D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
Alvin B. Lindsay (SBN 220236)
a.lindsay@d.law
Rose Sorial (SBN 271382)
r.sorial@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Antonia McKee (SBN 344511)
a.bliznets@d.law
450 N Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian (SBN 226337)
david@yeremianlaw.com
450 N Brand Blvd., Suite 840
Glendale, CA 91203
Telephone: (818) 962-6465
Fax: (818) 962-6469

Attorneys for Plaintiff MARIANA ZUAZO
on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MARIANA ZUAZO, an individual, on behalf of herself and others similarly situated, Plaintiff, vs. ROMEO & LAYLA WAREHOUSING, INC., a California corporation; FAIRWAY STAFFING SERVICES, a California corporation; ULTRA PERSONNEL, LLC, a California limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No.: CIVSB2307282 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Hon. Joseph T. Ortiz Dept.: S-17 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** *[Filed concurrently with Notice of Motion and Motion; Declarations of David Yeremian, Enoch J. Kim, Mariana Zuazo; and [Proposed] Order]* Date: May 9, 2025 Time: 1:30 p.m. Dept.: S-17

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff MARIANA ZUAZO ("Plaintiff"), on behalf of herself and others similarly situated employees of Defendants ROMEO & LAYLA WAREHOUSING, INC. ("R&L"); FAIRWAY STAFFING SERVICES ("Fairway"); and ULTRA PERSONNEL, LLC. ("Ultra") (all defendants being collectively referred to as "Defendants"), (collectively, "the Parties") respectfully request preliminary approval of the Parties' Class and PAGA Settlement Agreement and Release ("Settlement Agreement") pursuant to California Code of Civil Procedure § 382 and Rule 3.769 of the California Rule of Court.

1. INTRODUCTION

This is a putative class and PAGA action against Defendants. R&L operates distribution and warehouse facilities in California and Defendants Fairway and Ultra are temporary staffing companies which deployed workers to perform work at R&L in California during the period relevant to this action. (Kim Decl., ¶ 4.) Plaintiff contends that she and other settlement Class[1] members were employed by R&L either directly or through staffing agencies, such as Fairway and Ultra. (*Id.*)

On March 15, 2023, Plaintiff filed this putative Class Action Complaint against Defendants, alleging the following nine causes of action against Defendants: (1) Failure to Pay Minimum Wages for all hours worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; and (9) Violation of Business & Professions Code § 17200 *et seq.* (Kim Decl., ¶ 5.) On March 14, 2023, Plaintiff submitted a PAGA notice (LWDA-CM-941905-23) to the Labor and Workforce Development Agency ("LWDA") and Defendants. (*Id.*) On May 19, 2023, Plaintiff filed the First Amended Class Action Complaint adding a tenth cause of action for PAGA penalties under Labor Code §§ 2698 et seq. (*Id.*) On April 17, 2025, the Parties filed a joint stipulation for leave to file a Second Amended Class Action Complaint ("Operative Complaint") pursuant to the Settlement. (Kim Decl., ¶ 6.) The Settlement and its terms

[1] All capitalized terms herein shall have the meaning ascribed to them in the Settlement Agreement, unless otherwise stated.

are based on the Second Amended Class Action Complaint. (*Id.*)

With the assistance of a highly respected mediator, the Parties were able to reach a settlement of Plaintiff's class and PAGA claims as embodied in the Settlement Agreement. (Kim Decl., ¶ 3.) The Settlement defines the Class as: All non-exempt, hourly individuals who worked for R&L in California and all non-exempt, hourly individuals who Fairway and Ultra deployed to work for R&L in California during the period of March 15, 2019, through August 5, 2024 (the "Class Period"). (Kim Decl., ¶ 7, Exhibit 1, ¶¶ 5-6). Based on data provided by Defendants, Plaintiff estimated that there were approximately 625 Class Members at the time of mediation. (*Id.*)

