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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ALEXIS GARRIDO, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. LOWE'S HOME CENTERS, LLC., a North Carolina limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No.: STK-CV-VOE-2023-7780 <u>Assigned for All Purposes To:</u> Hon. Hon. Jayne Lee Department: 10C **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARILY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[Filed concurrently with Plaintiffs' Notice of Motion and Motion; Declaration of Enoch J. Kim; Declaration of Alex Garrido; Declaration of Bernice Carrillo; Declaration of David R. Markham; Declaration of Isam C. Khoury; Declaration of Walter L. Haines; and [Proposed] Order]* Original Complaint Filed: July 25, 2023 Trial Date: None Set

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I. INTRODUCTION

In this wage-and-hour class and representation action, Plaintiff Alexis Garrido and Plaintiff Bernice Carrillo ("Plaintiffs") have sued Defendant Lowe's Home Centers, LLC ("Defendant"), a leading retailer of home improvement goods. Plaintiffs assert claims for (1) failure to pay minimum wages; (2) failure to pay wages and overtime; (3) failure to provide meal breaks; (4) failure to provide rest breaks; (5) failure to provide accurate wage statements; (6) unlawful withholdings; (7) failure to timely pay wages during employment; (8) waiting-time penalties for failure to timely pay wages at end of employment; (9) failure to maintain records; (10) violation of Business and Professions Code § 17200 et. seq.; and (11) civil penalties for California Labor Code violations under the Private Attorneys General Act ("PAGA").

After engaging in substantial investigation and extensive negotiations with the assistance of a respected mediator, Plaintiffs and Defendant (collectively, the "Parties") agreed to settle all claims alleged in this action on a class-wide, non-reversionary basis for $4.2 million, inclusive of all fees and costs. The Parties' Class and Representative Action Settlement Agreement and Release ("Settlement Agreement" or "Settlement") defines the settlement class as all current and former hourly-paid or non-exempt employees who worked for Defendant in the Supply Chain organization within the State of California from July 25, 2019 through August 24, 2025 ("Class" or "Class Members"). The estimated 2,400 Class Members will each receive a settlement payment unless they opt out of the Class portion of the Settlement.

The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Accordingly, Plaintiffs respectfully request that this Court enter an order: (1) granting preliminary approval of the proposed class action settlement, as memorialized in the Settlement Agreement filed concurrently herewith; (2) approving the Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice"), which is attached as Exhibit A to the Settlement Agreement, to be sent to Class Members; and (3) setting a hearing for final approval of the settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

1. The Instant Action

On July 25, 2023, Plaintiff Alexis Garrido commenced the class action by filing a class action complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (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 [non-compliant wage statements]; (6) Violation of Labor Code § 221 [unlawful withholdings]; (7) Violation of Labor Code § 204 [failure to timely pay wages during employment]; (8) Violation of Labor Code § 203 [waiting-time penalties for failure to timely pay wages at end of employment]; (9) Failure to Maintain Records Required Under Labor Code § 1174, 1174.5; and (10) Violation of Business and Professions Code § 17200 et. seq. ("Garrido Class Action"). (Kim Decl., ¶ 3.)

On September 12, 2023, Defendant filed a Notice of Removal in Federal Court, thereby removing the Garrido Class Action to Federal Court. (Kim Decl., ¶ 5.)

2. The PAGA Action

On July 25, 2023, Plaintiff Alexis Garrido set the groundwork for a claim for civil penalties under PAGA by sending a PAGA Notice (LWDA-CM-970730-23) to Defendant and California's Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code section 2699.3, subd.(a). (Kim Decl., ¶ 4.)

On December 19, 2024, Plaintiff Alexis Garrido then filed a lawsuit against Defendant in state court. The lawsuit was a representative action for civil penalties under PAGA. Plaintiff asserts nine causes of action for civil penalties under PAGA based on the following alleged wage-and-hour violations: (1) Failure to Pay Minimum Wages; (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) and 1174 [non-compliant wage statements and failure to maintain accurate records]; (6) Violation of Labor Code § 221 [unlawful withholdings]; (7) Violation of Labor Code § 204 [failure to timely pay wages during employment];

(8) Violation of Labor Code §§ 201, 202, 203 [waiting-time penalties for failure to timely pay wages at end of employment]; and (9) Violation of Labor Code §§ 246, 248.1, 248.2, 248.5 [failure to pay sick leave]. ("Garrido PAGA Action") (Kim Decl., ¶ 6.)

