David Keledjian, Esq. (SBN 309135)
Norayr Zakaryan, Esq. (SBN 356913)
Enoch Kim Esq. (SBN 261146)
Marta Manus, Esq. (SBN 260132)
D.LAW, INC.
250 N Madison Avenue, 2nd Floor
Pasadena, CA 91101-1639
Tel.: (818) 962-6465 / Fax: (818) 962-6469
Emails: D.Keledjian@d.law, N.Zakaryan@d.law
e.kim@d.law, m.manus@d.law

Attorneys for Plaintiff BERNETTIA CLARA WILLIAMS and DAVID HERNANDEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

BERNETTIA CLARA WILLIAMS, on behalf of himself and all others similarly situated, and the general public, Plaintiff, v. EMPIRE TRANSPORTATION, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	CLASS ACTION Case No. 23STCV21618 Honorable Timothy Patrick Dillon Dept.: 15 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR AN ORDER (1) PRELIMINARILY APPROVING THE CLASS ACTION AND PAGA SETTLEMENT; AND (2) APPROVING NOTICE OF CLASS ACTION SETTLEMENT** Date: February 9, 2027 Time: 10:00 a.m. Dept.: 15 Complaint Filed: September 7, 2023 First Amended Complaint: November 16, 2023 Second Amended Complaint: June 3, 2024 Trial Date: None Set

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATUS OF THE LITIGATION 2

A. Procedural History 2

B. Investigation 2

C. Settlement Efforts 3

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS 3

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE 5

A. There Is a Numerous and Ascertainable Class 6

B. There Is a Well-Defined Community of Interest 6

C. The Named Plaintiffs' Claims Are Typical 7

D. Adequacy of Class Counsel and Class Representatives 8

E. Predominance and Superiority 8

V. THE TWO-STEP APPROVAL PROCESS 8

VI. THE SETTLEMENT IS FAIR AND ADEQUATE 9

A. The Strength of Plaintiffs' Case. 10

B. The Risk, Expense, Complexity and Likely Duration of Any Litigation. 11

C. The Risk of Maintaining Class Action Status Through Trial. 11

D. The Amount Offered in Settlement. 11

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND REASONABLE 14

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS. 14

IX. STANDING TO OBJECT TO PROPOSED SETTLEMENT 15

X. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED. 16

XI. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL 16

TABLE OF AUTHORITIES

CASES

B.W.I. Custom Kitchens v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341 7

Cartt v. Superior Court (1975) 50 Cal.App.3d 960, 974 15

Chu v. Wells Fargo Invest. LLC ((N.D. Cal. Feb. 16, 2011) 2011 WL 672645 9

Class Plaintiffs v. City Of Seattle (1992) 955 F.2d 1268 10

Classen v. Weller (1983)145 Cal.App.3d 27 7

Daar v. Yellow Cab Company (1967) 67 Cal. 2d 695 5

Duran v. U.S. Bank Nat. Assn., 59 Cal. 4th 1, 34 (2014) 11

Gould v. Alleco, Inc. (1989) 883 F.2d 281 16

Hammon v. Barry (D.D.C. 1990) 752 F.Supp. 1087 10

Hicks v. Toys 'R' Us–Delaware, Inc. (C.D. Cal. Sept. 2, 2014) 2014 WL 4703915 9

In re NASDAQ Market-Makers Antitrust Litigation (SDNY 1997) 172 F.R.D.119 7

In re School Asbestos Litigation (3rd Cir. 1990) 921 F.2d 1330 16

In re Vitamin Cases (2003) 107 Cal.App.4th 820 15

Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal. App. 4th 116 ..... 3, 10

Linder v. Thrifty Oil Co. (2000) 23 Cal.4th 429 ..... 5, 9

Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306 14

North County Contractor's Assn., Inc. v. Touchstone Ins. Services (1994) 27 Cal.App.4th 1085 9

Nordstrom Com'n Cases (2010) 186 Cal.App.4th 576 9

Priddy v. Edelman (6th Cir. 1989) 883 F.2d 438 10

Prince v. CLS Transp., Inc. (2004) 118 Cal. App. 4th 1320 5

Reyes v. Board of Supervisors of San Diego County (1987) 196 Cal. App. 3d 1263 6

Richmond v. Dart Industries, Inc. (1981) 29 Cal. 3d 462 5

Rodriguez v. West Publ. Corp (C.D. Cal. August 10, 2007) 2007 U.S. Dist. LEXIS 74767 10

