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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF KERN**

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| HERNAN NOTARIO CAZARIN, and MOSES SILVA, on behalf of themselves and all others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>U.C.I. CONSTRUCTION, INC., a California corporation; COREY DELTA CONSTRUCTORS, INC., a California Corporation; and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No. BCV-24-101433<br><br>Judge: Hon. Thomas S. Clark<br><br>Department: 17<br><br><u>CLASS ACTION</u><br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION SETTLEMENT; AND (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT**<br><br>*[Filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Scott Lidman; Declaration of Paul K. Haines; Declaration of Michael Sutherland; Declaration of Moses Silva; Declaration of Hernan Notario Cazarin; and [Proposed] Order]*<br><br>Date: July 29, 2025<br>Time: 8:30 a.m.<br>Dept.: 17 |

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## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

### CASES

## STATUTES



## OTHER AUTHORITIES

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiff Moses Silva ("Plaintiff Silva") and Plaintiff Hernan Notario Cazarin ("Plaintiff Cazarin") (collectively, "Plaintiffs") seek preliminary approval of a putative class and representative action settlement with Defendant U.C.I. Concstruction, Inc. ("Defendant UCI") and Defendant Corey Delta Constuctors, Inc. ("Defendant Corey Delta") (collectively Defendants, and collectively with Plaintiffs, "the Parties")). The Parties' proposed settlement is memorialized in their Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement").

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 $916,000.00, inclusive of all fees and costs. The Settlement Agreement defines the class as all persons employed by Defendants in California and classified as non-exempt, hourly employees who worked for Defendants during the Class Period from September 11, 2019 through October 25, 2024. All of the approximately 785 Class Members will receive a settlement payment unless they opt out of the Settlement. The Settlement Agreement defines the PAGA Aggrieved Employees as all individuals who were or have been employed by Defendants in California as non-exempt, hourly employees at any time during the PAGA Period, which is from September 11, 2022 through October 25, 2024 ("Aggrieved Employees"). All of the approximately 382 Aggrieved Employees will receive a settlement payment provided the PAGA settlement is approved by the Court, and cannot opt out of the PAGA settlement.

The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Consequently, Plaintiffs, with the consent of Defendants, hereby move this Court for 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 to be sent to Class Members, and the notification schedule as set forth in the Settlement Agreement and the Proposed Order, also filed concurrently herewith; and (3) setting a hearing for final approval of the class action settlement.

## II. STATUS OF THE LITIGATION

### A. Procedural History

On September 11, 2023, Plaintiff Silva filed a Class Action Complaint in Contra Costa County Superior Court (Case No. C23-02276) alleging causes of action against Defendants for (1) Failure to Provide Meal Periods Under Labor Code §§ 204, 223, 226.7, 512, and 1198; (2) Failure to Provide Rest Periods Under Labor Code §§ 204, 223, 226.7, and 1198; (3) Failure to Pay Hourly Wages and Overtime Under Labor Code §§ 223, 510, 1194, 1194.2, 1197, 1997.1, and 1198; (4) Failure to Provide Accurate Written Wage Statements Under Labor Code §§ 226(a); (5) Failure to Timely Pay All Final Wages under Labor Code §§ 201, 202, and 203; (6) Failure to Indemnify Under Labor Code § 2802; (7) Unfair Competition In Violation of Business & Professions Code § 17200 *et seq*. (Declaration of Enoch J. Kim ("Kim Decl.,"), ¶ 9.) On September 11, 2023, pursuant to Labor Code § 2699.3(a), Plaintiff Silva gave timely notice to the LWDA and Defendants that Plaintiff intended to proceed with a representative action under PAGA (LWDA Case No. LWDA-CM-980790-23). (*Id.*) On November 17, 2023, Plaintiff Silva filed his First Amended Complaint, which added claims for penalties under PAGA, Labor Code §2698. (*Id.*)

