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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

JOHN PARDEE, on behalf of himself, and others similarly situated, the State of California, and the general public, *Plaintiff*, v. HOLZ RUBBER COMPANY, INC., a California corporation; HR OUTSOURCING ASSOCIATES, LLC, a Delaware corporation; and DOES 1 through 50, inclusive, *Defendants*.	Case No.: STK-CV-UOE-2023-0010123 <u>CLASS ACTION</u> *Assigned for All Purposes to Hon. Jayne Lee, Dept. 10C* **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARILY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[Filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Enoch J. Kim; Declaration of John Pardee; and [Proposed] Order]* Date: Time: Dept.: 10C Original Complaint Filed: September 25, 2023 First Amended Complaint Filed: November 29, 2023 Second Amended Complaint Filed: December 16, 2024 Trial Date: None Set

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I. INTRODUCTION

Plaintiff John Pardee ("Plaintiff") filed a class and representative action complaint in this Court against Defendant Holz Rubber Company, Inc. ("Defendant Holz Rubber") and Defendant HR Outsourcing Associates, LLC ("Defendant HR Outsourcing") (hereinafter Defendant Holz Rubber and Defendant HR Outsourcing collectively referred to as "Defendants," and Plaintiff and Defendants collectively referred to as the "Parties"). Plaintiff alleged claims against Defendants for failure to minimum and overtime wages, failure to provide meal and rest breaks, failure to provide reporting time wages and sick pay, failure to provide accurate, itemized wage statements, failure to timely pay all wages owed during employment and upon termination of employment, failure to provide reimbursements for business expenses incurred, and for civil penalties for California Labor Code violations under the Private Attorneys General Act ("PAGA").

After engaging in substantial investigation and extensive negotiations with the assistance of a respected mediator, the Parties agreed to settle all claims alleged in this action on a class-wide, non-reversionary basis for $600,000.00, inclusive of all fees and costs. The Parties' Joint Stipulation of Class Action and PAGA Settlement and Release ("Settlement Agreement" or "Settlement") defines the class as all persons employed by Defendants in California as a non-exempt employee from September 25, 2019 through September 24, 2024 ("Class" or "Class Members"). All 193 Class Members will receive a settlement payment unless they opt out of the Settlement.

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

II. STATUS OF THE LITIGATION

A. Procedural History

On September 25, 2023, Plaintiff commenced a Class Action by filing a Complaint alleging causes of action against Defendants for (1) Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198); (2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198); (3) Failure to Pay Hourly Wages and Overtime (Lab. Code § 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (4) Failure to Provide Reporting Time Wages; (5) Failure to Pay Proper Sick Pay (Lab. Code § 246); (6) Failure to Provide Accurate Written Wage Statements (Lab. Code § 226(a)); (7) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); (8) Failure to Indemnify (Lab. Code § 2802); and (9) Unfair Competition (Business & Professions Code §§ 17200 *et seq*.) ("Action"). (Kim Decl., ¶ 3.)

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on September 25, 2023 (LWDA-CM-983560-23). On November 29, 2023, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under PAGA. (Kim Decl., ¶ 3.)

After initiating the Action, the Parties agreed to explore resolution via mediation and engage in informal discovery in preparation for mediation. (Kim Decl., ¶ 4.)

On December 16, 2024, pursuant to the Settlement reached between the Parties at mediation, Plaintiff filed a Second Amended Complaint to include all Released Claims (defined below) and Released PAGA Claims (defined below), including the addition of Plaintiff's rounding claims and allegations and the appropriate refinement of Plaintiff's class and subclass definitions to comport with the Settlement ("Operative Complaint"). (Kim Decl., ¶ 5.)

B. Plaintiff's Claims and Defendant's Denials

Plaintiff's claims are primarily based on Defendants' alleged failure to pay wages (including minimum and overtime wages), failure to provide meal and rest periods, failure to indemnify business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 6.)

