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an individual on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

RAUL B. IBARRA, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. STEPHENS INSTITUTE, a California corporation; and DOES 1 through 50, inclusive, Defendant.	Case No.: CGC-23-607667 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Honorable Jeffrey S. Ross Department 606 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S RENEWED MOTION FOR PRELIMINARILY APPROVAL OF THE PARTIES' CLASS ACTION AND PAGA SETTLEMENT AGREEMENT** Date: June 30, 2025 Time: 10:00 a.m. Location: Department 606 Original Complaint Filed: July 14, 2023 Amended Complaint Filed: September 18, 2023

Trial Date: None Set.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Raul B. Ibarra ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with defendant The Stephens Institute d/b/a/ Academy of Art University ("Defendant") (Plaintiff and Defendant collectively referred to herein as "the Parties") on behalf of himself and a proposed class consisting of all current and former non-exempt, hourly employees of Defendant who worked in California at any time during the Class Period, which is July 14, 2019 the Class Period (from January 14, 2019 to August 25, 2024 (Kim Decl., Amendment, ¶ 7.) After participating in mediation, the Parties reached a settlement in the gross amount of $1,300,000.00 to resolve the foregoing action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff respectfully requests that this Court grant preliminary approval of the proposed settlement agreement between the Parties, the terms of which are set forth in the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement") (Kim Decl., Exhibit 1, Settlement Agreement.) and the Parties' Amendment to the Settlement Agreement ("Amendment") (Kim Decl., Exhibit 2, Amendment.)

The Settlement Agreement was reached after the Parties engaged in informal discovery and investigation, participated in mediation with a skilled mediator, and negotiated at arms-length through experienced counsel on both sides.

As discussed below, the proposed Settlement Agreement satisfies all criteria for preliminary approval under California law, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally grant certification of the proposed Class solely for the purposes of settlement, (3) approve the appointment of Apex Class Action ("Apex") as the Administrator, (4) authorize the Administrator to send the Notice of Class and PAGA Action Settlement ("Class Notice"), attached to the Settlement Agreement as Exhibit A, to the Class Members, (5) appoint Plaintiff as the Class Representative and Plaintiff's Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On July 14, 2023, Plaintiff Raul B. Ibarra filed a class action complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages and 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; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Employment Records under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (12) Violation of Business & Professions Code § 17200 *et seq*. ("Action"). (Kim Decl., ¶ 3.)

Simultaneously, on July 14, 2023, and pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-968289-23). (*Id.*) On September 18, 2023, after the 65-day statutory period had passed, Plaintiff filed his First Amended Complaint ("Operative Complaint"), which added claims for penalties under PAGA, Labor Code §2698. (*Id.*)

Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, failure to pay final wages when required, failure to produce requested employment records, and failure to provide accurate wage statements. (*Id*. at ¶ 5.)

B. 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., ¶ 15.) 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 informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's 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 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. (*Id.*)

Prior to mediation, Class Counsel requested comprehensive informal discovery from the Defendant including a class list with job titles, start dates, and end dates, the total number of currently and former employees employed from July 14, 2019 to mediation, the total number of former employees employed from July 14, 2020 to mediation, the total number of current and former employees employed from July 14, 2022 to mediation, information regarding the hours of operation for the locations Class Members worked, Defendant's shift scheduling practice, information regarding the wage statement issued to Class Members as well as the pay frequency, work shift details, the total number of work weeks worked by Class Members during the alleged liability period, information regarding any meal period premiums paid to Class Members during the liability period, copies of Plaintiff's individual records, information regarding the Class Member's job responsibilities, and copies of arbitration agreements as well as the total number of Class Members who signed an arbitration agreement. (Kim Decl., ¶ 16.) Class Counsel also requested copies of Defendant's employee handbooks, training documents for managers and employees, policies regarding meal and rest periods, and payment of Section 226.7 penalty wages, policies regarding meal period waivers, policies regarding scheduling and payments of wages and overtime, policies regarding off-the-clock work, policies regarding rounding of hours. (*Id.*)