3. The Carrillo Action

On February 26, 2024, Plaintiff Bernice Carrillo commenced a separate class action against Defendant by filing a class action complaint in state court.

On April 26, 2024, Defendant removed the Carrillo action to federal court.

On August 19, 2024, Plaintiff Berenice Carrillo filed a First Amended Complaint in federal court, asserting the following six causes of action for violation of the California Labor Code and California Business and Professions Code: (1) Failure To Pay Minimum, Regular, And Overtime Wages; (2) Failure To Provide Meal Periods; (3) Failure To Provide Rest Periods; (4) Failure To Furnish Timely And Accurate Wage Statements; (5) Failure To Pay All Wages Due Upon Termination; and (6) Violation Of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code §§ 17200 et seq.) ("Carrillo Class Action"). (Kim Decl., ¶ 7.)

4. All Three Actions Were Consolidated Into The Operative Complaint In This Action

On October 21, 2025, as part of Parties' settlement, the instant action was remanded to this court. (Kim Decl., ¶ 9.)

On October 22, 2025, Plaintiffs filed a First Amended Complaint ("Operative Complaint") in this action that added Plaintiff Bernice Carrillo as a co-plaintiff and consolidated all claims and allegations pleaded in the Garrido PAGA Action and Carrillo Class Action into this action.

The Operative Complaint alleges causes of action against Defendant for (1) Failure to Pay Minimum Wages; (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 [non-compliant wage statements]; (6) Violation of Labor Code § 221 [unlawful withholdings]; (7) Violation of Labor Code § 204 [failure to timely pay wages during employment]; (8) Violation of Labor Code § 203 [waiting-time penalties for failure to timely pay wages at end of employment]; (9) Failure to Maintain Records Required Under Labor Code §

1174, 1174.5; (10) Violation of Business and Professions Code § 17200 et. Seq; and (11) Penalties under PAGA Labor Code § 2698. (Kim Decl., ¶ 8.)

B. Plaintiffs' Claims and Defendant's Denials

Plaintiffs' claims are primarily based on Defendant's alleged failure to pay wages (including minimum and overtime wages), failure to provide meal and rest periods, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 9.)

Specifically, Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members for all hours worked due to its systemic practices, policies and procedures. Plaintiffs allege that Defendant required Plaintiffs and Class Members to remain on duty and under Defendant's control during breaks. (Kim Decl., ¶ 10.) Plaintiffs further allege that Defendant implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiffs and Class Members. (*Id.*) Defendant's practice led to Plaintiffs and Class Members not being compensated for all hours worked, resulting in unpaid regular and overtime wages. (*Id.*)

Plaintiffs also allege that Defendant failed to provide Plaintiffs and Class Members with duty-free meal periods due to requiring Plaintiffs and Class Members to remain on duty and under Defendant's control during breaks. (Kim Decl., ¶ 11.) Plaintiffs also allege that Defendant failed to pay the legally required premium at their regular rate of pay whenever Plaintiffs and Class Members were deprived of duty-free meal periods. (*Id.*)

Plaintiffs also allege that Defendant failed to provide Plaintiffs and Class Members with duty-free rest breaks due to requiring Plaintiffs and Class Members to remain on duty and under Defendant's control during breaks. (Kim Decl., ¶ 12.) Plaintiffs allege that Defendant did not permit Plaintiffs and the Class members to leave the work premises during rest breaks. (*Id.*) Plaintiffs further allege that, despite scheduling Plaintiffs and the other Class members to work shift of more than twelve hours, Defendant made no effort to authorize and permit them to take a third rest break. (*Id.*) Plaintiffs also allege that Defendant failed to pay the legally required premium at their regular rate of pay whenever Plaintiffs and Class Members were deprived of duty free meal periods. (*Id.*)

Defendant denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement. Defendant contends that it complied with all applicable laws. (Kim Decl., ¶ 13.) However, after careful consideration, Defendant has agreed to settle to avoid the burden, expense, and uncertainty of continuing litigation. (*Id*.)

C. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 14.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, 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 informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing a 20% random sample of time and pay data, as well as employment-related policies; (3) reviewing Plaintiffs' personnel files and other documentation; (4) interviewing Plaintiffs 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 Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. (*Id.*)

The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the action, including consulting experts. (*Id.*)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification and representative treatment.