On April 25, 2024, Plaintiff Cazarin filed a Class and Representative Action Complaint in Kern County Superior Court (Case No. BCV-24-101433) against Defendants alleging the following wage and hour violations: (1) Failure to Pay Overtime Wages; (2) Failure to Pay Minimum Wages; (3) Failure to Provide Meal Periods; (4) Failure to Provide Rest Periods; (5) Failure to Reimburse Necessary Business Expenses; (6) Failure to Provide Accurate Wage Statements; (7) Failure to Pay Wages Upon Termination; and (8) Unfair Competition. (Kim Decl., ¶ 10.) On July 1, 2024, Plaintiff Cazarin filed a First Amended Complaint adding a ninth cause of action for civil penalties under the PAGA. (*Id.*)

Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff Silva and Plaintiff Cazarin gave timely written notice to Defendant and the LWDA by sending their PAGA Notices on September 11, 2023 and April 25, 2024, respectively. (Kim Decl., ¶ 11.)

On October 22, 2024, Plaintiffs filed the Operative Second Amended Complaint in the Action which added Plaintiff Silva and his pending claims ("Operative Complaint" or the "Action"). (Kim Decl., ¶ 12.) In light of the filing of the Operative Second Amended Complaint in the Action including Plaintiff Silva and his claims, Plaintiff Silva will file a request for dismissal of his action in Contra Costa County Superior Court. (Kim Decl., ¶ 13.) The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. (Kim Decl., ¶ 14.)

**B. Investigation**

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (Kim Decl., ¶ 16.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, as well as preliminary research into the various legal issues involved in the case. (*Id.*) After conducting their initial investigation, Class Counsel determined that Plaintiffs' claims were well-suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (*Id.*)

In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including speaking to current and former employees of Defendants regarding Defendants' employment policies and practices. (Kim Decl., ¶ 17.) Prior to mediation, Plaintiffs also obtained and analyzed a representative sampling of time and payroll data for Class Members and the necessary policy documents through informal discovery to properly evaluate the strengths and weakness of the claims and engage in meaningful settlement discussions. Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk*/*Kullar*"). (*Id.*)

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Kim Decl., ¶ 16.) After Class Counsel analyzed the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

### C. Settlement Efforts

On June 10, 2024, the Parties mediated this case with Mediator Michael Dickstein, a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 18.) During mediation, Plaintiffs' and Defendants' counsel discussed all aspects of the case, including the risks of litigation and the risks to all Parties of proceeding with a motion for class certification, as well as the law relating to unpaid wages, meal periods, rest period, wage statements, and final pay. (*Id.*) The Parties agreed to settle the lawsuit according to the terms set forth in the Settlement Agreement. (*Id.*)

From Class Counsel's review of the strengths and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable. (Kim Decl., ¶ 19.) 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 lawsuit. (*Id.*)

## III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay $916,000.00 ("Gross Settlement Amount") on a non-reversionary basis and to separately pay all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. (Kim Decl., ¶ 20; Exh. 1, ¶¶ 1.23, 3.1, pp. 2, 9.) The Settlement Agreement defines the "Class" or "Class Members" as all persons employed by Defendants in California and classified as non-exempt, hourly employees who worked for Defendants during the Class Period from September 11, 2019 through October 25, 2024. (Kim Decl., ¶ 21; Exh. 1, ¶¶ 1.5, 1.13, pp. 3, 4.) The Settlement Agreement also defines "Aggrieved Employee" as all individuals who were or have been employed by Defendants in California as non-exempt, hourly employees at any time during the PAGA Period, which is the period from September 11, 2022 through October 25, 2024. (Kim

Decl., ¶ 21; Exh. 1, ¶¶ 1.4, 1.33, pp. 3, 6.)