Defendant responded to most of Plaintiff's requests and provided Class Counsel with sample paystubs, policy documents, a template of an alleged meal waiver entitled "Meal Period & Rest Break Premium Authorization Form," a template arbitration agreement provided to Class Members, and Plaintiff's individual records. (Kim Decl., ¶ 17.) Defendant also provided Class Counsel with a "Data Sheet" based on time data through December 31, 2023 and pay data through January 5, 2024. (*Id.*) The raw data summarized the total number of non-exempt employees during the class period, the total number of Class Members with signed arbitration agreements, the total number of non-exempt employees in the PAGA Period, the total number of Workweeks in the class period, the total number of Class Members with arbitration agreements, the total days worked in the Class Period, the total average hourly rate, and the total number of days worked greater than 3.5 hours, 5 hours, and 10 hours. (*Id.*)

These investigatory efforts were followed by further conversations with the Plaintiff and Defendant regarding the relevant documents and other gathered data. (Kim Decl., ¶ 18.) Defendant, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.*) After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On April 29, 2024, the Parties participated in an all-day mediation with mediator Tripper Ortman, a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 17.) During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both parties of proceeding with a class certification motion, as well as the law unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit through a memorandum of understanding. (*Id.*) The Parties continued to work together to finalize a long-form settlement agreement, which resulted in the Settlement Agreement before the Court for approval. (*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 risks of further litigation, the possibility of losing class certification and/or dispositive motions, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (*Id.* at ¶ 20.) Further, 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 lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $1,300,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiff on behalf of the proposed Class to fully settle, resolve, and extinguish all claims asserted in the Action, including without limitation all claims asserted in the PAGA Notices. (Kim Decl., ¶ 21, Settlement Agreement, ¶ 3.1.) In addition to and separate from the Gross Settlement Amount, Defendant will pay the employers' portion of any payroll taxes on the wage allocation portion of the Individual Class Payments to Class Members. (*Id.*)

"Class" is defined as all current and former non-exempt, hourly employees of Defendant who worked in California at any time during the Class Period, which is July 14, 2019 to August 25, 2024.[1] (Kim Decl., ¶ 21, Exhibit 2, Amendment, ¶1.13.) "Participating Class Members" means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement. (Kim Decl., Settlement Agreement, ¶ 1.37.) "Aggrieved Employees" are defined as all current and former non-exempt, hourly employees of Defendant who worked in California at any time during the PAGA Period, which is July 14, 2022 to August 25, 2024. (Kim Decl., Exhibit 2, Amendment, ¶¶ 1.4, 1.33.)

The "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. (Kim Decl., Settlement Agreement, ¶ 1.29.) These amounts are detailed as follows:

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[1] The Parties amended the escalator clause to give Defendant the option to either (a) increase the Gross Settlement Amount by the same number of percentage points above 5% by which the increase in the actual number of Workweeks exceed 7,065 (for example, if such increase in Workweeks is 10% over 141,290 Workweeks, then the Gross Settlement Amount will increase by 5%), or (b) change the end date for the Class Period and PAGA Period such that the Class Period and PAGA Period end on the date that the total Workweeks do not exceed 148,355 Workweeks (i.e., 105% of the Extrapolated Workweeks). (Kim Decl., Exhibit 2, Amendment ¶ 8.) Defendant has elected to change the end date for the Class Period and PAGA Period to August 25, 2024 pursuant to the escalator clause.

- Class Counsel Fees Payment: Up to one-third (1/3) of the Gross Settlement Amount, or $433,333.33 for attorneys' fees (Kim Decl., Settlement Agreement, ¶ 1.7.);
- Class Counsel Litigation Expenses Payment: Reasonable litigation costs and expenses incurred to prosecute this Action not to exceed $20,000.00 (Kim Decl., Settlement Agreement, ¶ 1.7.);
- Class Representative Service Payment: Up to $10,000.00 to Plaintiff for his service as the Class Representative (Kim Decl., Settlement Agreement, ¶ 1.15.)
- Administration Costs: Up to $17,500.00 (Seventeen Thousand Five Hundred Dollars and Zero Cents) to the Administrator for its fees and costs to administer the Settlement (Kim Decl., Settlement Agreement, ¶ 3.3.3.);
- PAGA Penalty payment: $130,000.00 for settlement of claims for civil penalties under PAGA, with 25% ($32,500.00) to be paid on a pro-rata basis to the Aggrieved Employees ("Individual PAGA Payment") based on the number of pay periods each Aggrieved Employee worked during the PAGA Period ("PAGA Pay Periods") and 75% ($97,500.00) to be paid to the LWDA ("LWDA PAGA Payment"). (Kim Decl., Settlement Agreement, ¶ 1.28.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **$531,666.67**. Each Participating Class Member's pro-rata share of the Net Settlement Amount ("Individual Class Payment") is calculated according to the number of workweeks worked during the Class Period ("Workweeks"). (Kim Decl., ¶ 22, Settlement Agreement, ¶ I.24.) For the 2,270 Class Members estimated at the time of mediation, the average gross Individual Class Payment, using a straight average, is $234.21. (*Id.*) 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 Participating Class Members. (Kim Decl., ¶ 20, Settlement Agreement, ¶¶ 3.31, 3.3.5.1.)

The Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, with Spanish translation to all Class Members in no event later than fourteen (14) calendar days after receiving the Class Data via first-class United States Postal Service ("USPS") mail. (Kim Decl., ¶ 23, Settlement Agreement, ¶ 7.4.2.) The Class Notice provides each Class Member's estimate of the amount of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and the number of Workweeks and PAGA Pay Periods used to calculate these amounts. (Kim Decl., ¶ 23, Settlement Agreement, ¶ 7.4.2.) 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 PAGA Pay Periods attributed to each Class Member per Defendant's records. (Kim Decl., ¶ 23, Settlement Agreement, Exhibit A, Class Notice.) Class Members will have forty-five (45) days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of Workweeks and/or PAGA Pay Periods ("Response Deadline). (Kim Decl., Settlement Agreement, ¶ I.45.) Class Members who received a re-mailed Class Notice shall have their Response Deadline extended fourteen calendar (14) days from the original Response Deadline. (*Id.*)

Defendant will fund the Gross Settlement Amount by making five (5) equal installments of approximately $260,000.00 each, due in March and September of each year following the Effective Date until the completion of five (5) payments, with the first payment due in the March or September following the Effective Date. (Kim Decl., ¶ 24, Exhibit 1, Settlement Agreement, ¶ 3.2.) The Effective Date as defined in the Settlement Agreement means the date by which both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. (Kim Decl., ¶ 24, Exhibit 1, Settlement Agreement, ¶ 1.19.) The Judgment is final as of the latest of the following occurrences: (1) if no timely appeal is filed, then the date on which the date for filing such appeal has passed; or (2) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur. (*Id.*) The installment plan outlined in the Settlement Agreement was crucial for the Parties to reach a settlement, as Defendant's financial circumstances made such an arrangement essential to move forward with the Settlement, maximize the recovery for Class Members, and help avoid unnecessary costs and expenses associated with prolonged litigation and trial. (*Id.*) The Parties agreed to this payment plan in light of the Defendant's financial condition and cash-flow cycle. Defendant receives tuition payments from students (its exclusive revenue source) in March and September of each year. (*See* Declaration of Torie Toller, filed herewith in support of this Motion, at ¶¶ 6-7 [“Toller Decl.”].) Since the COVID-19 pandemic, Defendant has experienced a significant decline in student enrollment, which has continued to present. The decrease in overall enrollment (overall reduction of 40% since 2019), including a marked decrease in the enrollment by international students (down 71%), has had a substantial negative financial impact on the Academy. (Toller Decl., ¶ 4.) In order to manage the decrease in its revenue, Defendant has had to implement salary reductions, reduced its staff and removed its entire NCAA Division II athletics department and program. (Toller Decl., ¶ 5.) Reduced revenue has also impacted cash reserves and exacerbates cash flow concerns that arise from the Academy’s cyclical tuition/revenue receipts when significant cash payments are required, such as those needed to satisfy the settlement in this action. (*Id.*) The Parties agree that the Settlement payment plan is fair to the Class in ensuring Defendant can meet its obligations, and that the Class will receive the benefit of the Settlement while the Academy can continue to service its students and provide employment opportunities. (*Id.*)