After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (Kim Decl., ¶ 15.) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

D. Settlement Efforts

On April 29, 2025, the Parties attended a full-day mediation with Daniel Turner, a highly respected and experienced mediator in wage-and-hour class action cases. (Kim Decl., ¶ 16.) During mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case, including the risks associated with continued litigation and class certification issues, as well as the law and how it applied to the claims in this case. (*Id.*) After a full-day mediation, the Parties reached an impasse, but continued settlement negotiations with the assistance from the mediator. (*Id.*) On June 25, 2025, the Parties ultimately accepted the mediator's proposal. (*Id.*) The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id.*)

From Class Counsel's review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further litigation, 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., ¶ 17.) Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the action. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay a non-reversionary settlement amount of $4,200,000.00 ("Gross Settlement Amount") and to separately pay any and all employer payroll taxes owed on the wage portions of the individual Settlement Awards. (Kim Decl., Ex. 1, ¶ 1.16 and 4.1.)

The Settlement Agreement defines "Class Members" or "Settlement Class" as all current and former hourly-paid or non-exempt employees who worked for Defendant in the Supply Chain organization within the State of California from July 25, 2019 through August 24, 2025 ("Class Period"). (*Id.*, Ex. 1, ¶ 1.6 and 1.8.) The Settlement Agreement defines "Aggrieved Employees" with respect to PAGA as all current and former hourly-paid or non-exempt employees who worked for Defendant in the Supply Chain organization within the State of California from October 15, 2022 through August 24, 2025 ("PAGA Period"). (*Id*, Ex. 1, ¶ 1.2 and 1.23)

"Enhancement Awards" means the amounts to be paid to Plaintiffs in recognition of their effort and work in prosecuting the Actions as class representatives on behalf of Class Members, and for their general release of claims. Subject to the Court's approval, the Enhancement Awards shall not exceed $15,000.00 for Plaintiff Alexis Garrido and $10,000.00 to Plaintiff Bernice Carrillo, for a combined amount of $25,000.00. (*Id.*, Ex. 1, ¶ 1.13.)

"Settlement Administration Costs" refers to the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement. The Settlement Administration Costs are currently estimated to be $19,000.00 (*Id.*, Ex. 1, ¶ 1.31.)

"Class Counsel Fees and Costs" means payment to Class Counsel from the Gross Settlement Amount and approved by the Court for recoverable attorneys' fees and reimbursement of litigation costs and expenses related to the actions not to exceed $35,000.00 (*Id.*, Ex. 1, ¶ 1.5.) Subject to the Court's approval, it is agreed by the Parties that the Class Counsel Fees are not to exceed one-third (1/3) of the Gross Settlement Amount of $4,200,000.00 (or $1,400,000.00). (*Id.*, Ex. 1, ¶ 1.5.)

"PAGA Payment" means the payment of $200,000.00 as civil penalties under PAGA, to be paid from the Gross Settlement Amount. The PAGA Payment shall be allocated as follows: 75% of the PAGA Payment ($150,000.00) will be paid to the LWDA, and 25% of the PAGA Payment ($50,000.00) will be paid to the Aggrieved Employees. (*Id.*, Ex. 1, ¶ 1.22.) Individual payments to Aggrieved Employees will be determined by dividing $50,000.00 (25% of the PAGA Payment, which is allocated to Aggrieved Employees) by the total number of pay periods of all Aggrieved Employees during the PAGA Period, and then multiplying the resulting figure by the number of pay periods of each Aggrieved Employee during the PAGA Period. (*Id.*, Ex. 1, ¶ 6.5.)

The "Net Settlement Amount," available for distribution to Participating Class Members, is the Gross Settlement Amount, less (i) the Class Counsel Fees and Costs, (ii) the Enhancement Awards, (iii) the PAGA Payment, and (iv) the Settlement Administration Costs, as approved by the Court. (*Id.*, Ex. 1, ¶ 1.18.) If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **<u>$2,521,000.00</u>**. The Net Settlement Amount will be distributed to Participating Class Members based on their number of Workweeks during the Class Period. (*Id.*, Ex. 1, ¶ 6.1.) The Class Payments to Participating Class Members will be determined by dividing the value of Net Settlement Amount by the total number of Workweeks of all Participating Class Members during the Class Period, and then multiplying the resulting figure by the number of Workweeks of each Participating Class Member during the Class Period. (*Id.*, Ex. 1, ¶ 6.2.)