Specifically, Plaintiff alleges that Defendants required Plaintiff and Class Members to wait in long lines at the time clock, when arriving to work, and prior to clocking in. (Kim Decl., ¶ 7.) Additionally, Plaintiff and Class Members were required to perform work related tasks after clocking out for the day, including responding to calls from Defendants' clients as well as supervisors. (*Id.*) Plaintiff further alleges that Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Plaintiff and Class Members. (*Id.*) Defendants' practice led to Plaintiff and Class Members not being compensated for all hours worked, resulting in unpaid regular and overtime wages. (*Id.*)

Plaintiff also alleges that Plaintiff's and Class Members' meal periods were frequently interrupted with work related tasks, including completing customer orders and taking calls from customers. (Kim Decl., ¶ 8.) Accordingly, Defendants' practice denied Plaintiff and Class Members to take duty free meal periods, to which they were entitled, and suffer from short, late, and interrupted meal periods. (*Id.*) Plaintiff also alleges that Defendants failed to pay the legally required premium at their regular rate of pay whenever meal periods were missed, interrupted, or late. (*Id.*)

Plaintiff further alleges that Defendants maintained a policy or practice of not providing Plaintiff and Class Members of with net rest period of at least ten uninterrupted minutes for each four hour work period. (Kim Decl., ¶ 9.) Plaintiff also alleges that Defendants failed to pay the legally required premium at their regular rate of pay whenever rest periods were missed, interrupted, or late. (*Id.*)

Additionally, Plaintiff alleges that Plaintiff and Class Members were required to use their personal cellular phones and home internet to perform their job duties under Defendants' employ. (Kim Decl., ¶ 10.) However, Plaintiff and Class Members were not reimbursed for these necessary work-related expenses. (*Id.*)

Defendants generally deny all claims alleged in the Action and further deny class and/or representative treatment is appropriate for any purpose other than this Settlement and that they complied with all applicable laws. (Kim Decl., ¶ 11.) However, after careful consideration, Defendants have 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.*)

C. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 12.) 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 Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. (*Id.*) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*)

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (Kim Decl., ¶ 13.) 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.*)

D. Settlement Efforts

On July 26, 2024, the Parties participated in an all-day mediation with Brandon McKelvey, a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 14.) During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks associated with continued litigation and class certification issues, as well as the law and how it applied to the claims in this case. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. (*Id.*) The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id.*)

From Class Counsel's review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the amounts received in other wage and hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (Kim Decl., ¶ 15.) Further, and based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating class actions and wage and hour cases, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the Action. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay a non-reversionary settlement amount of $600,000.00 ("Gross Settlement Amount" or "GSA") and to separately pay any and all employer payroll taxes owed on the Wage Portions of the individual Settlement Awards. (Kim Decl., Ex. 1, ¶ 14.)

The Settlement Agreement defines "Class Members" or "Settlement Class" as all persons employed by Defendants in California as a non-exempt employee from September 25, 2019 through September 24, 2024 ("Class Period"). (*Id.*, Ex. 1, ¶ 6 and 7.) The Settlement Agreement defines "PAGA Members," or aggrieved employees with respect to PAGA, as all Class Members who worked any hours for Defendants in California from September 25, 2022 through September 24, 2024 ("PAGA Period"). (*Id*, Ex. 1, ¶ 7.)

The "Net Settlement Amount," available for distribution to Class Members, is the Gross Settlement Amount, less all Class Counsel's attorneys' fees and litigation costs, the Enhancement Award to the Class Representative, the PAGA penalty payment to the Labor and Workplace Development Agency ("LWDA"), and Settlement administration expenses. (*Id.*, Ex. 1, ¶ 15(c).)

