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DANIEL RUIZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

DANIEL RUIZ, Individually and on Behalf of All Others Similarly Situated, and as an Aggrieved Employee,

Plaintiff,

vs.

DCCCA1, INC. D/B/A DOPPLEMAYR CABLE CAR, a California Corporation,

Defendant.

Case No. 23CV040128
COMPLEX CASE (CLASS ACTION)

ASSIGNED FOR ALL PURPOSES TO:
Judge: Hon. Somnath Raj Chatterjee
Dept: 21

PLAINTIFF'S NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[Filed concurrently with: Declaration of Taylor B. Graham; Declaration of Daniel Ruiz; and [Proposed] Order]

Date: August 26, 2025
Time: 2:30 p.m.
Reservation #: 870368958180

Complaint Filed: August 7, 2023
Trial Date: None Set

TO THE HONORABLE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 26, 2025 at 2:30 p.m., or as soon thereafter as the matter can be heard, in Department 21 of Alameda County Superior Court, Rene C. Davidson Courthouse, located at 1225 Fallon Street, Oakland, CA 94612, Plaintiff Daniel Ruiz ("Plaintiff") will, and hereby does, move unopposed for an Order:

(1) Granting preliminary approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement and Class Notice ("Agreement" or "Settlement Agreement"), attached as "**Exhibit 1**" to the Declaration of Taylor B. Graham in Support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, including, but not limited to, the means of allocation and distribution of funds, including but not limited to, the allocations for penalties under the California Private Attorneys General Act of 2004, Attorneys' Fees and Costs to Class Counsel, the Class Representative Service Payment to the Named Plaintiff, and Settlement Administration Costs to the Settlement Administrator;

(2) Conditionally certifying, for settlement purposes only, the settlement Class;

(3) Preliminarily appointing Plaintiff Daniel Ruiz as the Class Representative;

(4) Preliminarily appointing Taylor B. Graham and Brent E. Pelton of Pelton Graham LLP as Class Counsel;

(5) Approving Phoenix Settlement Administrators as the Settlement Administrator;

(6) Approving the content and form of the notice to the settlement class ("Class Notice"), attached as "**Exhibit A**" to the Settlement Agreement;

(7) Directing the mailing of the Class Notice to the Class Members by the Settlement Administrator;

(8) Approving the proposed deadlines for the notice and settlement administration process; and

(9) Scheduling a hearing to consider whether to grant final approval of the Settlement Agreement, at which time the Court will also consider whether to grant final approval of the requests for Attorneys' Fees and Costs to Class Counsel, the Class Representative

Service Payment to the Named Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

This unopposed Motion is made pursuant to Rule 3.768 of the California Rules of Court, which requires approval by the Court of the settlement of a proposed class action and allows the Court to preliminarily certify a class for settlement purposes only.

The basis for this unopposed Motion is that the proposed settlement is fair, adequate, reasonable, and in the best interests of the settlement Class as a whole, and that the procedures proposed by the Parties are adequate to ensure the opportunity of class members to participate in, opt out of, or object to the settlement.

This Motion is based upon the following memorandum of points and authorities, the Settlement Agreement, the Declaration of Proposed Class Counsel (Taylor B. Graham) in support thereof, the pleadings and other records on file with the Court in this matter, and such evidence and oral argument as may be presented at the hearing on this Motion. As this motion is unopposed, Plaintiff respectfully requests relief from the page limit requirement under California Rules of Court, Rule 3.1113(d).

Dated: July 16, 2025

Respectfully submitted,

PELTON GRAHAM LLP

By:______________________________
Taylor B. Graham
Brent E. Pelton

Attorneys for Plaintiff
DANIEL RUIZ

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff Daniel Ruiz ("Plaintiff" or "Ruiz") respectfully submits this memorandum of points and authorities in support of his unopposed Motion for Preliminary Approval of Class Action Settlement (the "Motion for Preliminary Approval" or "Motion").

I. INTRODUCTION

Through this Motion, Plaintiff seeks preliminary approval of the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Agreement"), that was made and entered into by and between Plaintiff, individually and on behalf of all others similarly situated and other aggrieved employees, on the one hand, and Defendant DCCCA1, INC. D/B/A DOPPELMAYR CABLE CAR (hereinafter referred to as "Defendant" or "Doppelmayr")[1], on the other hand. Subject to approval by the Court, Plaintiff and Defendant (collectively, the "Parties") have agreed to settle this lawsuit (the "Action" or "Litigation") for the non-reversionary gross amount of One Million Six Hundred Thousand Dollars and Zero Cents ($1,600,000.00),[2] to a settlement class of 102 Class Members who collectively worked a total of 8,928 Workweeks.[3] As detailed below, the settlement is in the best interests of the class in light of all of the facts and circumstances and the risks and delays of further litigation. Most importantly, the settlement will result in significant financial benefit to the participating claimants, on terms that are by any measure fair, reasonable, and adequate. *See Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801-02.