The "Net Settlement Amount" shall be the Gross Settlement Amount, less the following payments in the amounts approved by the Court: PAGA Penalties payment, Class Representative Service Payments, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Kim Decl., ¶ 22; Exh. 1, ¶ 1.29, p. 6.) The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id.*) These amounts are detailed as follows:

- Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be $305,333.33, for attorneys' fees, and a Class Counsel Litigation Expenses Payment of not more than $25,000.000 for litigation costs; (Kim Decl., ¶ 22; Exh. 1, ¶ 3.2.2, p. 10.);
- Class Representative Service Payments of not more than $7,500.00 to each Plaintiff, totaling $15,000.00, for their service as the Class Representatives in addition to any Individual Class Payment and any Individual PAGA Payment that each Class Representative is entitled to receive; (Kim Decl., ¶ 22; Exh. 1, ¶ 3.2.1, p. 9.);
- Administration Costs Payment of up to $14,000.00 to the Settlement Administrator for settlement administration costs; (Kim Decl., ¶ 22; Exh. 1, ¶ 3.2.3, p. 10.);
- PAGA Penalties in the amount of $60,000.00 for civil penalties under PAGA, with 75% ($45,000.00) paid to the LWDA ("LWDA PAGA Payment") and 25% ($15,000.00) paid to Aggrieved Employees based on the number of pay periods each Aggrieved Employee worked during the PAGA Period ("Individual PAGA Payments"); (Kim Decl., ¶ 22; Exh. 1, ¶ 3.2.5, p. 11.)

The Individual Class Payment is each Class Member's share of the Net Settlement Amount and will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) by multiplying the result by each individual Class Member's workweeks. (Kim Decl., ¶ 23; Exh. 1, ¶ 3.2.4, p. 11.) Additionally, the Parties agreed that the Individual Settlement Payment shall be allocated as follows: 25% allocated to the settlement of wage claims ("Wage Portion") subject to applicable tax withholdings; and 75% allocated to the settlement of claims for interest and penalties. (*Id.*, Exh. 1, ¶ 3.2.4.1, p. 11.)

The Notice of Class Action Settlement ("Class Notice") is attached to the Settlement Agreement as **Exhibit A**. The Parties have selected Apex Class Action LLC ("Apex") to handle the Class Notice and administration of the Settlement. (Kim Decl., Exh. 1, § 7.1.) The procedures for mailing the Class Notice and processing exclusions and objections as well as distribution of the Net Settlement Amount are detailed in the Settlement Agreement. (Kim Decl., ¶¶ 25-28; Exh. 1, ¶ 7. pp. 15-22.)

## IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

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

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

### A. There Is a Numerous and Ascertainable Class

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

Plaintiffs contend, and Defendants do not dispute for settlement purposes only, this requirement and the requirement of numerosity are met. Class Members are all persons employed by Defendants in California and classified as non-exempt, hourly employees who worked for Defendants during the Class Period from September 11, 2019 through October 25, 2024. (Kim Decl., ¶ 74(a).) Documents and information exchanged between the Parties reflect a class of approximately 785 Class Members and 382 Aggrieved Employees. (Kim Decl., ¶ 74(a).) The Class Members have already been identified by reference to Defendants' payroll and personnel records. (Kim Decl., ¶ 74(b).)

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

**B. There Is a Well-Defined Community of Interest**

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

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

*Id.* at 809.

Plaintiffs contend, and 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. (Kim Decl., ¶ 74(e).) 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 1350f.) 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 pay wages and overtime due to allegedly common and unlawful policies, failure to pay all wages due to allegedly common and unlawful policies, failure to provide meal and rest periods, the resulting failure to pay final wages when required, the failure to provide accurate paystubs, the failure to pay employees on a timely basis, the failure to reimburse necessary business expenses, and largely derivative claims under the Business & Professions Code and PAGA. (Kim Decl., ¶ 74(e).) Plaintiffs contend these practices affected Class Members in the same way. (*Id.*) The outcome of litigation on this matter depends upon questions that are common to Class Members. (Kim Decl., ¶ 74(f).)

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

Plaintiffs contend, and Defendants do not dispute for settlement purposes only, that Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 74(c).) Plaintiffs were employed by Defendants during the Class Period and were subject to the allegedly unlawful meal and rest policies and pay practices at issue in this litigation. (*Id.*) Accordingly, Plaintiffs are members of the Class. (*Id.*) The central issues of this litigation (whether Defendants failed to pay all wages, whether Defendants failed to provide meal and rest periods, etc.) apply to the other Class Members as well. The answer to these questions would determine Defendants' liability to the putative class. (*Id.*) Thus, the claims of Plaintiffs are typical of the claims of the putative class and the typicality requirement is satisfied.