Under the Settlement, Defendants agreed to pay a non-reversionary "Gross Settlement Amount" of $440,000.00 inclusive of all fees and costs. (Kim Decl., ¶ 22; Exhibit 1, ¶ 14). All Class Members will automatically receive a settlement share unless they opt out and will divide, on a *pro-rata* basis, a Net Settlement Amount of approximately **$190,833.33** if all allocations are approved. (Kim Decl., ¶ 27.) The estimated average gross individual settlement payment to the Class Members, using a straight average, is **$305.33**. (*Id.*) Additionally, with **11,000** workweeks at issue in the relevant period, the $440,000.00 Gross Settlement Amount is valued at approximately **$40.00** per workweek. (*Id.*) Class Counsel submits this is an excellent result providing more than reasonable settlement value to Class Members. (*Id.*)

The proposed Settlement is fair, reasonable, and adequate, and in the best interests of the Class. Plaintiff respectfully requests that this Court issue an Order in the form provided herewith: (1) preliminarily approving the proposed class-wide settlement of this action; (2) approving the form and method for providing class-wide notice; (3) directing that notice of the proposed settlement be given to the class by mailing the Class Notice to the Class Members; (4) appointing Plaintiff Mariana Zuazo as Class Representative for settlement purposes only; (5) appointing Emil Davtyan, Alvin B. Lindsay, Enoch J. Kim, Rose Sorial, and Antonia McKee of D.Law, Inc., and David Yeremian of David Yeremian & Associates, Inc. as Class Counsel for settlement purposes only; and (6) scheduling a hearing date for Final Approval of the Settlement.

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2. FACTUAL BACKGROUND, DISCOVERY, AND MEDIATION

A. Plaintiff's Claims and Defendants' Denials

Plaintiff alleges that Defendants required Plaintiff and Class Members to work off the clock, including by requiring them to work through meal periods and rest breaks, requiring them to walk substantial distances to access the time clock before clocking in, and requiring them to wait in lines to clock in. (Kim Decl., ¶ 9.) Plaintiff further alleged that shift differentials and bonuses were not factored into the regular rate used to calculate and pay overtime wages to Plaintiff and Class Members. (*Id.*) As an initial matter, Defendants contend that Plaintiff and a large majority of the settlement Class signed arbitration agreements with valid class action waivers that would preclude their ability to bring any putative class claims. (*Id.*) Defendants further contend that they did not require off the clock work, paid for all reported hours worked, that Class Members were instructed to record all hours worked, and that they paid wages at the proper rates. (*Id.*)

Additionally, Plaintiff contends that Defendants failed to provide compliant meal periods and rest breaks by requiring Plaintiff and Class Members to remain on duty and to respond to job demands during their scheduled meal periods and rest breaks. (Kim Decl., ¶ 10.) Defendants denied these allegations and argued that the records established compliance and that they were free to take breaks without interruption. (*Id.*)

Lastly, Plaintiff contends that Defendants failed to provide all required paid sick days to Plaintiff and the Class members, failed to provide Plaintiff and Class members with basic information material to their employment at the time of hiring and failed to ensure that employees are given written and timely notice of any changes to basic information material to their employment, and failed to reimburse Plaintiff and Class members for necessary business expenses.[2] (*Id.*) Defendants denied these allegations and contend that employees were provided with paid sick leave and required information in accordance with all applicable laws. (*Id.*) Defendants further contend that there is no private right of action to enforce paid sick leave and that PAGA precludes the recovery of civil penalties for "notice and posting" requirements. (*Id.*)

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[2] These allegations will be included in Plaintiff's Second Amended Complaint, which will be filed within 7 days after the Court provides leave to file the Second Amended Class Action Complaint.

Finally, in regard to Plaintiff's reimbursement claim, Defendants contend that not only do Defendants' policies properly establish that business-related expenses or costs will be reimbursed, but also that Plaintiff and the Class members did not, and had no reason to, incur business-related expenses or costs to perform their job duties. (*Id.*)

Defendants specifically and generally denied any and all liability or wrongdoing of any sort with regard to the claims alleged. (Kim Decl., ¶ 11.) Defendants also made no concessions or admissions of liability of any sort, and contended that for any purpose other than Settlement, the Action is not appropriate for class treatment. (*Id.*)

The Parties have also taken into account the uncertainty and risks inherent in any litigation and determined it was desirable and beneficial to settle. (*Id.*)

B. <u>Investigation and Discovery</u>

Before filing the lawsuit, Class Counsel investigated and researched the circumstances and facts underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶¶ 13.) This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. (*Id.*) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting formal and informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data and numbers, as well as employment-related policies; (3) reviewing Plaintiff' personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. (Kim Decl., ¶ 14.)