Rosack v. Volvo of America Corp. (1982) 131 Cal. App. 3d 741 7

Van Vranken v. Atlantic Richfield Co. (N.D. Cal. 1995) 901 F.Supp. 294 14
Vasquez v. Superior Court (1971) 4 Cal. 3d 800 ..... 5, 6
Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 8
Williams v. Brinderson Constructors (C.D. Cal. Feb. 6, 2017) 2017 WL 490901 9

STATUTES

Labor Code § 2698, *et seq* 2
Labor Code § 2699.3 2
Labor Code § 2699(l)(2) 9

OTHER AUTHORITIES

Judicial Council of California's Deskbook on the Management of Complex Civil Litigation (Matthew Bender 2003), § 3.74 15
Manual for Complex Litigation (Second) (1985) 9
Newberg, § 11.25 9
Newberg, § 12.1 14
Newberg, §11.47 14
Newberg, §11.51 10

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Bernettia Clara Williams and David Hernandez ("Plaintiffs" or "Class Representatives") seeks preliminary approval of a Five Hundred Fifty Thousand Dollars and Zero Cents ($550,000), non-reversionary wage and hour Class Action and PAGA Settlement for an estimated 566 non-exempt, hourly employees who worked for Defendant Empire Transportation, Inc. ("Defendant" collectively with Plaintiffs "the Parties"), during the class release and PAGA release periods. The Class Period is defined as April 2, 2021, through August 31, 2023. The PAGA Period means the period from September 12, 2022, to August 31, 2023.

After engaging in substantial investigation and extensive negotiations with the assistance of a respected mediator, the parties agreed to settle all claims on a class-wide, non-reversionary basis for $550,000 inclusive of all fees and costs. The parties' Class Action and PAGA Settlement Agreement ("Settlement", "Settlement Agreement" or "SA") defines the Class as "all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California at any time during the Class Period. Contract employees are not part of the "Class." All Class Members will receive a settlement payment unless they opt out of the Settlement. The Settlement Agreement is attached as **Exhibit 1** to the Declaration of Marta Manus, filed concurrently herewith ("Manus Decl.").

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 Defendant, hereby moves this Court for an order: (1) granting preliminary approval of the proposed class action settlement, as embodied in the Settlement Agreement; (2) approving the Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice") 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 7, 2023, Plaintiffs commenced this putative class action by filing a complaint against Defendant in the Superior Court of California, County of Los Angeles, asserting causes of action against Defendant for: (1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to pay hourly wages and overtime; (4) failure to provide accurate written wage statements; (5) failure to timely pay all final wages; (6) failure to indemnify; and (7) unfair competition. (Manus Decl., ¶ 8.)

On Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs gave timely written notice to Defendant and the Labor Workforce Development Agency ("LWDA") by sending the PAGA Notice on September 7, 2023 (LWDA-CM- 980223-23). The LWDA did not express an interest in investigating Plaintiffs' claims within the 65-day period. Therefore, on November 16, 2023, Plaintiffs filed a First Amended Complaint ("FAC") including an eighth cause of action for penalties pursuant to Labor Code § 2698, *et seq*. (*Id*. at ¶ 9.)

On June 3, 2024, Plaintiffs filed a Second Amended Class and Representative Action Complaint ("SAC") adding David Hernandez as an additional plaintiff. The SAC is the Operative Complaint. (*Id*. at ¶ 10.)

B. Investigation

Before filing the lawsuit, Class Counsel investigated and researched the facts and circumstances underlying the pertinent issues and the law applicable thereto. (*Id*. at ¶ 11.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action. (*Id*. at ¶ 12.)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Manus Decl., ¶ 13.) 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 and the costs and burden associate with litigation for Defendant, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including reviewing documents and data regarding Defendants' employment policies and practices. Plaintiff' counsel provided Defendants' counsel with a comprehensive listing of informal discovery items required to constructively mediate. Defendants responded by producing timekeeping and corresponding payroll records for approximately 130 individuals (at the time of the data production). (See Declaration of Jarrett Gorlick ¶ 6, Ex. 3 to Manus Decl.). Prior to mediation, Plaintiff therefore obtained and analyzed the production of time and payroll data for Class Members and Aggrieved Employees and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of their claims and engage in meaningful settlement discussions. Plaintiff's 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*"). (Manus Decl., ¶ 13.)