Given the payment plan and in an effort to minimize costs, the Settlement Administrator will take all reasonable steps to avoid the need for additional tax filings by ensuring that payments are made in a timely manner. See the Declaration of Michael Sutherland in Support of Plaintiff’s Renewed Motion for Preliminary Approval (“Sutherland Decl.,” ¶ 7; Kim Decl., ¶ 25.) Apex will open and manage an escrow account throughout the payment process. (*Id.*) Upon final approval, all funds will be transferred to a Qualified Settlement Fund (QSF). (*Id.*) Additionally, to account for potential missed or delayed payments, Apex has included the cost of one additional tax return in its estimate. (*Id.*)

A. Settlement Release

The Settlement Agreement calls for the release of claims against all Released Parties, which is defined as “Defendant; its present, former, or future parent and/or subsidiary corporations; each of the foregoing’s present, former, or future: owners, officers, members, directors, shareholders, partners, employees, insurers, successors, predecessors, contractors, assigns, and managing agents;

and any and all agents, legal representatives, and/or attorneys of all of the foregoing entities or individuals." (Kim Decl., ¶ 26, Exhibit 1, Settlement Agreement, ¶¶ 1.43., 5.)

The Court has requested legal authority supporting the inclusion of certain third parties, like insurers, attorneys, and shareholders, as Released Parties to the Parties' Settlement Agreement. The Parties proffer that the scope of the Released Parties to the Settlement Agreement is proper. (Kim Decl., ¶ 29.) Parties to a class settlement agreement are within their rights to identify the scope of their releases to include third parties. See *Grande v. Eisenhower Med. Ctr.*, 13 Cal. 5th 313, 321-322 (2022) (explaining that if Litigants wanted to include a staffing agency in the future it was permitted to do so). Notably, courts have found that even "[a] release agreement containing boilerplate language that purports to excuse everyone in the world from liability can be enforced by persons who are not parties to the agreement." *Vahle v. Barwick*, 93 Cal. App. 4th 1323, 1328 (2001) citing *Lama v. Comcast Cablevision*, 14 Cal. App. 4th 59, 63 (1993); *General Motors Corp. v. Superior Court*, 12 Cal. App. 4th 435, 439-440 (1993).

Additionally, under Labor Code Sec. 558.1, a "person acting on behalf of an employer, who violates or causes to be violated any provision regulating minimum wages or hours and days of work…may be held liable as the employer for such violation." Cal. Lab. Code Sec. 558.1. Similarity, Labor Code Sec. 558 (a) further states "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to civil penalty…" Cal. Lab. Code Sec. 558(a). Similarly, Labor Code Sec. 1197.1 states "an employer or other persons acting either individually or as an officer, agent, or employee of another person who pays or causes to be paid to any employee a wage less than minimum . . . shall be subject to a civil penalty. . ." Cal. Lab. Code Sec. 1197.1. Labor Code Sec. 558 (a) and 1197.1 are both referenced in the Second Amended Complaint. Given that, the Settlement Agreement language is intended to be comprehensive in scope to ensure related third-party entities and individuals are covered by the release of claims. Settlement agreements must provide a sense of finality to an action. See *Winet v. Price*, 4 Cal. App. 4th 1159, 1173(1992) ("Those engaged in contract law and litigation are in great need of the availability of ironclad and enforceable general releases.")

The inclusion of these third-party entities and individuals also aligns with the Los Angeles Superior Court's "[Model] Class Action and PAGA Settlement Agreement's language for released parties, which includes "former and present directors, officers, shareholders, owners, attorneys, insurers, predecessors, successors, assigns [subsidiaries] [affiliates]." This Court also has previously approved class and/or PAGA releases containing analogous language. For example, on March 21, 2025, this Court granted a motion for preliminary approval in *Sandy Gonzalez, et al. v. Blue Link Wireless, LLC*, Case No. CGC-24-614396. In *Gonzalez*, released parties was defined as "BLW, its respective past and present parents, subsidiaries, and affiliates, past and present members, managers, shareholders, directors, officers, owners, agents, employees, attorneys, insurers, predecessors, successors and assigns of the foregoing, Nadhir, and any individuals or entitles that could be jointly liable with any of the foregoing." On April 14, 2025, this Court issued an order granting a renewed motion for preliminary approval in *Steven Jefferson, et al. v. Brookfield Property Multifamily, LLC* Case No. CGC-22-600085. In *Jefferson,* released parties were defined as "Defendant and each of its former and present directors, officers, shareholders, owners, members, managers, employees, agents, principals, heirs, representatives, attorneys, predecessors, successors, assigns, parents, subsidiaries, and affiliates." *Jefferson* and *Gonzalez* both had PAGA and Class Action claims for wage and hour violations. As such, the scope of the Released Parties to the Settlement Agreement is proper. (Kim Decl., ¶ 29.)