Upon agreeing to schedule mediation, and leading up to their agreement, the Parties conducted informal discovery regarding the claims and defenses to complete a constructive and meaningful mediation. (Kim Decl., ¶ 16.) Through substantial informal discovery, Defendants provided Plaintiff's counsel with necessary information and numbers for the Class Members during the Class Period, and the Parties had numerous discussions and negotiations through counsel. (*Id.*)

This data, along with counsel's analysis of it and conclusions drawn from it, also permitted Class counsel to objectively assess the strengths and weaknesses of the PAGA and putative class-wide claims and to value them appropriately and realistically. (*Id.*)

After extensive investigation and discovery, including the exchange of comprehensive informal discovery and analysis of relevant documents and data, Class Counsel believed that this case was appropriate for resolution through mediation. (Kim Decl., ¶ 15.) Given the high level of risk present for both sides, and the substantial uncertainty and expense of protracted litigation, the Parties elected to explore settlement. (*Id.*)

C. <u>Mediation and Settlement Efforts</u>

On June 06, 2024, the Parties participated in a private mediation session with respected class action mediator, Steven Rottman, and with his assistance entered into a Memorandum of Understanding detailing the general terms of their proposed Settlement. (Kim Decl., ¶ 20.) The mediation took place only after the parties exchanged extensive informal information, documents, and data. (Kim Decl., ¶ 19.) During the mediation, the Parties discussed all aspects of the case, including the risks of litigation and the risks to both Parties as well as the law and how it applied to the facts of this case. (Kim Decl., ¶ 20.) Upon completion of the mediation, the Parties agreed to the general terms of their class-wide and PAGA settlement in a Memorandum of Understanding setting forth material Settlement terms, which were later memorialized in the Settlement Agreement now before the Court for preliminary approval. (*Id.*)

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 own prior litigation experience, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (Kim Decl., ¶ 21.) Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. (*Id.*)

3. THE PROPOSED SETTLEMENT, TERMS, AND NOTICE

Defendants have agreed to a settlement on a non-reversionary basis for a Gross Settlement Amount of $440,000.00. (Kim Decl., ¶ 22, Exhibit 1 ¶ 14). The Settlement Agreement defines "Class" or "Class Members" as: all non-exempt, hourly individuals who worked for R&L in California and all non-exempt, hourly individuals who Fairway and Ultra deployed to work for R&L in California during the Settlement Class Period at any time between March 15, 2019, through August 5, 2024 (the "Class Period"). (Kim Decl., ¶ 24, Exhibit 1 ¶¶ 5, 6, 33). "Participating Class Members" or "Settlement Class Members" are defined as any person who does not submit a timely and valid request for exclusion. (*Id*. at ¶ 24, Exhibit 1 at ¶ 38). Additionally, "PAGA Aggrieved Employees" means all non-exempt, hourly individuals who worked for R&L in California and all non-exempt, hourly individuals who Fairway and Ultra deployed to work for R&L in California at any time between March 14, 2022, through August 5, 2024 ("PAGA Period"). (*Id*. at ¶ 24, Exhibit 1 at ¶¶ 21-22).