On August 14, 2026, the Parties mediated this case with Lonnie D. Giamela, Esq., a respected and highly experienced mediator in wage and hour class actions. During mediation, Plaintiffs' and Defendant's counsel discussed all aspects of the case. With the assistance of the mediation, the Parties reached a settlement according to the terms set forth in the Settlement Agreement. (*Id.; See* Exhibit 1 attached to Manus Decl., "Settlement" or "Settlement Agreement".) (Manus Decl., ¶ 14.)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay $550,000 ("Gross Settlement Amount") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the operative complaint on behalf of the proposed Class. (*Id*. at ¶ 16; Ex. 1 ¶ 3.1.) The Settlement Agreement defines the "Class" or "Class Members" as all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California at any time during the Class Period. Contract employees are not part of the "Class." (*Id*. at ¶ 17; Ex. 1, ¶ 1.3). The Class Period is the period from April 2, 2021, through

August 31, 2023. (*Id*., Ex. 1, ¶ 1.10.) The "Net Settlement Amount," available for distribution to Class Members, shall be the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Administration Expenses Payment. (*Id*. at ¶ 18; Ex. 1, ¶ 1.25.) These amounts are detailed as follows:

- Class Counsel Fees Payment and Expenses Payment of not more than One Hundred Eighty-One Thousand Five Hundred Dollars and Zero Cents ($181,500.00) and up to Twenty-Five Thousand Dollars and Zero Cents ($25,000.00) in litigation costs; (*Id*. at ¶ 18; Ex. 1, ¶ 3.2.2.);
- Administration Expenses Payment of not more than Nine Thousand Dollars and Zero Cents ($9,000) to the Administrator. The Administration Expenses Payment is currently estimated to be $8,000. (*Id*. at ¶ 18; Ex. 1, ¶ 3.2.3., Ex. 2, ¶ 11);
- Class Representative Service Payment of not more than Ten Thousand Dollars ($10,000); (*Id*. at ¶ 18; Ex. 1, ¶ 3.2.1.);
- PAGA Penalties in the amount of Thirty Thousand Dollars and Zero Cents ($30,000.00) for civil penalties under PAGA, with 75% ($22,500.00) will be paid to the LWDA and 25% ($7,500.00) will be included in the Net Settlement Amount and distributed to Aggrieved Employees); (*Id*. at ¶ 18; Ex. 1, ¶ 3.2.5);

The "Individual Class Payment," which is each Class Member's share of the Net Settlement Amount, the Administrator shall calculate 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) multiplying the result by each Participating Class Member's Workweeks. (Manus Decl., ¶ 19; Ex. 1, ¶ 3.2.4.) Using a straight average and assuming they worked throughout the Class Period, Plaintiffs estimates that each Class Member will receive an average of $504.42 (estimated Net Settlement Amount of $285,500.00 divided by 566 class members) for their Individual Class Payment for the class portion of the Settlement. (*Id*.) Each Aggrieved Employee's Individual PAGA Payment shall be calculated using the following formula:(a)

dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties ($7,500) by the total number of Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. (*Id*. at ¶ 18; Ex. 1, ¶ 3.2.5.1.).

Defendant will pay its employer-side payroll tax obligations on the Wage Portion of the Individual Class Payments in addition to the Gross Settlement Amount. (*Id*. at ¶ 16; Ex. 1, ¶ 4.3).

The Gross Settlement Amount was a compromise figure, factoring in the inherent risks related to certification, liability and damages. (*Id*. at ¶ 20.) However, considering all of the circumstances of the action and the defenses raised by Defendant against certification, liability and damages, Class Counsel believes that the settlement is fair and reasonable. (*Id*.)

Attached to the Settlement Agreement as Exhibit A is the Notice of Class Action Settlement (the "Class Notice"). Class Members will receive the Class Notice via first class mail. The procedures for mailing notice and submitting a request for exclusion or notice of objection as well as distribution of the Net Settlement fund is detailed in the Settlement. (Manus Decl., Ex. 1, ¶ 7.4.2.)