For the foregoing reasons, the Parties respectfully request that the Court: (a) grant preliminary approval of the Settlement Agreement and preliminarily find that the settlement falls within the range of reasonableness, including, but not limited to, the means of allocation and distribution of funds; (b) conditionally certify the proposed Settlement Class, for settlement purposes; (c) approve the appointment of Ruiz as the Class Representative; (d) approve the appointment of Taylor B. Graham and Brent E. Pelton of Pelton Graham LLP as Class Counsel; (e) approve appointment of Phoenix Settlement Administrators as the Settlement Administrator; (f) approve the content and form of the

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[1] Incorrectly named in the complaint as "Dopplemayr Cable Car."

[2] Settlement Agreement, attached as "**Exhibit 1**" to the Declaration of Taylor B. Graham ("Graham Decl."), § 1.21.

[3] *Id.*, § 9.

notice to the settlement class ("Class Notice"), attached as "**Exhibit A**" to the Settlement Agreement, and direct its mailing to the Class Members by the Settlement Administrator; (g) approve the proposed deadlines for the notice and settlement administration process; and (h) schedule a final fairness and approval hearing.

II. BACKGROUND AND PROCEDURAL HISTORY

A. Statement of Facts

Plaintiff and the putative settlement class are current and former non-exempt employees of Doppelmayr, who worked on the San Francisco Bay Area Rapid Transit district ("BART") Oakland International Airport Connector ("OAC") systems and fixed facilities, pursuant to Defendant's Operations and Maintenance Contract with BART (the "OAC Project"). (Graham Decl. at ¶ 7). As set forth in the Third Amended Complaint, Plaintiff worked for Defendant as a "maintenance technician" from approximately July 27, 2019 through approximately December 10, 2022. (*Id.*). During his employment with Defendant, Plaintiff performed work exclusively on the OAC Project. (*Id.*). Plaintiff alleged that Defendant failed to pay him and the other maintenance technicians working on the OAC Project, the prevailing rate of per diem wages, including overtime at least at the rate of one and one-half (1.5) times the prevailing rate of pay. (*Id.*). In addition, Plaintiff alleges that Defendant (i) failed to pay wages for all hours worked; (ii) failed to provide uninterrupted 30-minute meal periods and to authorize and permit off-duty 10-minute rest periods; (iii) failed to pay premiums for missed meal periods or rest periods; (iv) failed to indemnify and reimburse for necessary business expenses; (v) failed to provide accurate itemized wage statements; and (vi) failed to pay all wages due upon termination and/or separation from employment. (*Id.* at ¶¶ 7, 15). Further, in connection with Plaintiff's work on the OAC Project, Plaintiff asserts that Defendant breached its contract with BART by failing to pay prevailing wages (*id.* at ¶ 13), and also asserts violations of California's Business and Professions Code arising from Defendant's unlawful conduct discussed above. (*Id.* at ¶ 7). Finally, Plaintiff seeks to recover penalties for Defendant's violations of the California Labor Code under PAGA. (*Id.* at ¶ 8).

Defendant has denied, and continues to deny, any liability and wrongdoing of any kind associated with any of the allegations in the Action, and further denies any failure to comply with the laws identified hereinto. (Graham Decl. at ¶ 10). In particular, Defendant denies that the OAC Project is public works projects subject to prevailing wages and denies any liability for Plaintiff's allegations concerning unpaid wages, unreimbursed business expenses, missed rest and meal periods, and the derivative claims thereof. (*Id.*). Finally, Defendant denies that the Action is appropriate for class treatment or representative adjudication for any purpose other than for settlement. (*Id.*).

B. Procedural History

On August 7, 2023, Plaintiff filed his Complaint alleging causes of action for: (1) Failure to Pay Prevailing Wages, pursuant to Lab. Code §§ 1720 *et seq*; (2) Failure to Authorize and Permit Rest Periods, pursuant to Lab. Code §226.7; (3) Failure to Provide Meal Periods, pursuant to Lab. Code §§ 226.7,512; (4) Failure to Provide Wages When Due, pursuant to Lab. Code §§ 201, 202, and 203; and (5) Unfair Competition, pursuant to Cal. Business and Professions Code §§ 17200-09. (Graham Decl. ¶ 7).

Pursuant to Labor Code section 2699.3, subdivision (a), on August 9, 2023, Plaintiff provided timely written notice to Defendant and the California Labor & Workforce Development Agency ("LWDA"), of his intent to pursue a representative action under the Private Attorneys General Act of 2004 (Lab. Code § 2698 *et seq.*) ("PAGA"), on behalf of himself, the State of California, and on behalf of a proposed group of aggrieved employees. (Graham Decl. ¶ 8).

Pursuant to the Parties' agreement, on October 19, 2023, Plaintiff filed a First Amended Complaint ("FAC"), alleging an additional cause of action for PAGA violations. (Graham Decl. ¶ 9). Defendant filed its Answer to the FAC on November 17, 2023, asserting a general denial of each and every allegation contained in Plaintiff's FAC. (*Id.* at ¶ 10).