For the estimated 2,400 Class Members (if no exclusions), the average individual Class Payments, using a straight average, is approximately $1,050.42. (Kim Decl., ¶ 25.) If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (*Id.*)

The Class Notice is attached to the Settlement Agreement as Exhibit A. The Settlement Administrator will mail the Class Notice via first-class mail to all Class Members no later than 30 days after receiving the Class Members' names, last-known addresses, last-known telephone numbers, Social Security Numbers and the number of workweeks during the Class Period and the PAGA Period ("Class List"). (*Id.*, Ex. 1, ¶ 7.1 and 7.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant's records. (*Id.*, Ex. 1, Ex. A.) Class Members will have 45 calendar days from the mailing of the Class Notice to opt out of or object to the Settlement; With respect to re-mailed Class Notices, Class Members will have an additional fourteen (14) calendar days from the date of the re-mailing to respond. (*Id.*, Ex. 1, ¶¶ 8.1.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75. The decision to certify a class is a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

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, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all current and former hourly-paid or non-exempt employees who worked for Defendant in the Supply Chain organization within the State of California during the Class Period (i.e., July 25, 2019 through August 24, 2025). (Kim Decl., ¶ 28, Ex. 1, ¶ 1.6.) Defendant has estimated approximately 2,400 Class Members based on its current review of its payroll and personnel records. (*Id.*) Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is a Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... 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 subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to

the class.

Id. at 809.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is united in its proof. (Kim Decl., ¶ 29.) Because Plaintiffs have alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 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 [emphasis added]).

This action involves, *inter alia*, a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay minimum and overtime wages due to allegedly common rounding/time shaving policies and failure to provide duty free breaks; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 29.) Plaintiffs contend Defendant's 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. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

C. The Plaintiffs' 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 the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that Plaintiffs' 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., ¶ 30.) Plaintiffs and Class Members were employed by Defendant during the Class Period and subject to allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Id.*) Thus, Plaintiffs' claims are typical of the claims of the putative Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representative

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Kim Decl., ¶¶ 31, 72-78.) The Class Representatives' interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and have no conflicts of interest. (*Id.* at ¶ 31.) Plaintiffs have not shrunk from this responsibility. (*Id.*) Indeed, Plaintiffs have devoted a substantial amount of time and energy to litigating this action and effectuating a settlement. (*Id.*) Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 32.) As explained, *supra*, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and all Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id.*) Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id.*) Plaintiffs allege that these issues are suitable for common adjudication because all Class Members were subject to the same employment policies, and Plaintiffs contend the practices applied uniformly to all Class Members. (*Id*.)

Plaintiffs contend that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (Kim Decl., ¶ 33.) Although the alleged injury resulting from Defendant's policies and practices are real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. (*Id*.) If Class Members are forced to litigate their claims individually, it would potentially result in over 2,400 individual actions against Defendant each for relatively small amounts. (*Id*.) Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id*.)

V. 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.* (2008) 168 Cal.App.4th 116, 133. However, the record need not contain an explicit statement of the maximum theoretical amount that the class could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409 ("*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 plaintiffs' 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 Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

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*. (2001) 91 Cal.App.4th 224, 234-235. As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned."). 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 pertinent discovery and the exchange of necessary class data involving a 20% random sample of time and pay records. (Kim Decl. ¶ 35.) The negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) *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."). Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification and PAGA manageability. (*Id.*) Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. (*Id.*) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id.*)

B. Extent of Discovery and Stage of Proceedings

As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. (Kim Decl., ¶ 36.) This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id.*)

C. The Strength of Plaintiffs' Case and the Risk, Expense, Complexity and Likely Duration of Any Litigation.

As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (*Id.* at ¶ 37.) Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. (*Id.*) Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

D. The Risk of Maintaining Class Action Status Through Trial.

Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed classes are certifiable is somewhat speculative. (Kim Decl., ¶ 38.) Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class resulting in less overall recovery. (*Id.*)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (Kim Decl., ¶ 39.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) 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. (*Id.*) 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. (*Id.*) 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 was the product of compromise accounting for those risks and uncertainty. (*Id.*)

E. 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., ¶ 40.)

F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.

