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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ISAAC DELGADO, on behalf of himself and all others similarly situated, the State of California, and the general public, Plaintiff, v. OLDCASTLE INFRASTRUCTURE, INC., a Washington corporation; and DOES 1 through 50, inclusive, Defendants.	Case No. STK-CV-UOE-2023-11312 CLASS ACTION Assigned for All Purposes to: Honorable Robert T. Waters Dept. 11B **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Date: Time: Dept.: 11B

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Isaac Delgado, Marcos Gutierrez, and Rene Serrano ("Plaintiffs") seek preliminary approval of a putative class and representative action settlement with Defendant Oldcastle Infrastructure, Inc. ("Defendant") (Plaintiffs and Defendant collectively referred to herein as "the Parties") on behalf of themselves and a proposed class of all persons who both (1) worked for Defendant as non-exempt employees in the State of California at any time during the Class Period and (2) were not subject to a collective bargaining agreement at any time during the Class Period, which is October 26, 2019 through October 4, 2025 ("Class" or "Class Members"). After participating in mediation, the Parties reached a settlement in the gross amount of $2,080,000.00 to resolve the action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiffs respectfully request that this Court grant preliminary approval of the Parties' Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1). The Settlement Agreement was reached after the Parties engaged in formal and informal discovery and investigation, participated in mediation with a skilled mediator, and negotiated at arm's length through experienced counsel on both sides.

As discussed below, the Settlement satisfies all criteria for preliminary approval, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On October 26, 2023, Plaintiff Delgado commenced an Action in the Superior Court of the State of California, County of San Joaquin 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 Proper Vacation Wages (Lab. Code § 227.3); (5) Failure to Provide Accurate Written

Wage Statements (Lab. Code § 226(a)); (6) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); (7) Failure to Indemnify (Lab. Code § 2802); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) under Case Number STK-CV-2023-11312. On October 26, 2023, Plaintiff Delgado gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-990042-23) pursuant to Labor Code § 2699.3, subd. (a). On January 16, 2024, Plaintiff Delgado filed the First Amended Complaint, which added claims for civil penalties under Labor Code § 2698, *et seq.* On June 26, 2024, Plaintiff Delgado filed a Second Amended Complaint adding a second Plaintiff, Raymont Ortiz, to the Case. This matter was then removed to Federal Court. (Kim Decl., ¶ 3.)

On May 1, 2024, Plaintiff Serrano gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-1025667-24). This matter was then removed to Federal Court. (Kim Decl., ¶ 4.)

On January 6, 2025, Plaintiff Delgado filed a Third Amended Complaint adding Marcos Gutierrez to this matter and on February 10, 2025, Plaintiff Delgado filed a Fourth Amended Complaint removing Mr. Ortiz from the complaint. On August 6, 2025, Plaintiff Delgado filed a Fifth Amended Complaint following the Court's Order on Defendant's Motion to Dismiss which granted leave to amend. (Kim Decl., ¶ 5.)

On March 27, 2026, pursuant to the terms of the Settlement, the matter was remanded back to the Superior Court of California, County of San Joaquin. Plaintiff Delgado filed a Sixth Amended Complaint adding Plaintiff Serrano and the claims in the Serrano action. (Kim Decl., ¶ 6.)

B. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 7.) This required thorough discussions and interviews between Class Counsel and Plaintiffs. (*Id*.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) meeting and conferring with defense counsel and conducting formal and informal discovery; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiffs' personnel files and other documentation; (4) interviewing Plaintiffs

regarding Defendant's policies and workplace; (5) researching the applicable law and potential defenses; (6) constructing damage models based on the facts and numbers provided by Defendant, including consulting experts; and (7) reviewing information provided by Defendant in response to formal and informal discovery and in advance of the mediation. (*Id*.)

C. Settlement Efforts

On October 3, 2024, the Parties participated in an all-day mediation with mediator Monique Ngo-Bonnici, a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 9.) During mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both Parties of proceeding with a class certification motion, as well as the law on unpaid wages, meal periods, rest periods, reimbursements, wage statements, and final pay. (*Id.*) A settlement was not reached on the day of mediation and the Parties returned to a litigation posture; however, settlement discussions between the Parties and with the assistance of the mediator continued. (*Id.*) On September 2, 2025, the Parties reached a settlement in principle. (*Id.*) The Parties continued to work together negotiating the long-form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id*.)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the Settlement Agreement, Defendant has agreed to pay $2,080,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis. (Kim Decl., ¶ 11, Exhibit 1, Settlement Agreement, ¶ 1.21.) The Gross Settlement Amount does not include the employer's share of payroll taxes, which will be paid by Defendant in addition to the Gross Settlement Amount. (*Id*. at ¶ 3.1.)