An "Individual Settlement Payment" means the amount payable from the Net Settlement Amount to each Settlement Class Member and PAGA Aggrieved Employee, less employee portions of state and federal withholding taxes, including FICA, FUTA, and SDI contributions and any other applicable payroll deductions required by law as a result of the payment of the amount allocated to such Class Members under the terms of this Settlement. (Kim Decl., ¶ 25, Exhibit 1 ¶¶ 15, 58). To determine the Individual Settlement Payment for each Participating Class Member, the Settlement Administrator will calculate the total Compensable Workweeks for all Settlement Class Members. (*Id.*)The respective Compensable Workweeks for each Settlement Class Member will be divided by the total Compensable Workweeks for all Settlement Class Members, resulting in the Payment Ratio for each Settlement Class Member. (*Id.*)

Each Settlement Class Member's Payment Ratio is then multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment. (*Id.*) Compensable Workweeks shall include only those workweeks a Class Member actually worked for Defendants during the Class Period. (*Id.*). Defendants' payroll records shall control, but Class Members will have the right to challenge their number of workweeks. (*Id.*)

If there are any valid and timely Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Settlement Payment for each Participating Class Member according to the number of workweeks worked by Settlement Class Members, so that the amount distributed to the Settlement Class equals 100% of the Net Settlement Amount. (*Id.*)

All Individual Settlement Payment to Participating Class Members will be allocated as follows for tax purposes: 10% of each Individual Settlement Payment reflects compromise of a claim for alleged unpaid wages; 90% of each Individual Settlement Payment reflects compromise of a claim for alleged interest and penalties. (*Id.*)

As for the Payment to the LWDA and Aggrieved Employees ("PAGA Payment"), the Parties allocated $50,000.00 of the Gross Settlement Amount to PAGA penalties, with 75% of this amount to be paid directly to the LWDA ($37,500.00) and 25% of this amount ($12,500.00) to be paid to the PAGA Aggrieved Employees ("PAGA Settlement Payment"). (Kim Decl., ¶ 26, Exhibit 1 ¶ 20). The PAGA Settlement Payment will be calculated based on the number of pay periods each PAGA Aggrieved Employee worked during the PAGA Period. (Kim Decl., ¶ 26, Exhibit 1 ¶¶ 23, 58(j)).

The "Net Settlement Amount" is the portion of the Gross Settlement Amount available for distribution to the Participating Class Members, which is the Gross Settlement Amount less the PAGA Payment ($50,000.00), Court-approved attorneys' fees (up to one-third of the Gross Settlement Amount, i.e. $146,666.67), Litigation costs (up to $35,000.00), Settlement Administration Costs ($12,500.00), and the Court-approved Class Representative Service Payment ($5,000.00). (Kim Decl., ¶ 24, Exhibit 1 ¶¶ 7, 17, 20, 58(g), 58(h)).

If the Court approves all requested allocations and awards from the Gross Settlement Amount of **$440,000.00** as addressed above, the Net Settlement Amount is estimated to be **$190,833.33**. (Kim Decl., ¶ 27.) For the approximately **625** estimated Class Members as of mediation (if no exclusions), the average gross individual settlement payment share, using a straight average, is **$305.33.** (*Id.*) This average will vary based on their actual workweeks worked as compared to those worked by all Class Members. (*Id.*) The workweek value is a more reliable indicator than the average payments of the reasonableness of the Settlement, and with **11,000** workweeks at issue in the relevant period, the $440,000.00 Gross Settlement Amount is valued at approximately **$40.00** per workweek. (*Id.*) Class

Counsel submits this is an excellent result. (*Id.*) Any amounts not approved by the Court as a Class Representative Service Payment, Class Counsel Fees, Litigation Costs, or Settlement Administration costs or for the PAGA Payment will be added back to the Net Settlement Amount to be distributed to the Participating Class Members. (*Id.*)

The Effective Date of the Agreement means the date when all of the following events have occurred: (1) the Stipulation of Settlement has been executed by all Parties, Class Counsel and Defendants' counsel; (2) the Court has given preliminary approval to the Settlement Agreement; (3) the notice of Settlement has been given to the Settlement Class, providing Class Members with an opportunity to object to the terms of the Settlement or to opt out of the Settlement; (4) the Court has held a formal fairness hearing and entered a final order and judgment conditionally certifying the Settlement Class, approving the Settlement Agreement, and entering judgment on the Settlement Agreement; and (5) sixty-five (65) calendar days have passed since the Court has entered a final order and judgment conditionally certifying the Settlement Class, and approving the Stipulation of Settlement; and (6) if any appeal, writ or other appellate proceeding opposing the Court's final order approving the Settlement Agreement has been filed, five (5) business days after any appeal, writ or other appellate proceedings opposing the Settlement Agreement has been finally and conclusively dismissed with no right to pursue further remedies or relief. (Kim Decl., ¶ 28, Exhibit 1 ¶ 12).