Soon after Defendant filed its Answer, the Parties agreed to engage in early settlement negotiations through the informal exchange of classwide information and private mediation. (Graham Decl. ¶ 11). To that end, the Parties retained experienced employment class action mediator, Jason Marsili, Esq., and agreed to participate in a mediation on August 13, 2024 (*Id.*).

The Parties attended a full-day mediation on August 13, 2024, but were unable to reach a resolution of the action. (Graham Decl. ¶ 12). Instead, at the conclusion of the mediation, in order to attempt to narrow the issues in the litigation and aid the Parties in negotiations and the ultimate resolution of the action, the mediator made a proposal to the Parties to engage in an informal exchange of discovery and to file cross-motions for summary adjudication concerning the applicability of the Prevailing Wage Law to Plaintiff's work on the OAC Project (the "MSAs"). (*Id.*). The Parties ultimately accepted the mediator's proposal regarding the MSAs. (*Id.*).

Following the exchange of certain discovery in advance of the cross-motions, Plaintiff sought Defendant's consent to amend the FAC to include a common law claim for Breach of Contract. (Graham Decl. ¶ 13). Defendant ultimately agreed to Plaintiff's amendment, although reserving all rights to challenge the newly-asserted allegations and cause of action. (*Id.*). Accordingly, on January 31, 2025, Plaintiff filed a Second Amended Complaint ("SAC"), alleging an additional cause of action against Defendant for Third Party Beneficiary Breach of Contract. (*Id.*). Defendant filed its Answer to the SAC on March 3, 2025, asserting again a general denial of each and every allegation contained in Plaintiff's SAC. (*Id.*).

On March 11, 2025, Plaintiff exchanged with Defendant a proposed stipulation of facts for the MSAs. (Graham Decl. ¶ 14). Soon thereafter, the Parties agreed to extend the deadline to file their MSAs, in order to revisit their settlement negotiations. (*Id.*). Per agreement by the Parties, on April 18, 2025, Plaintiff filed a Third Amended Complaint ("TAC" or the "Operative Complaint"), alleging additional causes of action against Defendant for: Failure to Pay Minimum Wages, pursuant to Lab. Code §§ 204, 1194, 1194.2,1197; Failure to Pay Overtime Compensation, pursuant to Lab. Code §§ 510, 1194, 1198; Failure to Indemnify Necessary Business Expenses, pursuant to Lab. Code § 2802; and Failure to Provide Accurate Itemized Wage Statements, pursuant to Lab. Code § 226. (*Id.* at ¶ 15). In addition, on the same day, Plaintiff provided an Amended PAGA Notice to LWDA, giving notice of his intent to include amended representative claims in the Action for civil penalties under PAGA. (*Id.*, Ex. 2).

C. Investigation and Settlement Negotiations

In agreeing to participate in mediation, the Parties likewise agreed to engage in an informal exchange of all data and information necessary to evaluate the claims of the potential class members and aggrieved employees, and to calculate the potential damages for the violations alleged in the FAC. (Graham Decl. ¶ 16). In particular, Defendant produced comprehensive wage and hour data for Plaintiff and the putative Class Members, including the following: individual pay summaries for each of the putative Class Members, an Excel spreadsheet listing Class Members' start and end dates of employment and shifts worked during the relevant time period, and an Excel spreadsheet listing the Class Members' daily timeclock entries. (*Id.*). Plaintiff provided to Defendant all relevant materials in his possession, such as documents concerning the public funding utilized for the OAC project, a maintenance technician job posting, a copy of the OAC Operations and Maintenance Contract materials, copies of the Elevator Contractors of America Agreement with International Union of Elevator Constructors for the period of 2017 and 2022, the Department of Industrial Relations Scope of Work Provisions for Elevator Constructor and Electrician, and various photographs of equipment and facilities upon which Plaintiff and putative Class Members worked on the OAC Project. (*Id.*).

In connection with the exchange of pre-mediation discovery, the Parties engaged in extensive discussions about the respective strengths and weaknesses of their claims and defenses. (Graham Decl. ¶ 16). On July 22, 2024, Plaintiff's counsel exchanged with Defendant's counsel their class damages computation, which Plaintiff's counsel created utilizing the information exchanged by the Parties, as well as certain assumptions based on Plaintiff's and other Class Members' best recollection. Plaintiff exchanged a classwide damages computation that included 42 "maintenance technician" employees (anonymized by ID numbers), who worked a total of 2,456 workweeks, 22 of whom were also aggrieved employees, for which Plaintiff's counsel calculated the following approximate damages: $4,347,868.88 in unpaid prevailing wages and $621,526.26 in missed break damages. In addition, Plaintiff's counsel calculated $409,812.02 in derivative penalties (i.e., waiting time and PAGA), resulting in a total of $5,379,207.16 in estimated classwide damages. (*Id.* at ¶ 17).