In an effort to address the Court's concerns regarding the scope of the release of claims, the Parties have amended the definitions of the Released Class Claims and Released PAGA Claims. The Amendment redefines "Released Class Claims" as any and all disputes, claims and/or causes of action for wages, statutory and civil penalties (but not PAGA penalties), monies, damages, liquidated damages, premiums, restitution, injunctive and declaratory relief, pre-judgment and post judgment interest, attorney's fees, and costs pleaded in the Operative Complaint in the Action, Plaintiff's PAGA Notice to the LWDA, and/or which reasonably relate to or which reasonably arise out of the same set of operative facts pled therein during the Class Period. This includes claims for:

failure to pay all regular wages, minimum wages, straight time wages, and overtime wages due (including off-the-clock and rounding claims); (ii) failure to pay all wages at the correct rate of pay (including premium pay such as, meal period premiums, rest break premiums, and California Paid Sick Leave); failure to provide meal periods; failure to provide rest periods; failure to provide accurate, itemized wage statements; failure to pay wages due during employment; failure to pay all wages due at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, California Paid Sick Leave pay, and COVID-19 sick pay; unfair competition related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code §§ 90.5, 200 *et seq*., 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 et. seq., 248.1, 248.2, 248.5, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199 and 2802; the Fair Labor Standards Act; California Business & Professions Code § 17200 *et seq*.; California Code of Civil Procedure § 1021.5; and the California Industrial Welfare Commission Wage Orders MW-2014 ("Released Class Claims"). (Kim Decl., ¶ 26, Exhibit 2, Amendment ¶ 5.2.)

"Released PAGA Claims" is now defined as all claims for civil penalties under the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq*. ("PAGA"), that were alleged in the PAGA Notice, the Operative Complaint in the Action, and/or claims for PAGA penalties which reasonably relate to or which reasonably arise out of the same set of operative facts pled therein during the PAGA Period. This release includes claims for PAGA penalties based on: failure to pay all regular wages, minimum wages, straight time wages, and overtime wages due (including off-the-clock and rounding claims); (ii) failure to pay all wages at the correct rate of pay (including premium pay such as, meal period premiums, rest break premiums, and California Paid Sick Leave); failure to provide meal periods; failure to provide rest periods; failure to provide accurate, itemized wage statements; failure to pay wages due during employment; failure to pay all wages due at termination; failure to maintain and provide accurate and complete records; failure to reimburse for necessary business expenses; failure to provide sick pay, California Paid Sick Leave pay, and COVID-19 sick pay; unfair competition related to any or all of the foregoing. This release includes claims for PAGA penalties premised on: California Labor Code §§ 90.5, 200 et seq., 201, 202, 203, 204, 206.5, 210, 218.5, 221, 226, 226.2, 226.3, 226.7, 246, 248 et. seq., 248.1, 248.2, 248.5, 432.5, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802 and 2699 ("Released PAGA Claims"). (Kim Decl., ¶ 28, Exhibit 2, Amendment ¶ 5.3.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

For settlement purposes only, current and former non-exempt, hourly employees of Defendant who worked in California during the Class Period, including Plaintiff, were subject to the same policies and practices, including timekeeping and payroll. (Kim Decl., ¶ 32.) With respect to the composition of the Class, below are some approximate statistics based on data around the time of the Parties' mediation.

- Instructional Staff: 51.19%
- Student Workers: 18.59%
- Administrative: 18.24%
- Transportation: 2.91%
- Safety: 9.07%

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" when they may be readily identified without unreasonable expense or time.

Plaintiff contends, 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 non-exempt, hourly employees of Defendant who worked in California at any time during the Class Period (from January 14, 2019 to August 25, 2024 (Kim Decl., ¶ 34, Amendment, ¶ 7.) At the time of mediation, Defendant identified 2,270 Class Members based on a review of its payroll and personnel records. (*Id.*, Exhibit 1, Settlement Agreement, ¶ 8.)