**D. Adequacy of Class Counsel and Class Representatives**

Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Kim Decl., ¶¶ 3-8, 74(d)) The Class Representatives' interests are aligned with those of the Class Members, they have suffered the alleged same injuries as the Class Members and have no conflicts of interest. (*Id.*) Therefore, Class Counsel and the Class Representatives are adequate.

**E. Predominance and Superiority**

Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 74(f).) The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (Kim Decl., ¶ 74(g).)

## V. THE TWO-STEP APPROVAL PROCESS

Any settlement of class action litigation must be reviewed and approved by the Court. This is accomplished in two steps: (1) An early (preliminary) review by the trial court, and (2) a detailed review after the notice has been distributed to the class members for their comments or objections. In this regard, the Manual for Complex Litigation (Second) explains:

> A two-step process is followed when considering class settlements… 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)* (1985) at § 30.44.) The preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. (*See, e.g., Newberg*, § 11.25; *North County*

*Contractor's Assn., Inc. v. Touchstone Ins. Services* (1994) 27 Cal. App. 4th 1085, 1094-95.) Thus, the preliminary approval of the class action settlement by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements.

Settlements to resolve PAGA claims also require court approval. (Labor Code § 2699(s)(2).) There is no articulated standard for approving PAGA settlements. PAGA settlements for as little as $0 have been approved. (*See Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589 (approving PAGA settlement and release that allocated $0 to PAGA claim).) Courts have also approved settlements for $20,000 or less. (*See, e.g., Hicks v. Toys 'R' Us–Delaware, Inc.,* (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915, at *1 (approving $5,000 PAGA payment in $4 million settlement); *Chu v. Wells Fargo Invest. LLC* (N.D. Cal. Feb. 16, 2011) 2011 WL 672645, at *1 (approving PAGA payment of $7,500 in $6.9 million settlement); *Williams v. Brinderson Constructors* (C.D. Cal. Feb. 6, 2017) 2017 WL 490901, at *5 ($10,000 PAGA settlement in $300,000 settlement).)

A review of the preliminary approval criteria demonstrates a substantial basis for granting the instant Motion and proceeding to a full settlement hearing.

## VI. THE SETTLEMENT IS FAIR AND ADEQUATE

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.").)

Moreover, courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (*Newberg*, §11.51; *Rodriguez v. West Publ. Corp.* (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767, 24-25 ; *Priddy v. Edelman* (6th Cir. 1989) 883 F.2d 438, 447.) Courts do not substitute their judgment for that of the proponents, particularly when settlement has been reached by experienced counsel familiar with the litigation.

(*Rodriguez*, 2007 U.S. Dist. LEXIS 74767 at 24; *Hammon v. Barry* (D.D.C. 1990) 752 F. Supp. 1087.)

In *Kullar v. Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 128 (2008), the court laid out several factors that should be analyzed in determining if a class action settlement should be approved. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the Class Members to the proposed settlement.

The Settlement here satisfies each of these factors. Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter, including a detailed analysis of Defendant's policies and a considerable sample of Defendant's time and pay records. (Kim Decl., ¶¶ 16-18.) This discovery permitted Class Counsel to fairly evaluate the strengths and weaknesses of the case and the risks associated with ongoing litigation. Class Counsel is very experienced in the handling of wage and hour class actions and supports this Settlement. (Kim Decl., ¶¶ 3-8.)

**A. The Strength of Plaintiffs' Case.**

The claims in this action include failure to pay minimum and overtime wages, failure to provide meal breaks or rest breaks or provide premium pay in lieu thereof, failure to reimburse necessary business expenditures, failure to provide accurate wage statements, failure to pay final wages when due, and related claims for violations of California's Business & Professions Code and for penalties under PAGA. (Kim Decl., ¶ 9, 10, and 13.)

