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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SEAN GITTENS, on behalf of himself and all others similarly situated, and the general public, *Plaintiff*, v. NVA MASH CAPITAL PARTNERS, LP, a California corporation; NVA MASH VETERINARY MANAGEMENT, LP, a California corporation; NVA ABBY GP, INC., a California corporation; NATIONAL VETERINARY ASSOCIATES, INC., a Delaware corporation; and DOES 1 through 50, inclusive, *Defendants*.	Case No. 23STCV23169 [*Assigned for all purposes to the Hon. William F. Highberger, Dept. 10*] **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 David Keledjian; and [Proposed] Order]* Date: TBD Time: TBD Dept.: 10 Complaint Filed: September 21, 2023 FAC Filed: December 15, 2023 Trial Date: None Set

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I. INTRODUCTION

Plaintiff SEAN GITTENS ("Plaintiff") filed a class action complaint in this Court against Defendants NVA MASH CAPITAL PARTNERS, LP, a California corporation; NVA MASH VETERINARY MANAGEMENT, LP, a California corporation; NVA ABBY GP, INC., a California corporation; NATIONAL VETERINARY ASSOCIATES, INC (collectively "Defendant") (hereinafter Plaintiff and Defendant are collectively referred to as the "Parties"). Plaintiff alleged claims against Defendant for failure to minimum and overtime wages, failure to provide meal and rest breaks, failure to provide hourly wages and overtime, failure to timely pay all wages owed during employment and upon termination of employment, failure to pay all accrued and vested vacation wages upon separation, failure to pay proper sick time pay, failure to provide reimbursements for business expenses incurred, and unfair competition. Subsequently, Plaintiff filed a First Amended Complaint, which included a cause of action 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 $550,000.00, inclusive of all fees and costs. The Parties' Class Action and PAGA Settlement Agreement and Class Notice, **based on the Los Angeles County Model Form Agreement**, ("Settlement Agreement" or "Settlement") defines the class as all individuals employed by Defendants as non-exempt employees in California from September 21, 2019 through October 18, 2024 ("Class Period") (Declaration of David Keledjian, "Keledjian Decl.," Ex. A, ¶¶ 1.5 and 1.12). All 475 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 Defendant, 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 1** 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 21, 2023, Plaintiff GITTENS commenced a Class Action by filing a Complaint alleging causes of action against Defendant 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 Pay Vacation Wages (Lab. Code § 227.3) (5) Failure to Pay Sick Pay (Lab. Code § 246); (6) Failure to Provide Accurate Written Wage Statements (Lab. Code § 226); (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").

On December 15, 2023, Plaintiff filed a First Amended Complaint in the Los Angeles Superior Court, adding a cause of action for Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

After initiating the Action, the Parties agreed to explore resolution via mediation and engaged in informal discovery in preparation for mediation. On August 19, 2024, the Parties participated in a full-day global mediation with a well-respected mediator, Tripper Ortman, resulting in the proposed Settlement.

B. Plaintiffs' Claims and Defendant's Denials

Plaintiffs' claims are primarily based on Defendant's alleged failure to pay wages (including minimum and overtime wages), failure to provide meal and rest periods, 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. (Keledjian Decl., ¶ 6.)

Specifically, Plaintiff alleges that Defendant required Plaintiff and Class Members to perform work, off-the-clock, for which they were not paid wages. (*Id.*, at ¶ 7.) Defendants implemented a clock in system, where Plaintiff and Class Members were required to first sign in at the start of their work shift and then to clock in using a computer system. There was generally a wait time between the two procedures, for which no wages were paid. (*Id.*, at ¶ 7.) Furthermore, Defendants had a common policy and practice of requiring Plaintiff and Class Members to perform work-related tasks during unpaid meal periods, which were systemically denied. (*Id.*, at ¶ 7.) The forgoing and uncompensated working time was under the direction and control of Defendants, for which no wages were paid. (*Id.*, at ¶ 7.)

This uncompensated time caused Plaintiff and Class Members to work in excess of eight (8), ten (10) and/or twelve (12) hours a day and/or forty (40) hours a week, entitling Plaintiff and Class Members to minimum and overtime wages, which they were systemically denied. (*Id.*, at ¶ 8.)

The regular rate of pay under California law includes all remuneration for employment paid, on behalf of the employer, to the employee. (*Id.*, at ¶ 9.) This requirement includes but is not limited to commissions, non-discretionary bonuses, shift differential pay, etc. (*Id.*, at ¶ 9.) During the applicable limitations period, Defendants violated the rights of Plaintiff and Class Members by failing to pay them overtime wages, sick pay wages, and premium pay wages by not correctly calculating their regular rate of pay to include all applicable remuneration, including shift differential pay as well performance-based non-discretionary bonuses. (*Id.*, at ¶ 9.)