On August 13, 2024, the Parties participated in a full-day mediation session with Jason Marsili, Esq. (Graham Decl. ¶ 18). Although the mediation was unsuccessful, the Parties agreed to continue conferring with the mediator to explore the possibility of reaching a future resolution, following the Court's decision on the anticipated MSAs. (*Id.*).

After a subsequent amendment to the FAC, on February 10, 2025, the Parties exchanged additional documents and information upon which the Parties intended to rely in connection with the

MSAs. (Graham Decl. ¶ 19). On March 11, 2025, Plaintiff's counsel exchanged with Defendant's counsel Plaintiff's draft Stipulation of Facts for the Parties' MSAs. (*Id.*). Thereafter, the Parties continued to confer with the mediator regarding the potential for classwide resolution, to avoid the need for briefing and awaiting a decision from the Court regarding the MSAs. (*Id.* at ¶ 20). In connection with the Parties' continued settlement discussions, which included additional allegations and causes of action not previously discussed between the Parties, Defendant provided Plaintiff's counsel with comprehensive data for the entire putative class, including all non-exempt employees, not just those employees of Defendant who worked as maintenance technicians. (*Id.*). In particular, Defendant provided the total workweeks for the putative class, total pay periods for the aggrieved employees, as well as time and pay records for additional putative class members who worked in positions other than maintenance technicians, since Plaintiffs already had the time and pay records for the maintenance technicians. (*Id.*).

Plaintiff's counsel utilized the additional data to supplement the prior damages model for the entire putative class, which included 103 putative Class Members, 61 of whom worked as maintenance technicians, and who collectively worked 8,928 workweeks and 2,065 pay periods during the relevant time period, for which Plaintiff's counsel calculated the following approximate damages: $9,630,458.75 in unpaid prevailing wages (for the maintenance technicians), $275,250.24 in unpaid minimum wage, $413,009.28 in unpaid overtime premiums, $1,506,239.53 in missed meal and rest break wages, $44,640.00 in unreimbursed business expense damages, $289,506.37 in wage statement penalties, and $454,200.21 in waiting time penalties. In addition, Plaintiff's counsel calculated $206,552.68 in PAGA penalties, resulting in a total of $12,819,857.06 in estimated classwide damages. (Graham Decl. ¶ 21).

Ultimately, the Parties agreed to permit the mediator to make a settlement proposal to avoid the additional burden of preparing and awaiting a decision on the MSAs. (Graham Decl. ¶ 29). Therefore, on March 28, 2025, the mediator communicated a settlement proposal to the Parties, which proposal was accepted in writing by both Parties on March 31, 2025. (*Id.*). In the weeks following the mediator's proposal, the Parties jointly drafted and ultimately executed a Memorandum of Understanding (MOU), memorializing the agreed-to terms of the settlement in writing. (*Id.*). From the MOU, the Parties drafted a long-form Settlement Agreement, which is the subject of this Motion. (*Id.*, Ex. 1). At all times, the Parties' settlement discussions were conducted at arm's-length. (*Id.* at ¶ 30).

Further, per agreement by the parties, on April 18, 2025, Plaintiff filed a Third Amended Complaint ("TAC" or the "Operative Complaint"), alleging an additional causes of action against Defendant for: Failure to Pay Minimum Wages pursuant to Lab. Code §§ 204,1194, 1194.2,1197; Failure to Pay Overtime Compensation pursuant to Lab. Code §§ 510,1194,1198; Failure to Indemnify Necessary Business Expenses pursuant to Lab. Code § 2802; and Failure to Provide Accurate Itemized Wage Statements pursuant to Lab. Code § 226. (Graham Decl. ¶ 31). In addition, on the same day, Plaintiff provided an Amended PAGA Notice to LWDA giving notice of his intent to include amended representative claims in the Action for civil penalties under PAGA, on behalf of himself and the State of California, as well as on behalf of a proposed group of aggrieved employees. (*Id.*, Ex. 2).

After the Parties executed the Settlement Agreement, Plaintiff submitted a copy of the Settlement Agreement to the LWDA on July 16, 2025. (Graham Decl. ¶ 32, Ex. 3).

III. <u>SUMMARY OF THE SETTLEMENT TERMS</u>

A. Settlement Amounts

Subject to Court approval, under the terms of the Settlement Agreement (Graham Decl., Ex. 1), Defendant has agreed to pay the total amount of $1,600,000.00 ("Gross Settlement Amount"), subject to an escalator clause,[4] which amount includes the following:

- PAGA Penalties in the amount of $100,000.00, allocated 75% ($75,000.00) to the LWDA and 25% ($25,000.00) to the Aggrieved Employees;[5]
- A Class Representative Service Payment to Plaintiff Ruiz in the amount of $7,500.00;[6]

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[4] *Id.* §§ 3.1, 9.
[5] *Id.* §§ 1.26, 1.29, 3.2.5. There are estimated to be 63 Aggrieved Employees who worked 2,065 Pay Periods during the PAGA Period. *Id.* § 9.
[6] *Id.* §§ 1.14, 3.2.1