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 Defendant does not dispute for settlement purposes only, this requirement and the requirement of numerosity is met. Class Members are all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California at any time during the Class Period. Contract employees are not part of the "Class.". (Manus Decl., ¶ 76(a).) Documents and information exchanged between the parties reflect a class of approximately 566 Class Members. (*Id*.) The Class Members are readily identifiable by reference to Defendant's payroll and personnel records. (*Id*. at ¶ 76(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 Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Manus Decl., ¶ 76(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 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 Defendant's alleged failure to pay wages and overtime due to allegedly common and unlawful policies, failure to pay minimum wages, failure to provide meal and rest breaks, failure to reimburse necessary business expenses, the resulting failure to pay final wages when required, the failure to provide accurate paystubs, and the largely derivative claims under the Business & Professions Code and PAGA. Plaintiffs contend these practices affected Class Members in the same way. Plaintiffs contend these practices resulted in a failure to compensate employees at termination, and incomplete wages displayed on wage statements. The outcome of litigation on this matter depends upon questions that are common to Class Members. (Manus Decl., ¶ 76(f).) While Defendant maintained otherwise, these issues will not be decided based on facts peculiar to each Class Member, but rather based on facts common to them all. It is also true that these issues of liability can be determined on a class-wide basis. (*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 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 Defendant does 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. (Manus Decl., ¶ 76(c).) Plaintiffs were employed by Defendant during the Class Period and was subject to the allegedly unlawful meal and rest policies, reimbursement, and pay practices at issue in this litigation. (*Id*.) Accordingly, Plaintiffs are a member of the Class. (*Id.*) The central issues of this litigation (whether Defendant failed to pay all wages, whether Defendant failed to provide meal and rest periods, etc.), which would arise if this was an individual action, applies to the other Class Members as well. The answer to these questions would determine Defendant's liability to the putative class. (*Id.*) Thus, the claims of Plaintiffs are typical of the claims of the putative class. (*Id.*) Accordingly, 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. (Manus Decl., ¶¶ 3-7, 76(d). The Class Representatives' interests are aligned with those of the Class Members; they have suffered the same injuries as the Class Members and have no conflicts of interest. (Manus Decl., ¶ 76(d).) Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Manus Decl., ¶ 76(f).) The class action mechanism is superior to individualized actions because Class Members have little incentive to bring claims that are small. (Manus Decl., ¶ 76(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(l)(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. (Manus Decl., ¶ 12.) This discovery permitted Class Counsel to fairly evaluate the strengths 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. (Manus Decl., ¶¶ 3-7.)

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 expenses, failure to provide accurate wage statements, failure to keep required payroll records, failure to timely pay all wages when due, and related claims for violations of California's Business & Professions Code and for penalties under PAGA. (Manus Decl., ¶ 8.)

Class Counsel felt confident that the claims in this case would be certified given that Defendant's policies were applicable to all Class Members and unlawful on their face. (Manus Decl., ¶¶ 28-55.) Defendant contends, however, that that the policies and practices complied with California law.

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. (Manus Decl., ¶¶ 60-63.) 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.

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the Parties with an experienced mediator. In order to determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the time records for Plaintiffs, and Defendant provided Class Counsel with records for a sampling of the class members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiffs were to prevail at trial.

///

There are approximately 566 Class Members. Class Counsel calculated the maximum exposure on the unpaid wages claim is $162,702.50 ($154,687.50 + $8,015). (Manus Decl., ¶¶ 32, 33.) Class Counsel estimated the maximum exposure for the meal period claim is $349,781.60. (*Id.* at ¶ 38.) Class Counsel estimated the maximum exposure for the rest period claim is $259,437.60. (*Id.* at ¶ 41.) The maximum exposure for the wage statement claim was calculated to be approximately $155,900. (*Id.* at ¶ 44.) The maximum exposure for the waiting time penalties claim was calculated to be approximately $397,074.50. (*Id.* at ¶ 48.) The maximum exposure for the failure to reimburse business expenses claim was calculated to be approximately $92,246.50. (*Id.* at ¶ 50.) On the PAGA claim, the estimated maximum exposure is $642,300. (*Id.* at ¶ 54.)

Once Class Counsel was able to determine the maximum potential damages, it was able to determine a fair and reasonable settlement for the Class. (*Id*. at ¶¶ 57-59.) Class Counsel analyzed the likelihood of success on the merits. (*Id*.) It believes that the Class had a reasonable likelihood of success on the core claims. (*Id*.) However, Defendant disputes this contention, deny all wrongdoing in this matter and are confident it has strong legal and factual defenses to Plaintiffs' claims. Moreover, Class Counsel determined that the likelihood of success on the claims for unpaid wages and waiting time penalties were not as strong, because various defenses including issues not suitable for class treatment, no detriment to the class members over time, and *de minimis* defenses. Defendant may have had the opportunity to establish that it had a good faith belief that it was complying with the law. (*Id*.) After taking into account the likelihood of success on each claim and the challenges faced with certifying these claims, Class Counsel determined that the settlement amount of $550,000 was fair and reasonable. (*Id*. at ¶ 58.)