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.

Plaintiff contends, 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 Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 35.) Because Plaintiff has 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 Defendant's 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 wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to reimburse business expenses, failure to produce records, failure to pay final wages when required, and failure to provide accurate wage statements. (Kim Decl., ¶ 35.) Plaintiff contends Defendant's practices affected Class Members in the same way and presents 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 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 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 Defendant does 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., ¶ 36.) Thus, Plaintiff's 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 Plaintiff and Class Members zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 37, 80-85.) Plaintiff's interests are aligned with those of the Class Members, as he has suffered the same injuries as the Class Members and has no conflicts of interest. (*Id.*) Plaintiff has not shrunk from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel and the class representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 38.) As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id.*) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members. (*Id.*)

Plaintiff contends 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. (*Id.* at ¶ 39.) 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 2,270 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. (Kim Decl. ¶ 41.) 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 Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. (*Id.*) Thus, while Plaintiff was 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 informal discovery before the Settlement was reached to allow them to evaluate the class claims and Defendant's defenses. (*Id.* at ¶ 42.) 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 Plaintiff's Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to produce records, failure to reimburse business expenses, failure to pay final wages when required, and failure to provide accurate wage statements. (*Id*. at ¶ 5.)

Specifically, Plaintiff alleges that Defendant required Plaintiff and Class Members to manually input their scheduled shift hours rather than their actual hours worked on a weekly basis. (*Id*. at 6.) As a result, Plaintiff alleges that Plaintiff and Class Members had to work off-the-clock and were not paid for all hours worked by Defendant. (*Id*.) Plaintiff also alleges that Defendants had a uniform policy of rounding down employee work hours to the nearest quarter hour, resulting in a reduction of Plaintiff's and Class Members' recorded hours to match their scheduled hours rather than their actual hours worked. (*Id*.)

Defendant contends that it neither required off-the-clock work nor implemented a time-rounding policy. (*Id*. at 7.) Defendant contends it paid for all reported hours worked and that wages were paid at the proper rates. (*Id.*) Defendant asserts Class Members were instructed to record all hours worked and that any off-the-clock was performed without Defendant's knowledge. (*Id.*) Defendant also argues that given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id.*)

Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff and Class Members. (Kim Decl., ¶ 8.) Due to work demands and management pressure from Defendant, Plaintiff alleges that Plaintiff and Class Members were often unable to take a duty-free 30-minute meal break before the fifth hour of their shifts. (*Id.*) Plaintiff alleges that their meal periods were constantly interrupted by work-related tasks and management pressure. (*Id.*) Plaintiff also alleged that Defendant automatically deducted an hour for a meal period from their recorded hours regardless of whether the meal period was provided. (*Id.*)

Defendant denies Plaintiff's allegations and contends Plaintiff and Class Members were given a reasonable opportunity to take their meal periods. (*Id.*) Defendant further contends that when any missed meal periods were properly reported to Defendant, Defendant provided premium pay to Class Members as reflected in their time and pay records. (*Id.*) Defendant also contends that the meal break claim requires individualized inquiries which would preclude class certification. (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim. (*Id.*)

Plaintiff also contends that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 9.) Plaintiff contends that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift but were required to work through their rest breaks during their shifts due to heavy work demands from Defendant. (*Id.*)

Similar to meal breaks, Defendant contends that Class Members were given a reasonable opportunity to take their rest periods during their shifts. (Kim Decl., ¶ 10.) Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. (*Id.*) Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim. (*Id.*)

Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to use their personal cellular phones and personal computers and internet for work-related business, for which they were not reimbursed. (Kim Decl., ¶ 11.) Defendant maintained that Plaintiff and Class Members were not required to use their personal cell phones or personal computers to perform their job duties and were advised to seek reimbursement if they were required to use their own personal devices. (*Id.*) Defendant further contends that individualized issues relating to this claim would preclude class certification. (*Id.*)

As for the wage statement and waiting time penalties claims, Defendant contends that these claims are merely derivative of the underlying claims and that Plaintiff and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶ 12.) Defendant further contends that even if they could first establish liability for the underlying claims, Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members. (*Id.*) Thus, Defendant contends that the wage statement and waiting time penalties claims have little to no value. (*Id.*)