- Administration Expenses not to exceed the amount of $5,950.00;[7]
- An attorneys' fee award of 33.33% of the Gross Settlement Amount, or $533,333.33;[8]
- Reimbursement of Plaintiff's reasonable litigation expenses, in the amount of $9,092.40;[9] and
- All Individual Class Payments to the Participating Class Members – i.e., the Net Settlement Amount – which amounts are paid to Participating Class Members pro-rata based on the number of Workweeks Class Members worked for Defendant during the Class Period and whether the Class Member worked for Defendant as a "maintenance technician" or in another position.[10]

For tax purposes, all Individual Class Payments will be allocated as follows: ten percent (10%) as wages, which will be reported on an IRS Form W-2, seventy percent (70%) as penalties and twenty percent (20%) as interest, together as non-wages, which will be reported on an IRS Form 1099.[11] Defendant will pay the employer's share of payroll taxes with respect to the wage portion of the Individual Class Payments in addition to the Gross Settlement Amount.[12]

Any funds resulting from uncashed checks issued to Participating Class Members and/or Aggrieved Employees, after the check void date, will be given to the California Controller's Unclaimed Property Fund.[13] No portion of the Gross Settlement Amount will revert to Defendant.[14]

B. Eligible Employees and Releases

For settlement purposes only, the Parties have agreed to seek certification of the following class:

> All current and former non-exempt employees who worked for DCCCA1 in California during the period from August 7, 2019 to the

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[7] *Id.* §§ 1.3, 3.2.3.
[8] *Id.* § 3.2.2.
[9] *Id.* While the Settlement provides for reimbursement of Class Counsel's actual litigation expenses of "not more than $10,000.00", to date, Class Counsel has only incurred $9,092.40 in expenses in prosecuting and settling this matter and therefore limits the request for reimbursement to that amount. Counsel will specify the exact amount sought in section 3 of the Notice.
[10] *Id.* §§ 1.25, 1.30, 3.2.4.
[11] *Id.* § 3.2.4.1.
[12] *Id.* § 3. 1.
[13] *Id.* § 4.4.4.
[14] *Id.* § 3.1.

date of the Court's order granting preliminary approval (the "Settlement Class").

The Class is estimated to consist of one-hundred and two (102) individuals.[15] If the Settlement is approved, each member of the Settlement Class who does not submit a valid and timely request for exclusion from the Settlement, will be deemed a "Participating Class Member" and will receive their pro-rata share of the Net Settlement Amount.[16] As consideration for the payment of the Individual Class Payments, each Participating Class Member will release all Released Parties[17] of all claims that were alleged, or reasonably could have been alleged, based on the facts stated in Plaintiff's TAC and ascertained in the course of the Action.[18]

In addition, all current and former non-exempt employees of Defendant in California who worked for Defendant during the period from August 9, 2022 to the date of the Court's order granting preliminary approval ("PAGA Period") ("Aggrieved Employees")[19], will receive their pro-rata portion of 25% of the PAGA Penalties, regardless of whether they are also a Participating Class Member.[20] In exchange for their portion of the PAGA Penalties, the Aggrieved Employees, including Plaintiff, and the State of California, will release Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the facts stated in Plaintiff's pleadings or the PAGA Notice.[21]

Finally, Plaintiff will release the Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to all claims that were, or reasonably could have been, alleged based on the facts contained in Plaintiff's TAC and the PAGA Notice, as amended, and ascertained in the course of the Action.[22]

C. Administration of the Settlement

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[15] *Id.* §§ 1.5, 4.1.
[16] *Id.* §§ 1.25, 1.37, 3.2.4.
[17] Defined at Ex. 1 § 1.43.
[18] *Id.* § 5.2.
[19] Defined at *id.* § 1.4.
[20] *Id.* §§ 1.4, 1.36.
[21] *Id.* § 5.3.
[22] *Id.* § 5.1.

As detailed in the Settlement Agreement, the Parties have agreed to the following timeline concerning the administration of the Settlement, including the approval process, notice to the Class, and settlement payments:

- Within 30 days after the date of the Court's Order Granting Preliminary Approval, Defendant shall provide to the Settlement Administrator and Class Counsel an updated list of data for the Class, which includes, Class Members' name, social security numbers, dates of employment, position(s) held, last-known mailing addresses, and phone numbers, to the extent known to Defendant (the "Class Data");[23]
- Not later than 14 days after receipt of the Class Data, the Settlement Administrator will send to all Class Members, via first-class USPS mail, the Class Notice, the first page of which shall include an estimate of the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts;[24]
- The deadline for Class Members' written objections, Requests for Exclusion, and Challenges to Workweeks and/or Pay Periods, shall be 60 days from the date the Settlement Administrator mails the Class Notice (subject to an extension of such deadline by 14 days for Class Members whose notice is re-mailed);[25]
- Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide counsel with a declaration setting forth, *inter alia*, the total number of Requests for Exclusion, with a corresponding Exclusion List, and the number of written objections;[26]
- No later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file a Motion for Final Approval of the Settlement, which includes a request for