Settlement Awards to the Class Members, and PAGA Awards to the PAGA Members, will be calculated by the Settlement Administrator and paid out of the Net Settlement Amount. (*Id.*) The entire Net Settlement Amount will be paid out *pro rata* to Class Members who do not opt out, and to PAGA Members. (*Id.*) These amounts are detailed as follows:

- Up to one-third (33% 1/3) of the GSA, or $200,000.00, to Class Counsel for Attorneys' Fees, and up to $20,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (*Id.*, Ex. 1, ¶ 17);
- Up to $10,000.00 to Plaintiff as an Enhancement Award for service as the class representative (*Id.*, Ex. 1, ¶ 15(c)(vi));
- Up to $9,000.00 to the Settlement Administrator for its fees and costs to administer the Settlement (*Id.*, Ex. 1, ¶ 15(c)(vii));
- $37,500.00 to the LWDA of the State of California for settlement of claims for civil penalties under PAGA, which will be paid out of the GSA, leaving $12,500.00 as the Net PAGA Settlement Amount to be paid to PAGA Members. (*Id.*, Ex. 1, ¶ 15(c)(ii).)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $311,000.00 in addition to the Net PAGA Settlement Amount of $12,500.00. The Settlement Administrator will calculate the amount to be paid to each Class Member ("Settlement Award") based on the number of workweeks the Class Member worked during the Class Period and the amount to be paid to each PAGA Member ("PAGA Award") based on the number of workweeks the PAGA Member worked during the PAGA Period. (*Id.*, Ex. 1, ¶ 15(c)(i).) For the 193 Class Members (if no exclusions), the average individual Settlement Award, using a straight average, is approximately $1,611.40. If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Ex. 1, ¶¶ 15(c)(vi), 15(c)(vii), and 17.)

The Class Notice is attached to the Settlement Agreement as Exhibit 1. The Settlement Administrator will mail the Class Notice via first-class mail to all Class Members no later than 45 days after receiving the Class Members' names, last-known addresses, last-known telephone numbers, Social Security Numbers and the number of work weeks during the Class Period and the PAGA Period ("Class Data"). (*Id.*, Ex. 1, ¶ 19(a).) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant's records. (*Id.*, Ex. 1, Ex. A.) Class Members will have 45 calendar days from the mailing of the Class Notice to opt out of or object to the Settlement; Class Members will have maximum of fifteen (15) calendar days from the date of the re-mailing due to an undeliverable notice to cure the deficiency, or until the end of the opt out deadline, whichever is later. (*Id.*, Ex. 1, ¶¶ 19(b), 22 and 23.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

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

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

A. There Is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class and the means available for identifying class members. *See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are "ascertainable" where they may be readily identified without unreasonable expense or time.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all current and former non-exempt employees of Defendants employed in California during the Class Period (September 25, 2019 through October 19, 2024). (Kim Decl., ¶ 21, Ex. 1, ¶ 6.) Defendants have identified 193 Class Members based on review of its payroll and personnel records. (*Id.*)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is a Well-Defined Community of Interest

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

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

Id. at 809.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 22.) 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 defendants' actions to him or her.'" *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal and rest periods, failure to pay minimum and overtime wages due to allegedly common off-the-clock work policies, failure to reimburse business expenses; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 21.) Plaintiff contends Defendants' practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

C. The 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., ¶ 22.) Plaintiff and Class Members were employed by Defendants during the Class Period and subject to allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Id.*) 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 their clients zealously and have no conflicts of interest. (Kim Decl., ¶¶ 23, 67-73.) The Class

Representative'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.* at ¶ 23.) 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., ¶ 24.) 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, reimbursement for business expenses, and penalties for work performed as non-exempt employees for Defendants. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were 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. (Kim Decl., ¶ 25.) Although the alleged injury resulting from Defendants' policies and practices are real and significant, the cost of individually litigating each such case against Defendants 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 193 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. ¶ 27.) 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.*) Defendants 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 substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses. (Kim Decl., ¶ 28.) 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.

As stated above, while 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 ¶ 29.) Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id*.) This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. (*Id*.) Even if 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 classes are certifiable is somewhat speculative. (Kim Decl., ¶ 30.) Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class resulting in less overall recovery. (*Id*.)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (Kim Decl., ¶ 31.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id*.) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id*.) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id.*) An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id*.) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id*.)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). (Kim Decl., ¶ 32.)