Similarly, Defendant contends that the PAGA claim is also derivative of the underlying claims in the Action and ultimately fails because the underlying claims have no merit. (Kim Decl., ¶ 13.) Defendant also contends that even if Plaintiff and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*) Defendant also contends that trial of the PAGA claim would be unmanageable. (*Id.*)

Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (Kim Decl.,¶ 14.) However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

As stated above, while the Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (*Id.* at ¶ 43). Although the Parties engaged in informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years, which would have further weakened Defendant's financial condition and significantly restricted its ability to pay any judgment. (*Id.*) Even if Plaintiff 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.

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed class is certifiable is somewhat speculative. (*Id.* at ¶ 44.) 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. (*Id.* at ¶ 45.) 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. An appeal would result in further delay for the Class Members who have already waited years for a 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

On June 9, 2025, Class Counsel submitted the Settlement Agreement, Amendments to the Settlement, and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). A true and correct copy of the confirmatory email from the LWDA is attached hereto as (*Id.* at ¶ 46.)

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

Claims.

If the Court approves the requested allocations from the Gross Settlement Amount of $1,300,000.00 as addressed above, the Net Settlement Amount is estimated to be $**531,666.67**. (Kim Decl., ¶ 22.) There are at least approximately 2,270 total Class Members. (*Id.*) If there are no exclusions from the Class, the average gross Individual Class Payment per Class Member, using a straight average, is $234.21. (*Id.*)

Based on an analysis of the Class data provided by Defendant, Plaintiff estimated the potential realistic exposure for the main claims as follows: $595,443.73 for unpaid wages claims, including minimum and overtime wages, due to off-the-clock work; $1,429,058.83 for meal period violations; $1,429,058.83 for rest period violations; $304,590.00 for wage statement penalties; $1,471,392.00 in waiting time penalties; and $609,180.00 for PAGA penalties. (*Id*. at ¶¶ 49-71.) As such, the total estimated realistic exposure Defendant could face is $5,838,723.39.

The Gross Settlement Amount of $1,300,000.00 represents a recovery for the Class of approximately 22.27% of the total realistic exposure Plaintiff estimated that Defendant could face on the primary claims in this case. (*Id*. at ¶ 73.) Plaintiff 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, and particularly in light of Defendant's limited ability to pay any significant judgment.

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's counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendant faced on Plaintiff's 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 22.27% of the estimated total realistic exposure facing Defendant. (Kim Decl., ¶ 40.)

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 their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 80-85.) 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. (*Id.*)

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS 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.). Plaintiff requests a reasonable Class Representative Service Payment for his effort and initiative in bringing and helping to prosecute this class action.

Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. (Kim Decl., ¶ 74.) Both before and after filing this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case. (*Id.*) He estimates he has invested approximately 30 hours in this action thus far. (See the Declaration of Raul B. Ibarra in Support of Plaintiff's Renewed Motion for Preliminary Approval of the Parties' Class Action and PAGA Settlement Agreement ("Ibarra Decl.") Ibarra Decl., ¶ 10.) Plaintiff has spent hours discussing the case and the law, providing Class Counsel with information about Defendant, reviewing documents such as the complaint and LWDA letter, consulting Class Counsel throughout the litigation, participating in the mediation process, and reviewing the Settlement Agreement and motion papers. (Ibarra Decl., ¶ 10; Kim Decl., ¶ 74.)

As a Class Representative, Plaintiff has placed the Class Members' interest above his own. Plaintiff is providing a general release and requesting a Class Representative Service Payment of $10,000.00 for his service in prosecuting this action. The Agreement calls for the vindication of rights for over two thousand Class Members. As such, the Class Representative Service Payment of $10,000.00 is fair and reasonable given the risks Plaintiff has taken, the tasks he had to perform, and the time he invested, all for the benefit that the Class Members will receive from the Settlement. (Kim Decl., ¶ 76; Ibarra Decl., ¶¶ 2-16.)

