment formula: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's total number of Workweeks during the Class Period (*Ibid*.)

One Hundred percent (100%) of the Gross Settlement Amount to each Participating Class Member shall be deemed payment for settlement of non-wage claims for reimbursement of business expenses, not subject to withholdings. (*Ibid*.)

The Agreement provides for a specific and detailed dispute process regarding the number of Workweeks allocated to Class Members. (*See* Ex. 1 at ¶8.6.)

E. Individual PAGA Payments

The Individual PAGA Payment will be a payment to all Aggrieved Employees calculated by (a) dividing the amount of the Aggrieved Employees' 25% share of the PAGA Penalties Payment ($12,500.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's total number of PAGA Period Pay Periods worked during the PAGA Period. (*See* Ex. 1 at ¶4.2.5.1.)

F. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Ex. 1 at ¶8.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix Claims Administration, to administer the Agreement. (*Ibid*.)

G. Process for Class Members to Respond to Class Notice

Class Members will have an opportunity to request exclusion from the Settlement Class (i.e. opt out) and to object to the Class Settlement at the Final Approval Hearing. (Ex. 1 at ¶8.5.)

Class Members who do not opt out of the Class may object to the Agreement. Participating Class Members may send written objections related to the Class Settlement to the Administrator, by email or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court on their behalf and at their own expense) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline, or where applicable to only certain Class Members, the Extended Response Deadline. Participating Class Members have no right to object to the PAGA Settlement

Class Members who timely return a Request for Exclusion from the Agreement shall have no right to object and shall be foreclosed from making any objection to the Agreement. (*Ibid.*)

Aggrieved Employees will not be provided the opportunity to opt-out of the PAGA settlement. (*Ibid.*) If the Court approves the settlement, the Administrator will mail out PAGA Payments to the Aggrieved Employees at the same time of mailing Individual Class Payments to Participating Class Members.

H. The Release

The Class Release is defined as: "all Section 2802 claims that were alleged, or reasonably could have been alleged, based on the facts stated in the Action, the PAGA Notices, and/or ascertained in the course of the Action or settlement negotiations, including, any and all claims involving any alleged violation of Section 2802 and/or the failure to reimburse Participating Class Members for any business expenses incurred related to their employment with DOLLAR GENERAL during the Class Period and any claims derivative to such Section 2802 claims ("Class Release"). Except as set forth in Section 6.3 of the Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period ('Class Release')." (Ex. 1 at ¶6.2.)

The PAGA Release are defined as: "all claims for PAGA penalties related to any alleged violation of Section 2802 and/or the failure to reimburse Participating Class Members for any business expenses incurred related to their employment with DOLLAR GENERAL during the PAGA Period, including those that were alleged, or reasonably could have been alleged, based on the facts stated in the Action, and/or the PAGA Notices, the scope of the settlement, and/or facts ascertained in the course of the Action and settlement negotiations, including, any alleged failure to reimburse Aggrieved Employees for any cell phone usage, mileage, or other business expenses incurred related to their employment with DOLLAR GENERAL during the PAGA Period ('PAGA Release')." (Ex. 1 at ¶6.3.)

Plaintiffs will also execute a general release of any and all claims, known or unknown, in favor of the Released Parties. (Ex. 1 at ¶6.1.)

V. ARGUMENT

A. Plaintiffs Request Approval of This Class Action Settlement

The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of Plaintiffs' case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

The proposed settlement satisfies each of these factors. Class Counsel conducted extensive discovery before entering into settlement negotiations. (*Id* at Ly Decl. ¶¶11-16.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶44.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Ly Decl. ¶45.)

1. <u>The Strength of Plaintiffs' Case</u>

a) The Risks Associated with the Reimbursement Claim

Under California Labor Code§ 2802(a) an employer "shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer." An employee acts in "discharge of his duties," for purposes of this Section when the employee acts within the "course and scope of employment." See *O'Hara v. Teamsters Union Local No. 856,* C.A.9 (Cal.)1998, 151 F.3d 1152.

Plaintiffs maintain that Defendant's policies required that Plaintiffs and Class Members to use their personal cell phones in performing their job duties and to perform regular bank drops, or be subject to disciplinary action including termination. (Ly Decl. ¶46.) Plaintiffs contend that they and the Proposed Class Members were required to take their own personal vehicles for bank drops as Defendant did not provide a company vehicle for them to use. (Ly Decl. ¶47.)

As such, Plaintiffs assert that Defendant is required to reimburse Plaintiffs and the Class for all out-of-pocket expenses incurred by them in the performance of their job duties, including but not limited to for cell phone usage and mileage for bank drops. (Ly Decl. ¶48.)

Defendant argued that it maintained a valid reimbursement policy, that the evidence shows Class Members used this policy, and that Plaintiffs and the Class Members' failure to utilize the reimbursement procedures resulted in no liability for Defendant. (Ly Decl. ¶49.)

b) The Risks Associated with the PAGA Claim

California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq*., permits private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that Plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were established, Plaintiffs may recover default penalties provided in section 2699(f) in the amount of

$100 per employee per pay period for the initial violation and $200 for subsequent violations.

The Parties discounted the PAGA claim for multiple reasons. First, the Aggrieved Employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g.*, *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Finally, the settlement Class is compensated for these violations in the proposed Agreement, and thus any PAGA recovery for these same violations would be duplicative. As such, the Agreement's contemplated PAGA payment of $50,000.00 is appropriate. (Ly Decl. ¶50.) *See Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties).

2. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Ly Decl. ¶51.) If the Court did eventually certify a class, trial of a case involving approximately 10,844 Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶52.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Ly Decl. ¶53.) An appeal would result in further delay for the Class Members who are waiting for a resolution in this matter. (*Id.*)

3. <u>The Risk of Maintaining Class Action Status through Trial</u>

This case has not been certified. (Ly Decl. ¶54.) While Plaintiffs believe there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) There is a risk for both sides as to what these depositions will reveal. (*Id.*)

4. <u>The Amount Offered in Settlement</u>

This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly

Decl. ¶55.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, extensive negotiations, and the assistance of an experienced mediator, Honorable Amy D. Hogue (Ret.). (*Id.*)

a) Plaintiffs' Assessment of Defendant's Maximum Exposure

With regard to the Section 2802 Claim analysis, Plaintiffs believed that it was reasonable to value the potential reimbursement at $15 per month, per employee, for reimbursement of personal vehicle usage. There are 655,978 work weeks and approximately 151,379.53 work months. This brought the damages for this claim to approximately $2,270,693.08. (Ly Decl. ¶56.)

Finally, Plaintiffs calculated the value of the PAGA claim at approximately $2,068,369.62 for aggrieved employees (using $100 per month). (Ly Decl. ¶57.) The Aggrieved Employees were paid weekly, but reimbursements were done monthly or quarterly, and the approximate number of months in the 597,529 pay periods is 137,891.31. (Ly Decl. ¶58) As such, each pay period does not contain a violation. (Ly Decl. ¶59.) The main risk taken into account with PAGA is the discretionary nature of the penalty award. (Ly Decl. ¶60.) A judge can award the statutory maximum of $100 for the initial violation and $200 thereafter or – in theory – one cent per wage statement. (Ly Decl. ¶61.) While there is a dearth of available authority, in Plaintiffs' view, were she to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Ly Decl. ¶62.)

As a result of the forgoing risks on the merits, Class Counsel believes the Gross Settlement Amount of $1,190,000.00 is fair and reasonable. (Ly Decl. ¶63.)

5. <u>The Experience and Views of Counsel</u>

Finally, counsel's experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley Szamet & Ly is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Ly Decl. ¶¶64-66.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley Szamet & Ly currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley Szamet & Ly has handled is included in the accompanying declaration of Liane Katzenstein Ly. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶67.)

6. <u>The Proposed Plan of Allocation Is Fair and Reasonable</u>

Plans of allocation are subject to the same standard of review as class action settlements; they must be "fair, adequate and reasonable." (*See, e.g.*, *Officers for Justice v. Civil Service Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Class Members pro rata based on during the Class Period. The lump sum payment to each Class Member will be determined by dividing the Net Settlement Amount by the total number of eligible Workweeks worked by all Participating Class Members and then multiplying the result by each Participating Class Member's total number of Workweeks during the Class Period. This allocation distributes settlement funds proportionally to each Participating Class Member's damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at ¶4.2.4.)

7. <u>The Proposed Notice Fairly Apprises the Class Members of the Terms of the Settlement and of the Class Members' Rights under the Settlement</u>

Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶¶1.11 and 5.4.1). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Class Members.

With respect to the contents of the Notice, the "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky v. L.A. Fed. Sav. & Loan Ass'n* (1975) 48 Cal.App.3d 134, 151–52.)

Here, the Notice clearly explains the proposed Agreement and the options to opt out of the Agreement or object to it at the Final Approval Hearing. (Ex. 1 at ¶¶8.5 and 8.7; *see also* Ex. A to the Agreement at pp. 2, 3, 4-5, 8-9 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Class Members to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFFS

The Class Representatives are entitled to enhancements for their valiant effort and time expended in this matter. (Ly Decl. ¶68.) The time spent by Plaintiffs is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work for Defendant; compiling relevant documents; working closely with Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; and responding promptly to Class Counsel's communications regarding settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiffs request a proposed litigation enhancement in the amount of $5,000.00 each, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶4.2.1.) As set forth in the Agreement, Plaintiffs will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶69; Ex. 1 at ¶6.1.)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As required by statute, Plaintiffs' Motion for Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the LWDA's website on the date this Motion is filed. Proof of submission of Plaintiffs' Motion, all related documents, is attached to the Declaration of Liane Katzenstein Ly as Exhibit "2." (Ly Decl. ¶70.)

VIII. CONCLUSION

Plaintiffs respectfully submit that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Class Members. Therefore, the Plaintiffs respectfully request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement Agreement, and all of its terms; (2) approve the proposed form of the Notice, and direct that the Notice be sent to Class Members and Aggrieved Employees in the manner set forth in the Class Action and PAGA Settlement Agreement; and (3) a ruling on Class Counsel's application for an award of Class Counsel Fees Payment, Class Counsel Expenses Payment, Plaintiffs' Class representative litigation enhancements, and the Administration Expenses Payment; and (4) schedule a hearing on the final approval of the Agreement.

DATED: April 24, 2024

KINGSLEY SZAMET & LY

By: ______________________________

Liane Katzenstein Ly
Attorneys for Plaintiffs, the proposed class, and all aggrieved employees

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

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 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On April 26, 2024, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Mike Arias
mike@aswtlawyers.com
Craig S. Momita
craig@aswtlawyers.com
ARIAS SANGUINETTI WANG
& TORRIJOS LLP
6701 Center Drive West, Suite 1400
Los Angeles, CA 90045

MCGUIREWOODS LLP
Sabrina A. Beldner
Email: sbeldner@mcguirewoods.com
Sarah Y. Oh
Email: soh@mcguirewoods.com
1800 Century Park East, 8th Floor
Los Angeles, CA 90067

[XX] **BY ELECTRONIC SERVICE:** I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (https://dir.tfaforms.net/315) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] **(BY ELECTRONIC MAIL TRANSMISSION)**: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the above email address(es).

[XX] **(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 26, 2024, at Woodland Hills, California.

____
Michelle Tanzer