Plaintiff also alleges that Plaintiff and Class Members' meal periods were consistently interrupted due to heavy workload and assignments from Management. (*Id.*, at ¶ 10.) Specifically, due to understaffing and heavy workloads, Plaintiff and Class Members were denied the opportunity to take timely meal periods prior to the completion of their fifth hour of work. (*Id.*, at ¶ 10.)Additionally, Plaintiff and Class Members were required to perform work-related tasks during unpaid meal periods. (*Id.*, at ¶ 10.) Furthermore, Defendants maintained a policy or practice of not providing Plaintiff and Class Members with second meal periods when they worked shifts of ten or more. (*Id.*, at ¶ 10.)

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 due to (1) Defendant's policy of not scheduling each rest period as part of each work shift, including second rest breaks for shifts of six (6) hours or more; (2) no formal compliant written rest period policy that encouraged employees to take their rest periods, or that properly advised Plaintiffs and Class Members of their rest period rights; (3) Defendants' policy and practice of requiring Plaintiffs and Class Members to remain on the premises during their rest breaks; (4) Defendants' policy and practice of requiring putative class members to continue working through their rest breaks due to the excessive workload1. (*Id.*, at ¶ 11.)

Plaintiff also alleges that Defendant failed to pay the legally required premium at their regular rate of pay whenever meal periods and rest periods were missed, interrupted, or late. (*Id.*, at ¶ 12.)

Plainti13ff also alleges that Plaintiff and Class Members were not provided with accurate wage statements by Defendant. (*Id.*, at ¶ 13.)

Additionally, Plaintiff and Class Members were required to use their personal cellular phones and personal vehicles, all necessary to perform their duties under Defendants' employ. (*Id.*, at ¶ 14.)Additionally, Plaintiff and Class Members were required to clean and maintain their uniforms, which were required to be worn. Plaintiff and Class members were not reimbursed for these necessary work-related expenses. (*Id.*, at ¶ 14.)

Next, Plaintiff alleges that Defendants also had a common policy and practice of systemically failing to pay Plaintiff and Class Members the requisite and accrued vacation time pay in accordance with California Law. (*Id.*, at ¶ 15.) Specifically, Defendants failed to pay all accrued vacation time owed to Plaintiff and Class Members upon their separation from employment. (*Id.*, at ¶ 15.)

Finally, it is alleged hat Defendants had a common policy and practice of systemically failing to pay Plaintiff and Class Members the requisite sick time pay in accordance with California Law. (*Id.*, at ¶ 16.) Specifically, Plaintiff and Class Members worked for Defendants for more than 30 days, but were not paid at least one hour of sick pay for every 30 hours of work, or at least 3 days of sick time for every 12 month period of work. (*Id.*, at ¶ 16.) Additionally, any sick time payments made were not paid at the applicable regular rate of pay, as required by law. (*Id.*, at ¶ 16.)

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. (*Id.*, at ¶ 17 .)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.*, at ¶ 17.)

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. (*Id.*, at ¶ 18.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the various legal issues involved in the case. After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting both formal and 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.*, at ¶ 18.) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*, at ¶ 18.)

Defendant, for its 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. (*Id.*, at ¶ 19.) 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.*, at ¶ 19.)

D. Settlement Efforts

On August 19, 2024, the Parties participated in an all-day mediation with Tripper Ortman, a respected and highly experienced mediator in wage and hour class actions. (*Id.*, at ¶ 20.) During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks associated with continued litigation and class certification issues, as well as the law and how it applied to the claims in this case. (*Id.*, at ¶ 20.) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. (*Id.*, at ¶ 20.) The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id.*, at ¶ 20.)

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. (*Id.*, at ¶ 21.) 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.*, at ¶ 21.)

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 $550,000.00 ("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. (Keledjian Decl., Ex. A, ¶ 3.1.)

The Settlement Agreement defines "Class Members" or "Settlement Class" as all individuals employed by Defendants as non-exempt employees in California from September 21, 2019 through October 18, 2024 ("Class Period") (*Id.*, Ex. A, ¶¶ 1.5 and 1.12). The Settlement Agreement defines PAGA "Employees," or aggrieved employees with respect to PAGA, as all individuals employed by Defendants as non-exempt employees and who worked for Defendant in California from September 21, 2022, through October 18, 2024 ("PAGA Period"). (*Id*, Ex. A, ¶¶ 1.4 and 1.31).

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 Awards to Class Representatives, the PAGA penalty payment to the Labor and Workplace Development Agency ("LWDA"), individual PAGA payments, and Settlement administration expenses. (*Id.*, Ex. A, ¶ 1.28.) 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,* at ¶¶1.23, 1.24 and 3.2.4.) These amounts are detailed as follows:

These amounts are detailed as follows:

- Up to one-third (33% 1/3) of the GSA, or $183,333.33, to Class Counsel for Attorneys' Fees, and up to $25,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (*Id.*, Ex. A, ¶ 3.2.2);
- Up to $5,000.00 to Plaintiff as an Enhancement Award for services as class representative (*Id.*, Ex. A, ¶ 3.2.1);
- Up to $8,500.00 to the Settlement Administrator for its fees and costs to administer the Settlement (*Id.*, Ex. A, ¶ 3.2.3);
- $28,000.00 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 $7,000.00 as the Net PAGA Settlement Amount to be paid to PAGA Members. (*Id.*, Ex. A, ¶ 3.2.5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $300,166.67 in addition to the Net PAGA Settlement Amount of $7,000.00. 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. A, ¶¶ 3.2.4 and 3.2.5.1.) For the 371 Class Members (if no exclusions), the average individual Settlement Award, using a straight average, is approximately $809.07 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. (Keledjian Decl., ¶ 23; Ex. A, ¶¶ 3.2.1, 3.2.2, 3.2.5.2.)