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, its effect on their rights, their options as Class Members (i.e., participate, object, opt-out, and dispute Workweeks), and procedures for exercising those options. (Kim Decl., ¶ 79; *see also* Class Notice, Exhibit A to the Settlement Agreement 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 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 23.) The Administrator will mail the Class Notice to all Class Members in no event later than fourteen (14) calendar days after receiving the Class Data via first-class USPS mail. (Kim, Decl., ¶ 77, Exhibit 1, Settlement Agreement, ¶.7.4.2.) Any Class Notices returned to the Administrator as non-delivered on or before the Response Deadline must be re-mailed to the Class Notice using any forwarding address provided by the USPS. (Kim, Decl., ¶ 78, Exhibit 1, Settlement Agreement, ¶ 7.4.3) If no forwarding address is provided, the Administrator will promptly attempt to determine a correct address by the lawful use of skip-tracing, or other search using the name, address and/or Social Security number of the Class Member involved, and the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. (Kim, Decl., ¶ 77, Exhibit 1, Settlement Agreement, ¶ 7.4.3.) The Class Notice will be mailed to each Class Member whose Class Notice is returned to the Administrator within (5) calendar days of the initial mailing of the Class Notices by the Administrator, or other such notice as ordered by the Court. (*Id.* at 78.) This procedure for providing notice is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Class Notice. (*Id.*)

IX. THE STIPULATED CLASS COUNSEL FEES PAYMENT FOR ATTORNEYS' FEES PLUS CLASS COUNSEL LITIGATION EXPENSES PAYMENT FOR REASONABLE LITIGATION COSTS AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel Award of no more than $433,333.33 (up to one-third of the Gross Settlement Amount) for attorneys' fees plus reasonable litigation costs and expenses not to exceed $20,000.00, subject to approval by the Court. (Kim Decl. ¶ 94.)

As of the date of the filing of this motion, the actual total costs incurred in litigating this Action for Class Counsel are $15.318.16. (Kim Decl. ¶ 94.) Class Counsel incurred costs including, but not limited to, filing fees (e.g. complaint, stipulation, motions), service of process, mediation fees, expert analysis fees, attorney-service costs for court filings, copy charges for documents, and postage charges, all of which were necessarily and reasonably incurred to prosecute this Action and achieve a settlement that significantly benefits the Class.

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 80-85; Yeremian Decl., ¶¶ 3-

9). 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. (Kim Decl. ¶ 74.)

Class Counsel conservatively estimates that it invested over 198.70 hours of attorney time in this matter. (Kim Decl., ¶ 91.) Senior Attorney Enoch Kim invested approximately 30.00 hours for a total of $22,500.00 in attorneys' fees ($750/hr x 30 hours = $22,500.00). (*Id.*) Senior Attorney Alvin B. Lindsay invested approximately 39.10 hours for a total of $31,280.00 ($800/hr x 39.10 hours = $31,280.00) (*Id.*) Associate Attorney Jean Power invested approximately 46.10 hours for a total of $25,355.00 in attorneys' fees ($550/hr x 46.10 hours = $25,355.00). (*Id.*) Associate Attorney Melissa Rodriguez invested approximately 42 hours for a total of $16,800.00 in attorneys' fees ($400/hr x 42 hours = $16,800.00). (*Id.*) Former Senior Associate Samantha Smith incurred approximately 31.5 hours for a total of $22,050.00 in attorneys' fees ($700/hr x 31.5 hours = $22,050.00). (*Id.*) Managing Attorney David Yeremian invested at least 10 hours for a total of $8,500.00 ($850/hr x 10 hours = $8,500.00). (*Id.*) Therefore, Class Counsel has collectively incurred at least 198.70 hours and $126,485.00 in fees to date. (*Id.*) The fee request of $433,333.33 results in a modest multiplier of approximately 3.42, which further evidences the reasonableness of the request. (*Id.* at 92.)

As such, the requested Class Counsel Award for attorneys' fees reasonable. (Kim Decl., ¶ 93.)

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

The Parties 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. to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex 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 the Class Member's name, last-known mailing address, email address, telephone number, Social Security number, hire dates, and termination dates as set forth in the Settlement Agreement;

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

10. Set a date for the Final Approval Hearing.

Dated: June 9, 2025

D.LAW, INC.

By ______________________________

Alvin B. Lindsay
Enoch J. Kim
Melissa Rodriguez
Attorneys for Plaintiff and Settlement Class