[23] *Id.* §§ 4.2, 7.4.3.
[24] *Id.* § 7.4.3.
[25] *Id.* § 7.4.5.
[26] *Id.* § 7.8.7.

approval of the PAGA settlement, a Proposed Final Approval Order and proposed Judgment;[27]

- If the Court grants Final Approval of the Settlement, Defendant will pay the Gross Settlement Amount to the Settlement Administrator within 30 days of the date that the Final Approval Order and Judgment is final;[28]
- The Settlement Administrator will distribute all settlement amounts by check within 14 days of the receipt of the Gross Settlement Amount;[29] and
- After the Court has approved the final accounting, any funds from uncashed settlement checks after the void date (i.e., 180 days after issuance) will be transferred by the Settlement Administrator to the California Controller's Unclaimed Property Fund, consistent with the requirements of Code of Civil Procedure Section 384, subd. (b).[30]

IV. <u>ARGUMENT</u>

A. Legal Standards for Preliminary Approval of Class Settlements

Any settlement of class litigation must be reviewed and approved by the Court. Cal. R. Ct. 3.769; Fed. R. Civ. P. 23(e).[31] This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members informing them of the terms of the settlement and allowing them to exclude themselves from, participate in and/or object to the settlement. The Manual for Complex Litigation (Third) § 30.41 states:

> Approval of class action settlements involves a two-step process. First, counsel submit the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the

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[27] *Id.* § 10.
[28] *Id.* § 4.3.
[29] *Id.* § 4.4.
[30] *Id.* § 4.4.4.
[31] The California Supreme Court has authorized California's trial courts to use Federal Rule of Civil Procedure 23 and cases applying it for guidance in considering class issues. *See Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-46. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

> range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. *See Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-35. "The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing." 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions,* § 11.26 (4th ed. 2002).

Pursuant to California Rules of Court, Rule 3.769(d), parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditioned upon final approval of the settlement. "[P]re-certification settlements are routinely approved if found to be fair and reasonable." *Wershba, supra,* 91 Cal. App. 4th at 240. *Accord Dunk, supra,*48 Cal. App. 4th at 1803 (although the settlement was reached before any "adversary certification," the court was satisfied that it was "fair, adequate and reasonable."). *See also In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 4783 ("many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.")

B. Certification of the Settlement Class Is Appropriate

It is well established that trial courts should use a lower standard for determining the propriety of certifying a settlement class, as opposed to a litigation class. *Dunk, supra,* 48 Cal. App. 4th at I 807, n. 19. The reason for this is that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted. *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620. The proposed Settlement Class meets all requirements for certification, as discussed below.

1. The Class Is Ascertainable and Sufficiently Numerous

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." *Hicks v. Kaufman & Broad Home Corp.* (2001) 89

Cal.App.4th 908, 914. "A class is ascertainable if it identifies a group of unnamed plaintiffs by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." *Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828. The proposed class must also be sufficiently numerous. *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.

This action involves a class of approximately one-hundred and two (102) individuals.[32] This class is sufficiently numerous for purposes of certification. Indeed, "[n]o set number is required as a matter of law for the maintenance of a class action." *See Rose v. City of Hayward* (1981) 126 Cal.App.3d 926, 934-35 (indicating that a class of approximately 30 individuals satisfies the numerosity requirement as joinder is not practical at that point). Further, the Class is ascertainable, as all Class Members can and will be identified by Defendant to the Settlement Administrator through a review of Defendant's employment records regarding non-exempt employees in California who worked during the Class Period. As such, the Class is ascertainable and sufficiently numerous.

2. The Class Members Share a Well-Defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) class representative with claims or defenses typical of the class; and (3) class representative who can adequately represent the class." *Sav-On Drug Stores, Inc.* (2004) 34 Cal.4th 319, 326. "[T]he community of interest requirement for certification does not mandate that class members have uniform or identical claims." *Capitol People First v. Dep't of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original). Rather, courts focus on the defendants' internal policies and "pattern and practice... in order to assess whether that common behavior toward similarly situated plaintiff renders class certification appropriate." *Id.* (citing *Sav-On, supra*, 34 Cal.4th at 333).

a. <u>Common Questions of Fact and Law Predominate</u>

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." *Capitol People, supra*, 155 Cal.App.4th

[32] Ex. 1, § 4.1.

at 690 (emphasis added) (citing *Sav-On, supra*, 34 Cal.4th at 327). Furthermore, the commonality inquiry centers on the "reasonableness" of the defendants' labor policies as applied to the potential class. *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1534.