Under the Settlement, each of the approximately 566 Class Members will receive, using a straight average and assuming they worked throughout the Class Period, $504.42 (NSA of $285,500 / 566 for their Individual Class Payment. (*Id.* at ¶ 59.) Plaintiffs feel that this Settlement is fair, reasonable, and advantageous to the class.

To summarize, the Settlement here is fair because it provides a substantial payment to each Class Member for releasing his or her claims; extinguishes the risk of litigation; and

provides a fair and adequate distribution of the settlement proceeds whereby the funds are allocated to Class Members proportionally based on their Payout Ratio.

As detailed at length in the accompanying Declaration of Marta Manus, the settlement is the result of extensive settlement negotiations between the Parties, conducted at arm's length, and informed by substantial factual and legal investigations. Throughout this case, Class Members have been represented by experienced counsel with many years of experience in employment class action litigation. (*Id*. at ¶¶ 3-6.)

Class Counsel has devoted a considerable amount of time to the prosecution of this case, including but not limited to, interviewing Plaintiffs on repeated occasions; drafting pleadings; conducting considerable discovery, and meeting and conferring with defense counsel about same; reviewing and analyzing sample time records, pay records, relevant policies and handbooks, collective bargaining agreements, Plaintiffs' personnel file, and other documentation; researching California law; preparing for and attending mediation; and negotiating and finalizing the Settlement Agreement and related documents. (*Id*. at ¶¶ 11-15.)

Among those matters considered during the course of settlement negotiations were the strength of Plaintiffs' case versus the amounts offered in settlement; the risks, expenses, and length of further litigation, including class certification and the appeals process; the present state of the law as it applies to wage and hour class actions, particularly in light of *Brinker*; the present value of a settlement versus the long wait necessitated by any potential judgment in class members' favor; the burdens of proof necessary to establish liability against Defendant; and Defendant's defenses to the action. (Manus Decl., *passim*.)

These factors each indicated that the interests of Class Members are best served by a settlement of this action in the manner and upon the terms set forth in the Settlement Agreement. The Settlement Agreement confers a substantial benefit on the class of up to $550,000. Moreover, the Individual Class Payment for each Class Member will be tailored to their workweeks during the class period. (*Id.* at ¶ 19.) In addition, Class Counsel secured prospective relief for the class in that Defendant will ensure its policies comply with California law.

///

Class Counsel believes that the settlement is fair and reasonable and serves the best interests of the Class Members. Although the recommendations of counsel proposing the class settlement are not conclusive, the Court can properly take the recommendations into account, particularly if counsel has been involved in litigation for some period of time, appear to be competent, and have experience with this type of litigation, and significant discovery has been completed. *See Newberg,* §11.47.

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE 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 reasonable service payments for their efforts and initiative in bringing and helping to prosecute this class action. 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. (Manus Decl., ¶¶ 71-75.) In light of the foregoing, Class Counsel believes that the service payments in the amount of $10,000.00 to each Class Representative is fair and reasonable. (*Id.*)

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. (Manus Decl., ¶¶ 64-66.) Moreover, the Notice will specifically direct any class members who have questions or concerns to contact the Class Action Administrator, Apex, 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 packet will be sent via first-class mail to each class member. (Manus Decl., ¶ 64.) If any Class Notices are returned undeliverable without a forwarding address, the 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 Notice Packet.

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 herein.

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. Generally, 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, subject to approval by this Court, Class Counsel will seek an award of fees of no more than $181,500.00, approximately one-third of the Gross Settlement Amount, and up to $25,000 in litigation costs. The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. (Manus Decl. ¶¶ 68-70.) Defendant will not oppose Class Counsel's fees and cost request.

Class Counsel has borne the entire risk and costs of litigation and will not receive any compensation until recovery is obtained. (*Id*.) The Court should also consider the benefit obtained by Class Counsel on behalf of class members. Thus, the requested fees award is reasonable.

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

The Plaintiffs respectfully requests the Settlement be preliminarily approved, Class Notice approved and ordered mailed to the Class, Xpand Legal Consulting LLC, be appointed Settlement Administrator, David Keledjian, Norayr Zakaryan, Enoch J. Kim, Marta Manus, and the other attorneys of D.Law, Inc. be appointed Class Counsel, Bernettia Clara Williams and David Hernandez be appointed the Class Representative, and a Final Approval Hearing date be set.

Respectfully Submitted,

D.LAW, INC.

By _____

Enoch J. Kim
Marta Manus
Attorneys for Plaintiffs