A Participating Class Member must cash his or her Individual Settlement Payment check within one hundred eighty (180) calendar days after it is mailed to him or her, which will be mailed within ten (10) days of receipt of the Gross Settlement Amount from Defendants. (Kim Decl., ¶ 28, Exhibit 1 ¶¶ 58, 58(c)). If a check is returned to the Settlement Administrator, the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address, as further addressed in the Settlement Agreement. (*Id*. at Settlement, ¶ 56(a)). Any settlement checks that are not claimed or not negotiated within one hundred eighty (180) calendar days after the distribution of Individual Settlement Payments to Settlement Class Members shall be void and the funds not disbursed as a result and will instead be paid to the State Controller's Unclaimed Property Fund to be held in the name of the Class Member and in accordance with the procedures set forth in CCP §1520. (Kim Decl., ¶ 29, Exhibit 1 ¶ 58(c)).

Upon the Effective Date and funding of the Settlement, Participating Class Members will release the Released Parties from the Released Class Claims for the Class Period. (Kim Decl., ¶ 30, Exhibit 1 ¶ 53). The "Released Class Claims" are defined as: all claims, rights, demands, liabilities, and causes of action alleged or which could have reasonably been alleged based on the facts alleged in the operative Complaint and PAGA notice in this action. The Released Class Claims extend to all Defendants, including Defendants' respective officers, directors, shareholders, owners, investors, assigns, attorneys, insurers, agents, independent contractors, employees, joint employers, staffing companies, predecessors, successors, parents, subsidiaries, affiliates, related entities or other representatives of any kind. (Kim Decl., ¶ 31, Exhibit 1 ¶ 31).

Similarly, upon the Effective Date and funding of the Settlement, the PAGA Aggrieved Employees (including Plaintiff) will release Defendants and the Released Parties from the Released PAGA Claims that accrued during the PAGA Period. (Kim Decl., ¶ 31, Exhibit 1 ¶ 32). The "Released PAGA Claims" include all claims for PAGA civil penalties that are alleged or reasonably could have been alleged against Defendants based on the facts alleged in the operative Complaint and Plaintiff's PAGA notice in this action. The Released PAGA Claims extend to all Defendants, including Defendants' respective officers, directors, shareholders, owners, investors, assigns, attorneys, insurers, agents, independent contractors, employees, joint employers, staffing companies, predecessors, successors, parents, subsidiaries, affiliates, related entities or other representatives of any kind. (Kim Decl., ¶ 31, Exhibit 1 ¶ 32).

Under the Settlement, the Settlement Administrator (Apex Class Action, LLC) will mail the Notice Packets, including the Class Notice to the Class Members no later than forty-five (45) days following the Preliminary Approval Date. (Kim Decl., ¶ 33, Exhibit 1 ¶¶ 4, 56). The Settlement Agreement budgets up to $12,500.00 for Administration costs. (Kim Decl., ¶ 24 Exhibit 1 ¶¶ 36, 58(i)). The Class Notice includes a summary of the case and settlement terms and provides Class Members with instructions on how to exclude themselves, dispute the amount of pay periods, and object to the settlement. Class Members will have 45 days from the mailing of the Class Notice to submit a Request for Exclusion, submit an objection to the Settlement, or dispute the information contained in the Class Notice ("Response Deadline"). (Kim Decl., ¶ 33, Exhibit 1 ¶ 34; *see also*

Class Notice at Settlement Agreement, Exhibit A).

4. THE THREE-STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is the dissemination of notice of the settlement to all Class Members. *Id*. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

The determination of whether a settlement should be preliminarily approved requires, "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.,* 168 Cal.App.4th 116, 133 (2008). However, the record need not contain an explicit statement of the Gross theoretical amount that the class could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, 186 Cal. App. 4th 399, 409 (2010) ("*Kullar* does not,… require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."). "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement." Manual for Complex Litigation, Second § 30.44, at 229.