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

If the Court approves the above allocations from the Gross Settlement Amount of $600,000.00, the Net Settlement Amount is estimated to be $311,000.00 while the Net PAGA Settlement Amount is $12,500.00. (*Id*. at ¶ 17.) There are approximately 193 total Class Members. (*Id*.) If there are no exclusions from the Class, the average gross individual Settlement Award to each Class Member, using a straight average, is $1,611.40. (*Id*.)

Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as follows: $53,552.80 for unpaid wages, including minimum and overtime wages, due to off the clock work; $12,190.80 for meal period violations; $343,183.80 for rest period violations; $8,999.50 for unreimbursed business expenses; $1,930.00 for unpaid sick pay; $71,430.00 in wage statement penalties; $81,751.62 in waiting time penalties; and $363,100.00 for PAGA penalties. (*Id*. at ¶¶ 35-60.) As such, the total estimated realistic exposure Defendant could face is $936,138.52.

The Gross Settlement Amount of $600,000.00 represents a recovery for the Class of approximately 64.09% of the total realistic liability exposure Plaintiff estimated that Defendant could face on the main claims in this case. (Kim Decl. ¶ 60.) 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.

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

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." *Munoz*, at 408. Class Counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendants 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 64.09% of the estimated total realistic liability exposure (Kim Decl., ¶ 60.)

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 Plaintiff and Class Members zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 23, 65-71.) Class Counsel submits the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (Kim Decl., ¶¶ 73.)

VII. THE CLASS REPRESENTATIVE ENHANCEMENT AWARD 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 enhancement award for his effort and initiative in bringing and helping to prosecute this class action.

As an initial matter, Plaintiff's courage in proceeding with his class-wide claims should not be underestimated. By suing Defendants, Plaintiff increased his risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (Pardee Decl., ¶¶ 11-12.)

Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (Kim Decl., ¶ 62-64; Pardee Decl., ¶¶ 2-10.) Both before and after filing, Plaintiff conferred with Class Counsel to discuss every aspect of this case. Plaintiff has invested approximately 25 hours in this action thus far. (Pardee Decl., ¶ 10.) Plaintiff has provided Class Counsel with information about Defendants, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the settlement agreement. (*Id.* at ¶ 10.)

Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge of Defendants' practices. Plaintiff has diligently, adequately, and fairly represented the Class Members, and has not placed her interests above any member of the putative Class. This sort of payment to a Class representative has been a common feature of settlements negotiated by Class Counsel and routinely approved by courts. The class representative service payment of **$10,000.00** to Plaintiff is fair and reasonable. (Kim Decl., ¶ 64; Pardee 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, of its effect on their rights, of their options as Class Members (i.e., participate, object, opt-out, and dispute workweeks), and procedures for exercising those options. (Kim Decl., ¶ 19; *see also* Class Notice, Exhibit 1 thereto.)

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the 193

Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 65.) If any Notice Packets are returned undeliverable, the Settlement Administrator shall resend to the forwarding address, if any, on the returned envelope. (*Id.*) If there is no forwarding address, the Settlement Administrator will do an NCOA check and will skip-trace return mail and re-mail within three (3) business days of receipt using the Class Member's Social Security Number. (*Id.*) The Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice.

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

Class Counsel respectfully requests, without opposition from Defendants, an award of attorneys' fees of $200,000.00 (one-third of the Gross Settlement Amount) and reasonable litigation costs not to exceed $20,000.00, subject to approval by the Court. (Kim Decl. ¶¶ 16, and 61.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 67-73.) Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. As such, the requested award of attorneys' fees and costs is reasonable.

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

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 Phoenix 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 Phoenix the names, last-known mailing addresses, last known telephone numbers, Social Security numbers, and the number of Class Period workweeks and PAGA Period workweeks as set forth in the Settlement Agreement;

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

10. Set a date for the Final Approval Hearing.

Dated: March 20, 2025

D.LAW, INC.

By ______________________________

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David Keledjian
Enoch J. Kim
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