1. Here, common issues of fact and law predominate as to each of the claims alleged and asserted in the TAC. Based on the documents and information obtained through informal discovery and exchange of information in this case, Plaintiff contends that Class Members were subject to the same or similar operations and employment practices, policies, and procedures during the time period at issue. Plaintiff's claims arise from Defendant's alleged uniform policy of, *inter alia*, failing to pay minimum wages for all hours worked; failing to pay overtime compensation for all overtime hours worked; failing to authorize and permit rest periods or pay premiums for missed rest periods; failing to provide meal periods or pay premiums for missed meal periods; failure to indemnify necessary business expenses; failing to pay all wages when due upon separation; failing to provide accurate itemized wage statements; and, for maintenance technicians, failing to pay prevailing rate of per diem wages for work performed on the public works projects. (Graham Decl. ¶ 45). Since these claims would rely on common proof for the Class Members, and no individualized questions would predominate over the common questions of fact and law relevant to proving these claims, the commonality requirement is satisfied.

b. Plaintiff's Claims Are Typical of Those of the Class

To satisfy the typicality requirement, the class representative must suffer the same or similar injury as other members of the class. Plaintiff is not required to have suffered an identical injury, but the plaintiff and the class should have been injured by the same course of conduct. *See Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.

Here, Plaintiff asserts that he and the Class Members were not paid for each hour worked, including minimum wages and overtime hours, were not provided uninterrupted 30-minute meal period and 10- minute rest or were not paid premiums for missed meal periods or rest periods, were not reimbursed for necessary business expenses, were not paid all wages owed upon separation, were not provided with accurate wage statements, and was not paid prevailing wages for his maintenance work on the OAC Project. (Graham Decl. ¶ 46). Thus, Plaintiff's claims arise out of the same facts and course of conduct as the other Class Members and he seeks the same relief for these alleged violations. The typicality requirement is therefore satisfied.

c. Plaintiff Will Fairly and Adequately Represent the Class

"Adequacy of representation depends on whether the plaintiff's attorney is qualified to conduct the proposed litigation and the plaintiff's interests are not antagonistic to the interests of the class." *McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450.

Here, Plaintiff worked as a non-exempt employee for Defendant and has the same claims that members of the Class would reasonably be expected to bring based on the course of conduct alleged herein. (Graham Decl. ¶ 47). Plaintiff maintains that the outcome of this litigation would be determined by Defendant's alleged uniform operations and employment policies and procedures that applied across its non-exempt employees who worked in California during the Class Period, including those employees, like Plaintiff, who worked as maintenance technicians on the OAC Project. Plaintiff has also demonstrated that he will competently assert the interests of the proposed Settlement Class and has no apparent conflicts with the other Class Members. (*Id.*). Finally, Plaintiff has retained competent counsel, experienced in litigating class action claims in the employment context. (*See id.* ¶¶ 3-7). For these reasons, the Court should approve Plaintiff as the Class Representative and Plaintiff's Counsel as Class Counsel.

C. The Settlement Is Fair and Reasonable and Not the Result of Fraud or Collusion

The purpose of the Court's preliminary evaluation of a proposed class action settlement is to determine only whether the proposed settlement is within the range of possible approval and whether notice to the class of its terms and conditions and the scheduling of a formal fairness hearing is warranted. *See Wershba*, 91 Cal. App. 4th at 234-35. If the Court finds a proposed settlement falls within "the range of reasonableness," it should grant preliminary approval of the class action settlement. *See, e.g., North County Contr.'s Assn., Inc. v. Touchstone Ins. Svcs.* (1994) 21 Cal. App. 4th 1085,1089-90. However, this Court should begin its analysis with a presumption that the proposed settlement is fair. "[A] presumption of fairness exists where: (1) the settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small." *Dunk*, *supra*, 48 Cal.App.4th at 108.

1. The Settlement Is a Result of Non-Collusive Arm's Length Negotiations

Settlement in this case was only reached after extensive arm's length negotiations lasting many months. (Graham Decl. ¶¶ 16-21, 29). After preliminary settlement discussions and exchange of relevant information, the Parties participated in a formal, full-day mediation on August 13, 2024, with the aid of an experienced employment class action mediator (*Id.* at ¶ 18). However, it was not until March 28, 2025, after subsequent discovery and negotiations in advance of anticipated MSAs, with the aid of the mediator's second proposal, that the parties reached a settlement in principle. (*Id.* at ¶ 29). At all times, negotiations were adversarial and contentious, although still professional in nature. (*Id.* at ¶ 30).

2. The Extent of Investigation and Discovery Completed Provided Ample Information to Enter Into an Informed and Reasonable Settlement

The Parties were in possession of all necessary information during the negotiations. Pursuant to *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, the Parties engaged in substantial informal and formal discovery, including information on the number of Class Members, Class Members' dates of employment, Class Members' hours worked, Class Members' daily timeclock entries, Class Members' rates of pay, a copy of the O&M Contract documents from the OAC Project on which Plaintiff and maintenance technicians worked during the Class Period, photographs of certain equipment and facilities of the OAC Project on which Plaintiff and Class Members worked, which covered all aspects of the class claims and helped thoroughly vet the extent of Plaintiff's claims against Defendant. (*See* Graham Decl. ¶¶ 16-20). Plaintiff was in possession of this information for Class Members prior to calculating the potential range of liability in this case. (*Id.* at ¶ 21). As a result, Plaintiff was able to make a reasonable estimation of Defendant's potential liability. (*Id.*). For these reasons, the settlement now before the Court was reached at a stage where "the parties certainly have a clear view of the strengths and weaknesses of their cases" sufficient to support the settlement. *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 617 (N.D. Cal. 1979).