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength of Plaintiff' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The instant settlement satisfies all of these requirements.

5. THE PROPOSED SETTLEMENT MEETS THE STANDARDS FOR APPROVAL

The Court's decision to preliminarily approve a settlement is granted great deference, as an exercise within its broad discretion. *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 234-235 (2001). Applying the above factors, the proposed settlement provides a substantial benefit to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

A. The Settlement Is the Result of Serious, Informed, Non-Collusive Negotiations

The proposed settlement was reached as a result of arm's length negotiations after the completion of substantial discovery and the exchange of necessary class data. (Kim Decl., ¶¶ 14-22; Exhibit 1, ¶¶ 41-46). The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). While Plaintiff believes in the merits of her case, Plaintiff and her counsel also recognized the inherent risks of litigation and understood the benefit of the Settlement Class receiving funds immediately, as opposed to risking an unfavorable decision on class certification, or then at trial and appeal, that would take several more years to litigate. (Kim Decl., ¶¶ 33, 61-64, Exhibit 1 ¶ 44). Assistance from a well-respected mediator ensured negotiations were non-collusive and well-informed. (Kim Decl., ¶ 21, Exhibit 1 ¶¶ 43, 46).

B. The Parties Engaged In Extensive Discovery and Investigation

As discussed above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses. (Kim Decl., ¶¶ 14-18, Exhibit 1 ¶¶ 41-43). This litigation has reached the stage where the Parties have a clear view of their strengths and weaknesses.

C. Class Counsel Are Experienced Class Action and Employment Attorneys

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Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 80-89; Yeremian Decl., ¶¶ 3-11). Class Counsel submits the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (Kim Decl., ¶¶ 85, Exhibit 1 ¶¶ 44-46, 77).

D. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2). (Kim Decl., ¶ 8).

E. The Strength of Plaintiff' Case and the Risks and Cost of Further Litigation.

As with all litigation, there are risks that Plaintiff would not prevail on the merits of her class claims. (Kim Decl., ¶¶ 61-64, Exhibit 1 ¶ 44). Class Counsel has addressed the strengths of each of the main class claims, Defendants' arguments against liability, and the estimated potential liability exposure Defendants faced on each. (Kim Decl., ¶¶ 37-50, 61-64).

Defendants vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Kim Decl., Exhibit 1 ¶¶ 50, 65). While Plaintiff believes and continues to believe this is a strong case for certification, there is risk and significant expense associated with class certification proceedings. As set forth above, Defendants deny that they have engaged in any unlawful activity, have failed to comply with the law in any respect, have any liability to anyone under the claims asserted in the Action, or that any claim could be certified in the Action. Defendants further contend that Plaintiff and the majority of employees falling under the defined putative class signed valid and enforceable arbitration agreements with class action waivers. Defendants further contend that a trial of any purported class or representative claims would be unmanageable given the individualized questions regarding alleged off-the-clock work, overtime, meal and rest periods, reimbursement of necessary business expenses, and Plaintiff's other claims. Defendants denied and continue to deny each of the Released Claims and any and all liability or wrongdoing of any sort with regard to the Released Claims but have concluded that further conduct of the Action would be protracted, distracting and expensive for all Parties. Defendants have also taken into account the uncertainty and risks inherent in any litigation in reaching their decision to enter into this Settlement. (Kim Decl., ¶¶ 12, 61-64, Exhibit 1 ¶¶ 45-46, 65).

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) address the complexity of using statistical samples in class actions, and decertification is a real risk that Class Counsel must take into account. (Kim Decl., ¶ 63.) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement accounted for those risks and that uncertainty.