<u>Minimum Wages and Overtime</u>

Plaintiffs alleged that Defendants failed to pay Plaintiffs and other Class Members minimum wages and overtime for all hours worked. (Kim Decl., ¶ 33.) Specifically, Plaintiffs contended that they and other Class Members had to perform work off-the-clock prior to the start of their shifts, including being required to arrive to work early, and wait to be granted access onto Defendants' premises, donning their work clothes and boots, undergo mandatory security checks to gain access to the building, and spending time locating their respective supervisors in order to clock into work. (*Id.*) Plaintiffs further contended that the entire process was repeated after the completion of their scheduled shifts and clocking out for the day, including having to doff their work clothes and boots. (*Id.*) Furthermore, Plaintiffs alleged that Defendants maintained a uniform policy or practice of recording the scheduled hours of Class Members and not the actual time Class Members began working and/or stopped working. (*Id.*)

Defendants denied all allegations and contended that they paid for all reported hours worked and that they paid proper minimum and overtime wages. (Kim Decl., ¶ 34.) Defendants further argued that given their written policies and practices, any unrecorded hours were likely subject to individualized inquiry and unlikely to be certified. (*Id.*) Moreover, Defendants disputed claims that Class Members were required to perform work pre-shift before clocking in or post-shift after clocking out. Defendants also argued that they did not engage in rounding of time entries. (*Id.*)

<u>Meal Periods and Rest Breaks</u>

Plaintiffs argued that Defendants had a common practice and policy of denying compliant meal periods. (Kim Decl., ¶ 36.) Plaintiffs contended that Class Members were regularly interrupted during their meal periods and therefore were not provided with an off-duty thirty (30) minute meal period in accordance with California law. (*Id.*) Specifically, due to the work demands imposed by Defendants and the nature of the work, the meal periods were untimely, short, interrupted. (*Id.*) Moreover, Plaintiffs contended that Class Members were not required to clock in and out for their meal periods, and to the extent a supervisor purported to record a meal period, the recorded meal period did not accurately reflect the length of the meal period, the time of the meal period nor whether a meal period was in fact not taken. (*Id.*) Additionally, Defendants' meal period policies and practices failed to provide Plaintiffs and Class Members a second meal period for shifts over 10 hours. (*Id.*)

Defendants disagreed with Class Counsel's interpretation of the law and facts. (Kim Decl., ¶ 37.) Defendants argued that in practice all employees were authorized, encouraged, and did in fact take timely uninterrupted meal breaks. (*Id.*) Defendants also argued that their written policies were valid and disseminated to all Class Members. (*Id.*) Defendants contended that Class Members were given a reasonable opportunity to take their meal periods, and in fact received their meal periods most of the time. (*Id.*) Defendants also contended that they did not instruct Class Members to record 30-minute meal periods if they did not in fact take a 30-minute meal period. (*Id.*) Rather, Defendants contended that meal periods were scheduled, and employees took their meal periods at their scheduled times, which resulted in meal periods being recorded at the same time each day for that scheduled 30-minute period. (*Id.*) Defendants also contended that on the occasions when compliant meal periods were not provided, Class Members were paid premium pay in accordance with the law. (*Id.*)

The same arguments applied to rest breaks. (Kim Decl., ¶ 39.) Plaintiffs contended that Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (*Id.*) Specifically, Plaintiffs alleged that Class Members were required to work through their rest breaks or had breaks provided on an untimely basis but were not compensated with premium pay for missed or untimely rest breaks. (*Id.*)

Defendants maintained that they did provide a reasonable opportunity for Class Members to take duty-free rest breaks. Defendants also pointed out that, unlike meal periods, rest breaks need not be recorded. (Kim Decl., ¶ 40.) As these considerations would likely depress the damages *vel non* ultimately awarded, Class Counsel applied significant and appropriate discounts to the rest-break claim. (*Id.*)