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 14 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. A, ¶ 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 pay periods attributed to each Class Member per Defendant's records. (*Id.*, Ex. A, Ex. 1.) 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 fourteen (14) 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. A, ¶¶ 7.5.1 and 7.4.4).

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 Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all individuals employed by Defendant as non-exempt employees who worked for Defendant in California during the Class Period (September 21, 2019, through October 18, 2024). (Keledjian Decl., ¶ 26, Ex. A, ¶8.) Defendant has identified 371 Class Members based on review of its payroll and personnel records. (Keledjian Decl., ¶26.)

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 Plaintiffs, and the Class is united in its proof. (Keledjian Decl., ¶27.) Because Plaintiffs have alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY

1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal and rest periods, failure to pay minimum wages and overtime 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. (Keledjian Decl., ¶27.) Plaintiff contends Defendant's practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

C. The Named Plaintiffs' Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary that the class representative should have personally incurred all the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

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. (Keledjian Decl., ¶ 28.) Plaintiffs and Class Members were employed by Defendant during the Class Period and subject to allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Id.*) Thus, Plaintiffs' claims are typical of the claims of the putative Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representatives

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Keledjian Decl., ¶¶ 29, 80-88.) The Class Representative's interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and have no conflicts of interest. (Keledjian Decl., ¶29.) 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. Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Keledjian Decl., ¶ 30.) 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, unpaid and accrued vacation wages, and penalties for wage statement violations and 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 Plaintiffs contend 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. (Keledjian Decl., ¶ 31.) Although the alleged injury resulting from Defendant's policies and practices are allegedly 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 this would result in over 371 individual actions against Defendant. (*Id.*) Here, the alternative methods of resolution are individual suits 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. (Keledjian Decl. ¶ 33.) 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. (Keledjian Decl., ¶ 33.) 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 substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses. (Keledjian Decl., ¶ 34.) 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.

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 ¶ 35.) 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 was 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. (Keledjian Decl., ¶ 36.) 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. (Keledjian Decl., ¶ 37.) 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). (Keledjian Decl., ¶ 38, Ex. B.)

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 $550,000.00, the Net Settlement Amount is estimated to be $300,166.67 while the Net PAGA Settlement Amount is $20,000.00. (Keledjian Decl., at ¶ 23.) There are approximately 371 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 $809.07. (*Id.*)

Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Class, Plaintiffs estimated the potential realistic exposure for the main claims as follows: $63,219 for unpaid wages, including minimum and overtime wages, due to off the clock work; $28,321.28 for meal period violations; $110,388.10 for rest period violations; $15,372 for unreimbursed business expenses; $1,869.84 in unpaid vacation wages; $18,175.40 for unpaid sick pay; $149,110 in wage statement penalties; $231,033.60 in waiting time penalties; and $28,000 for PAGA penalties. (*Id.* at ¶¶ 41-71.) As such, the total estimated realistic exposure Defendant could face is **$630,117.72**. (Id., at ¶ 73.)

The Gross Settlement Amount of $550,000.00 represents a recovery for the Class of approximately 87.29% of the total realistic liability exposure Plaintiff estimated that Defendant could face on the main claims in this case. (Keledjian Decl. ¶ 73.) Plaintiffs and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial.

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

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." *Munoz*, at 408. Class Counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure 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. (Keledjian Decl., ¶¶ 80-88.) 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.

Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on to discuss every aspect of his case. Plaintiff provided Class Counsel with information about Defendant and about the industry generally, produced and reviewed documents, identified witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (Keledjian Decl., ¶76.)

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 **$5,000.00** to Plaintiff is fair and reasonable. (Keledjian Decl., ¶ 77.)

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. (Keledjian

Decl., 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 Class Members at their addresses from Defendant's records. If any Notices Packets are returned undeliverable, the Settlement Administrator shall resend to the forwarding address, if any, on the returned envelope. (*Id,*. ¶ 7.4.3) If there is no forwarding address, the Settlement Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. (*Id.*) This is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Class and PAGA Notice. (Keledjian Decl., ¶ 78.)

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 $183,333.33,000.00 (one-third of the Gross Settlement Amount) and reasonable litigation costs not to exceed $50,000.00, subject to approval by the Court. (Keledjian Decl., 74.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (*Id.*, Decl., ¶¶ 80-88.) 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 Apex Class Action Administration ("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 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 Apex to mail the Class Notice to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: August 22, 2025 D.LAW, INC.

By ______/s/ David Keledjian_______________
David Yeremian
David Keledjian
David Arakelyan
Attorneys for Plaintiff SEAN GITTENS and Settlement Class