F. <u>The Amount Offered in Settlement and Method of Allocation are Fair</u>

If the Court approves all requested allocations and awards from the Gross Settlement Amount of **$440,000.00** as addressed above, the Net Settlement Amount is estimated to be **$190,833.33**. (Kim Decl., ¶ 63.) For the approximately **625** estimated Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is **$305.33.** (*Id.*) The workweek value is a more reliable indicator than the average payments of the reasonableness of the Settlement, and with **11,000** workweeks at issue in the relevant period, the $440,000 gross settlement amount is valued at approximately **$40.00** per workweek. (*Id.*)

Based on the data provided, Plaintiff estimated Defendants faced approximately **$407,951.80** in total realistic exposure on Plaintiff's main claims. The Gross Settlement Amount of **$440,000.00** therefore represents a recovery for the Class Members greater than the total realistic exposure Plaintiff estimated Defendants could face on these class-wide claim (Kim Decl., ¶¶ 58-59). Plaintiff and Class Counsel submit this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial. (Kim Decl., ¶¶ 12-13). Plaintiff and Class counsel submit the Settlement is fair, reasonable, and certainly advantageous to the Class. (Kim Decl., ¶¶ 13, 20-22, 33, 68, 88-89).

Each Settlement Class Member will be compensated using a formula based on the total number of workweeks during the Class Period or pay periods during the PAGA Period. (Kim Decl., Exhibit 1, ¶ 58(a)). Basing the size of the individual awards on Settlement Class Members' workweeks during the Class Period or pay periods during the PAGA Period ensures that those with more valuable potential claims receive more money and that the settlement payments are made on an equitable basis.

G. A Balance of Risk Factors and *Kullar* Analysis Support Approval

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." *Munoz*, at 408. Plaintiff' counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendants faced on Plaintiff's main class-wide claims, establishing the realistic upper range of the outcome here.

The fact remains there was a very real prospect that nothing would be recovered if litigation continued and class certification was ultimately denied. At the same time, further litigation would require the expenditure of significant time and financial resources, and there is always the possibility of adverse developments in the law and the likelihood of extended battles in both the trial court and the courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

6. THE NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS

To be deemed proper, a Notice must provide the Class Members with sufficient information to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the Class Members of the pendency of the action; reasonably convey information regarding the settlement and the Class Members' rights, entitlements, and obligations; and affords Class Members the opportunity to present their objections. *Id.* The Class Notice provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all Class Members of the terms of the settlement, of its effect on their rights, of their options as Class Members (i.e., participate, object, opt-out, and dispute work weeks), and procedures for exercising those options. (Kim Decl., Exhibit 1 ¶¶ 56(a)-56(f); *see also* Class Notice, Exhibit A thereto).

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the approximately 625 Class Members at their addresses from Defendants' records. (Kim Decl., ¶ 34, Exhibit 1 ¶¶ 4, 56). If any Notice Packets are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Class Notice to the correct address. (*Id.* at 56(a)). The Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice.

7. <u>CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE</u>

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.). Plaintiff requests a reasonable enhancement payment for her effort and initiative in bringing and helping to prosecute this class action. Plaintiff has dedicated significant time and effort to these proceedings. (Zuazo Decl., ¶¶ 2-16). Plaintiff's courage in proceeding with her putative class-wide claims should not be underestimated. By suing Defendants, Plaintiff contends that she increased her risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (Zuazo Decl., ¶¶ 11-12).

Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (Zuazo Decl., ¶¶ 2-10). Both before and after filing, Plaintiff conferred with Class Counsel to discuss every aspect of this case. Plaintiff Zuazo has invested approximately 25 hours in this action thus far. (Zuazo Decl., ¶ 10). She has provided Class Counsel with information about Defendants, reviewed documents, consulted Class

Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the settlement agreement after several conferences with Class Counsel. (*Id.* at ¶ 10).

Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge of Defendants' practices. She has diligently, adequately, and fairly represented the Class Members, and has not placed her interests above any member of the putative Class. This sort of payment to a Class representative has been a common feature of settlements negotiated by Class Counsel and routinely approved by courts. The representative enhancement award payment of **$5,000.00** to the Class Representative is fair and reasonable. (Kim Decl., ¶ 20; Exhibit 1, ¶ 7; Zuazo Decl., ¶¶ 2-16).