3. Plaintiff's Counsel Is Experienced In Similar Litigation

Plaintiff's counsel has considerable experience in class actions and wage and hour litigation. Plaintiff's counsel has brought and is currently bringing several class actions involving employment law generally and wage and hour issues specifically. (Graham Decl. ¶ 4). Thus, Plaintiff's counsel is qualified to evaluate the class claims, value of settlement versus moving for certification and going to trial, and the viability of possible affirmative defenses. Plaintiff's counsel believes that the settlement is fair and reasonable in light of the complexities of the case, the uncertainties of class certification and litigation, and the secured benefit to the class. (*Id.* at ¶ 50).

4. The Settlement is Fair and Reasonable Based on the Strength of Plaintiff's Case and the Risks and Costs of Further Litigation

A review of the terms of the proposed Settlement Agreement does not give rise to any doubts about its fairness. The case of *Kullar v. Foot Locker Retail Inc., supra*, requires additional information be presented to the Court, acting as a fiduciary for the absent class members "to ensure that the recovery represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation . . . ." *Id.* at 129. *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, clarified that a *Kullar* showing does not require the parties to submit an illusory prediction of the outer reaches of exposure without taking into account the actual risks of certification, decertification, dispositive motions, and trial. *Kullar* also does not require an explicit statement of the maximum amount the Plaintiff class could recover if it prevailed on all its claims provided there is a record that allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation." *Id.* at 409.

Assuming the PAGA Penalties, Administrator Expenses, the Class Representative Service Payment, and Attorneys' Fees and Costs are approved by the Court and paid in the full amounts provided by the Settlement[33], the Settlement provides for a Net Settlement Amount that is currently estimated to be approximately $944,124.27. (Graham Decl. ¶ 34). As discussed *supra*, the entire Net Settlement Amount will be fully paid out to the Participating Class Members, in accordance with the

[33] The only amount not specifically provided for in the Settlement Agreement, is Plaintiff's litigation expenses, which are $9,092.40. *See, supra* fn. 7.

Settlement Agreement. The Net Settlement Amount therefore represents approximately 31% of the Plaintiff and Class Members' realistic maximum recovery, discounted based on Defendant's legitimate defenses and other factors. (*Id.* at ¶ 35).

5. Awarding Attorneys' Fees as a Percentage of the Settlement is Reasonable

California state courts have approved use of a percentage of the fund to calculate reasonable attorney fee awards where the amount of the settlement is certain or is an easily calculable sum of money. *See Dunk*, *supra*, 48 Cal. App. 4th at 1808. Specifically, California courts routinely approve class action attorneys' fee awards "average[ing] around one-third of the recovery." *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 43, 66 n.11 (lower court found 20 to 40 percent range of contingency fee in marketplace was appropriate in class actions).

In connection with the motion for final approval, Class Counsel will seek an attorneys' fee award of one-third (1/3) of the Gross Settlement Amount, consistent with the Parties' agreement. (Ex. 1 § 3.2.2). Considering the work performed and risks incurred, the attorneys' fees provided for by the Settlement and to be requested by Class Counsel are well within the range of reasonableness.

D. The Court Should Approve the Class Notice

California statutory and case law vests the Court with broad discretion in fashioning appropriate class notice. *See* Cal. Code Civ. Proc. § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74. A class notice is adequate if it "present[s] a fair recital of the subject matter and proposed terms" of the Settlement. *Mendoza v. United States*, 623 F2d 1338, 1351 (9th Cir. 1980) (quotations omitted).

Here, the Class Notice (Exhibit A to the Settlement Agreement) describes the Settlement, the deadlines and procedures to submit a Request for Exclusion, Objection, and/or Workweek or Pay Period Dispute, and the date and time set for the Final Approval Hearing. The Notice also apprises the Class Members of, *inter alia*, how their Individual Settlement Amount is calculated and the number of Workweeks and PAGA Pay Periods credited to them. (*See id.*). Accordingly, the Court should approve the proposed Class Notice.

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V. **CONCLUSION**

Based on the foregoing, Plaintiff respectfully requests that the Court enter an Order: preliminarily and conditionally certifying the class for settlement purposes; granting preliminary approval of the proposed Settlement, including payment to the LWDA under PAGA, the class representative service payment, and class counsel's application for reasonable attorneys' fees and costs; approve the proposed Class Notice, including the proposed deadlines for opting-out of and objecting to the settlement; and schedule a final settlement approval hearing.

A copy of Plaintiff's [Proposed] Order Granting Preliminary Approval of Class Settlement is being filed contemporaneously herewith.

Dated: July 16, 2025

Respectfully submitted,

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By: ______________________
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