<u>Unreimbursed Business Expenses</u>

Plaintiffs contended that they and other Class Members incurred necessary business-related expenses while performing their job duties, including the cost of personal cell phone usage and purchasing materials such as tubes and bags as well as work tools. (Kim Decl., ¶ 48.) Defendants contended that Plaintiffs and Class Members were not required to use their personal cell phones or otherwise incur reimbursable expenses under the law. (*Id.*)

<u>Wage Statement and Waiting Time Penalties</u>

As for the wage statement and waiting time penalties claims, Defendants contend that these claims are merely derivative of the underlying claims and that Plaintiffs and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶¶ 42, 46.) Defendants further contend that even if they could first establish liability for the underlying claims, Plaintiffs and Class Members would be unable to establish that Defendants' conduct was willful and knowing as required by the relevant statutes since Defendants contend they acted in good faith to provide accurate wage statements and to pay all wages due to Plaintiffs and Class Members. (*Id.*) Thus, Defendants contend that the wage statement and waiting time penalties claims to have little to no value. (*Id.*)

PAGA

Similarly, Defendants contend that the PAGA claim is also derivative of the underlying claims in the Action, and ultimately fails because the underlying claims have no merit. (Kim Decl., ¶ 51.) Defendants also contend that even if Plaintiffs and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendants acted in good faith to comply with the relevant wage and hour laws, and that even if there were violations established, they would be minor and technical in nature. (*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 it complied with all applicable laws. (Kim Decl., ¶ 56.) 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.*)

As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl., ¶ 57.) 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 the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. (*Id.*) Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

**B. The Risk, Expense, Complexity and Likely Duration of Any Litigation.**

Given the risks outlined above, the issues in this case were complex and the risk for Plaintiffs and the Class Members associated with this litigation was high. (Kim Decl., ¶¶ 59-62.) A class trial would have required the retention of expensive expert witnesses, the accrual of extensive litigation costs, and the parties would have had to spend a substantial amount of time.

Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter.

**C. The Risk of Maintaining Class Action Status Through Trial.**

In class actions, decertification is always a possibility. There is always a risk that a trial of this magnitude can become unmanageable. (*Id.*) Given cases like *Duran v. U.S. Bank Nat. Assn.*, 59 Cal. 4th 1, 34 (2014) that deal with the complexity of using statistical samples in class actions, decertification is a real risk that Class Counsel must take into account.

**D. The Amount Offered in Settlement.**

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.

Based on the data provided, Class Counsel estimated the potential realistic exposure for the main claims as follows: unpaid wage claim at **$129,696.80** for minimum wages and overtime, meal period claim at **$808,131.80**, rest period claim at **$511,816.31**, wage statement claim at **$187,570.00**, waiting time penalties at **$24,840.00**, unreimbursed business expenses claim at **$34,650.00,** and on PAGA at **$95,390.00.** (Kim Decl., ¶ 31.) As such, Plaintiffs estimate the total realistic exposure Defendants could face is **$1,792,094.91**. (*Id.*)

The Gross Settlement Amount of $916,000.00 represents a recovery for the Class of approximately 51.11% of the total realistic exposure Plaintiffs estimated that Defendants could face on the primary claims in this case. (Kim Decl., ¶ 56.) 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, and particularly in light of all of the factors described above. (*Id.*)

If the Court approves the requested allocations from the Gross Settlement Amount of $916,000.00 as addressed above, the Net Settlement Amount is estimated to be $496,666.67. (Kim Decl., ¶ 20.) There are approximately 785 total Class Members. (*Id.*) If there are no exclusions from the Class and using a straight average for reference, each Class Member will receive an average of $632.69. (*Id.*)

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were ultimately denied and/or if Defendants prevailed on the underlying merits of the claims. 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.

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed Settlement. Class Counsel are experienced in class actions, have represented Plaintiffs and the Class zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 3-8.) 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., ¶ 19.)

## VII. THE CLASS REPRESENTATIVE ENHANCEMENT IS FAIR AND REASONABLE

It is appropriate to provide a relatively modest additional incentive payment to the class representative. See *Newberg*, § 12.1; *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F.Supp. 294.