8. <u>THE REQUESTED ATTORNEYS' FEES AND COSTS ARE REASONABLE</u>

Class Counsel respectfully requests an award of attorneys' fees of one-third of the Gross Settlement Amount (i.e., **$146,666.67**), and an award of reasonable costs and expenses in an amount not to exceed **$35,000.00**, subject to approval by the Court. (Kim Decl., ¶ 24, Exhibit 1 ¶ 58(g)).

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Yeremian Decl., ¶¶ 3-9; Kim Decl. ¶¶ 84-86). Class Counsel has incurred substantial hours in prosecuting this action on a contingent basis. Class Counsel will provide further details regarding hourly rates, lodestar, and hours, and will document expenses incurred, in support of final approval and its fees and costs motion. (Kim Decl., ¶ 90).

9. <u>PROVISIONAL CERTIFICATION OF THE CLASS IS APPROPRIATE</u>

Certification is appropriate when the moving party has demonstrated the existence of an ascertainable class and a well-defined community of interest among the class. *See, e.g.*, *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1021. For settlement purposes only, Defendants do not oppose conditional class certification. Defendants do not concede that certification is appropriate outside of this Settlement and preserves all rights to oppose certification if, for any reason, the settlement does not become effective. (Kim Decl., ¶ 68, Exhibit 1 ¶¶ 45, 50).

A. <u>There is a Numerous and Ascertainable Class</u>

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *See, Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal.

App. 3d 1263, 1271. Based on information provided by Defendants at the time of the mediation, Plaintiff estimated approximately 625 total Class Members. (Kim Decl., ¶ 69). Defendants do not dispute for settlement purposes only that these Class Members are ascertainable and sufficiently numerous. (Kim Decl., ¶ 70).

B. There Is a Well-Defined Community of Interest

A community of interest is established by predominant common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. It "does not depend upon an identical recovery,...The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover…" *Id.* at 809.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff. (Kim Decl., ¶ 76). California courts show "no hesitancy" in inferring class-wide causation, injury, and damages when a common course of action has been shown. *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350. This inference "'eliminates the need for each class member to prove individually the consequences of the Defendants' actions to him or her.'" *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753).

This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work policies, the resulting failure to pay final wages when required, the failure to provide accurate paystubs, and largely derivative claims under the UCL and PAGA. Plaintiff contends these practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices, which applied uniformly to all Class Members. The outcome of litigation on this matter depends upon questions that are common to Class Members. (Kim Decl., ¶ 75).

C. The Named Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative Class Members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other Class Members. 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. *Classen v. Weller* (1983)145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary that the class representative should 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, 228.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 71).

D. <u>Adequacy of Class Counsel and Class Representatives</u>

Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Yeremian Decl., ¶¶ 3-9; Kim Decl., ¶¶ 80-88). The Class Representatives' interests are aligned with those of the Class Members, they have suffered the same injuries and have no conflicts of interest. (Kim Decl., ¶¶ 92-97; Zuazo Decl., ¶¶ 3-16). Class Counsel and the Class Representative are adequate.

E. <u>Predominance and Superiority</u>

Individual issues do not predominate over those common to the class, as addressed above. (Kim Decl., ¶ 76). Additionally, class proceedings are superior to individualized actions, as there is little interest or incentive for class members to individually control the prosecution of separate actions. If Class Members are forced to litigate their claims individually, it would result in over 625 individual actions against Defendants, and the cost of individually litigating each such case against Defendants would easily exceed the value of any relief that could be obtained. (Kim Decl., ¶ 77). Class proceedings are superior to individual ones.

10. <u>CONCLUSION</u>

Plaintiff respectfully requests that the Court grant preliminary approval of the parties' Settlement Agreement; provisionally certify the proposed Class for settlement purposes; approve

Plaintiff as the Class Representative and her counsel as Class Counsel; approve the proposed form of the Class Notice and plan for administration of the Settlement; and schedule the final settlement approval hearing by entering the concurrently provided [Proposed] Order.

DATED: April 28, 2025

D.LAW, INC.

By ______________________________

David Yeremian
Alvin B. Lindsay
Enoch Kim
Rose Sorial
Antonia McKee
Attorneys for Plaintiff Mariana Zuazo and Settlement Class