If the Court approves the above allocations from the Gross Settlement Amount of **<u>$4,200,000.00</u>**, the Net Settlement Amount is estimated to be **<u>$2,521,000.00</u>** while the 25% portion of the PAGA Payment distributed to Aggrieved Employees is **<u>$50,000.00</u>**. (*Id.* at ¶ 24.) There are approximately 2,400 total Class Members. (*Id.*) If there are no exclusions from the Class, the average gross individual Class Payment to each Class Member, using a straight average, is $1,050.42. (*Id.*)

Based on an analysis of Plaintiffs' time and pay records and a sampling of time and pay records for the Class, Plaintiffs estimated the total potential realistic exposure for the main claims to be approximately $6.8 million. This consists of the following exposure estimates: $277,135.00 for unpaid wages, including minimum and overtime wages, due to off the clock work; $2,675,041.39 for meal period violations; $343,183.80 for rest period violations; $15,355.00 for unpaid sick pay; $1,031,550.00 in wage statement penalties; $1,995,396.60 in waiting time penalties; and $480,270.00 for PAGA penalties. (*Id*. at ¶¶ 37-62.) As such, the total estimated realistic exposure Defendant could face is $6,817,931.79.

The Gross Settlement Amount of $4,200,000.00 represents a recovery for the Class of approximately 61.6% of the total realistic liability exposure Plaintiffs estimated that Defendant could face on the main claims in this case. (Kim Decl. ¶ 65.) Plaintiffs and Class Counsel submit that 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.

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. Class Counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendant faced on Plaintiffs' main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Amount represents a recovery of approximately 61.6% of the estimated total realistic liability exposure (Kim Decl., ¶ 65.)

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were 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 courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

F. Experience and Views of Counsel

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 Plaintiffs and Class Members zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 31, 72-78.) 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., ¶ 78.)

VII. THE CLASS REPRESENTATIVE ENHANCEMENT AWARDS ARE FAIR AND REASONABLE

"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.). Plaintiffs request a reasonable enhancement award for their efforts and initiative in bringing and helping to prosecute this class action.

As an initial matter, Plaintiffs' courage in proceeding with class-wide claims should not be underestimated. By suing Defendant, Plaintiffs increased their risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (Garrido Decl., ¶ 11; Carrillo Decl., ¶ 8.)

Plaintiffs have devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (Kim Decl., ¶ 67-69; Garrido Decl., ¶¶ 2-10; Carrillo Decl., ¶¶ 5-12.) Both before and after filing, Plaintiffs conferred with Class Counsel to discuss every aspect of this case. Plaintiffs have provided Class Counsel with information about Defendant, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the settlement agreement. (Garrido Decl., ¶ 10; Carrillo Decl., ¶¶ 5-12.)

Plaintiffs have spent a significant amount of time with Class Counsel detailing their knowledge of Defendant's practices. Plaintiffs have diligently, adequately, and fairly represented the Class Members, and have not placed their interests above any member of the putative Class.

This sort of payment to a Class Representative have been a common feature of settlements negotiated by Class Counsel and routinely approved by courts. The class representative service payment of **$15,000.00** to Plaintiff Alexis Garrido and **$10,000.00** to Plaintiff Bernice Carrillo is fair and reasonable. (Kim Decl., ¶ 69.)

VIII. THE PROPOSED CLASS 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 proposed 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 workweeks), and procedures for exercising those options. (Kim Decl., ¶ 26; *see also* Class Notice, Exhibit 1 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 estimated 2,400 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 70.) If any Notice Packets are returned undeliverable, the Settlement Administrator shall resend to the forwarding address, if any, on the returned envelope. (*Id.*) If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace return mail and re-mail within five (5) calendar days. (*Id.*) 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.

IX. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, an award of attorneys' fees of $1,400,000.00 (one-third of the Gross Settlement Amount) and reasonable litigation costs not to exceed $35,000.00, subject to approval by the Court. (Kim Decl. ¶ 66.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 72-78.) Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. As such, the requested award of attorneys' fees and costs is reasonable.

X. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

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

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit A;

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

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint D.Law, Inc.; David Yeremian & Associates, Inc.; Cohelan Khoury & Singer; The Markham Law Firm; and United Employees Law Group to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex Class Action LLC as the Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose to Apex Class Action LLC the names, last known mailing addresses, last known telephone numbers, Social Security numbers, and the number of Class Period workweeks and PAGA Period pay periods as set forth in the Settlement Agreement;

9. Order Apex Class Action LLC to mail the Class Notice to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: December 8, 2025

D.LAW, INC.

By ______________________

Enoch J. Kim
Eric J. Naessig
Attorneys for Plaintiff Alexis Garrido and others similarly situated