Plaintiffs are entitled to a reasonable service payment for their efforts and initiative in bringing and helping to prosecute this class action. (Kim Decl., ¶ 69.) Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken, how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiffs discussing their case and the law. (*Id.*)

Plaintiffs have devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (Kim Decl., ¶ 71.) Both before and after the filing of this lawsuit, Plaintiffs conferred with Class Counsel to discuss every aspect of his case. (*Id.*) Plaintiffs provided Class Counsel with information about Defendants and about the industry generally, reviewed documents, identified witnesses, consulted Class Counsel throughout the litigation repeatedly and at length, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In light of the foregoing, Class Counsel believes that the Class Representative Service Payment in the amount of $7,500.00 to each Plaintiff, totaling $15,000.00, is fair and reasonable. (Kim Decl., ¶ 73.)

## VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.

Constitutional due process requires that class members be provided with notice sufficient to give them an opportunity to be heard in the proceedings. *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306. Proper notice must provide the class members with sufficient information to make an informed decision as to whether to accept or object to the settlement. (*Id.* at 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 afford class members the opportunity to present their objections. (*Id.*)

The Class Notice meets constitutional standards because it 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, do nothing), and of the consequences of exercising those options. (Kim Decl., ¶¶ 62-64.) Moreover, the Class Notice will specifically direct any Class Members who have questions or concerns to contact the Settlement Administrator, Apex Class Action, or Class Counsel. (*Id.*)

The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) The Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 notes that individual notice by mail is preferred when possible and dissemination of combined certification/settlement notice is a common and accepted practice. (*In re Vitamin Cases* (2003) 107 Cal.App.4th 820, 828.)

Here, the Class Notice will be sent via first-class mail to each Class Member. (Kim Decl., ¶ 62.) If any Class Notices are returned undeliverable without a forwarding address, the Settlement Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Class Notice to him or her at the correct address. (*Id.*) Thus, most, if not all, Class Members will likely receive the Class Notice.

Pursuant to controlling authority, the proposed Class Notice and method of distribution fully comport with due process requirements. Therefore, the Court should approve the Class Notice and direct that it be distributed as proposed in the Settlement Agreement.

## IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT

Non-settling parties and third parties periodically may attempt to object to proposed class action settlements, but the right of non-settling parties to object at the final settlement approval hearing, let alone the preliminary approval hearing, is quite limited. As a general rule, only class members have standing to object to a proposed settlement. "Beginning from the unassailable premise that settlements are to be encouraged, it follows that to routinely allow non-class members to inject their concerns via objection at the settlement stage would tend to frustrate this goal." (*Gould v. Alleco, Inc.* (4th Cir. 1998) 883 F.2d 281, 284.) Since an application is being filed to obtain a good faith determination, no persons other than class members have standing to object to the proposed settlement. (*In re School Asbestos Litigation* (3rd Cir. 1990) 921 F.2d 1330.)

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

Under the Settlement Agreement, Class Counsel will seek a Class Counsel Fees Payment of no more than $305,333.33 (up to one-third of the Gross Settlement Amount) and a reasonable Class Counsel Litigation Expenses Payment not to exceed $25,000.00, subject to approval by the Court. Defendants will not oppose Class Counsel's fees and cost request.

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 3-8.) Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 66.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. (*Id*.) As such, the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

## XI. 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 Emil Davtyan, David Yeremian, David Keledjian, Enoch J. Kim, David Arakelyan, and Norayr Zakaryan of D.Law, Inc. to serve as Class Counsel for settlement

purposes;

6. Approve and appoint Apex Class Action LLC as the Settlement 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 Defendants to disclose to Apex Class Action LLC the names, last-known addresses, dates of employment, and social security numbers of Class Members as set forth in the Settlement Agreement;

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

10. Set a date for the Final Approval Hearing.

Dated: July 7, 2025

Respectfully submitted,

D.LAW, INC.

By ______________________

Enoch J. Kim
Attorneys for Plaintiff Moses Silva