The "Net Settlement Amount," available for distribution to Participating Class Members, is the Gross Settlement Amount less the following payments in the amounts approved by the Court:

- Class Counsel Fees Payment*:* Up to thirty-five percent (35%) of the Gross Settlement Amount, or **$728,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Counsel Litigation Expenses Payment: Reimbursement of actual expenses incurred to prosecute the Action, which are currently estimated not to exceed **$30,000.00** (Kim Decl.,

¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.2);

- Class Representative Service Payment: Up to **$10,000.00** to each Plaintiff (for a total of $30,000.00) as an award for their services as the Class Representatives (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Administration Expenses Payment: Up to **$13,000.00** to the Administrator for its fees and costs to administer the Settlement (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.3); and
- PAGA Penalties: **$140,000.00** for settlement of claims for civil penalties under PAGA, with 25% ($35,000.00) to be paid on a pro-rata basis to the Aggrieved Employees ("Individual PAGA Payments") and 75% ($105,000.00) to be paid to the LWDA ("LWDA PAGA Payment") (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $**1,139,000.00**. (Kim Decl., ¶ 13.) Each Class Member's share of the Net Settlement Amount ("Individual Class Payment") 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) multiplying the result by each Participating Class Member's Workweeks. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 11,163 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **$102.03.** (Kim Decl., ¶ 13.)

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 on 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" when they may be readily identified without unreasonable expense or time.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all persons who both (1) worked for Defendant as non-exempt employees in the State of California at any time during the Class Period and (2) were not subject to a collective bargaining agreement at any time during the Class Period. (Kim Decl., ¶ 16, Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) Defendant has identified at least 11,163 Class Members based on a review of its records. (Kim Decl., ¶ 16.) Therefore, 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 "does 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 Plaintiffs, and the Class is united in its proof. (Kim Decl., ¶ 17.) 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*s, 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 a determination about Defendant's alleged failure to pay all wages due by requiring Class Members to work off the clock, failure to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failure to pay vacation wages, failure to pay all sick pay owed, failure to reimburse necessary business expenses, failure to furnish accurate wage statements, and failure to timely pay wages including final wages. (Kim Decl., ¶ 17.) Plaintiffs contend 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.*)

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.

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. (Kim Decl., ¶ 18.) 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 Plaintiffs and the Class zealously, and have no conflicts of interest. (Kim Decl., ¶ 19.) The Class Representatives' 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. (*Id*.) Plaintiffs have devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*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., ¶ 20.) As explained above, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id*.) Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees. (*Id*.) Plaintiffs allege 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*.)

Plaintiffs contend that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy, as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (Kim Decl., ¶ 21.) Although the alleged injuries resulting from Defendant's policies and practices are real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. (*Id*.) If Class Members are forced to litigate their claims individually, it would potentially result in more than 11,163 individual actions against Defendant, each for relatively small amounts. (*Id*.) Hence, an individual suit would prove

uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id*.)

V. THE THREE STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure for settlements of class actions. *See* Manual for Complex Litigation, Second § 30.44 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is the dissemination of notice of the settlement to all Class Members. (*Id*.) The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and Class Members may be heard. (*Id.*)

The determination of whether a settlement should be preliminarily approved requires "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. However, the record need not contain an explicit statement of the maximum theoretical amount that the class could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409 ("*Kullar* does not,… require any such explicit statement of value; it requires a record which allows 'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'"). "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement." Manual for Complex Litigation, Second § 30.44, at 229.

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery

completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." (*Id.*)

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.").

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations

The proposed settlement was reached as a result of arm's-length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl., ¶ 23.) 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 Plaintiffs steadfastly maintain that their claims are meritorious, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. (*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 formal and informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. (*Id.* at ¶ 24.) 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 Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation

Plaintiffs allege that Defendant failed to pay Plaintiffs and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 26.) Plaintiffs allege that Defendant required Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including by waiting for computers to boot in order to log in and answer incoming communications from supervisors and clients after clocking out for the day. (*Id*.) However, Plaintiffs allege that Class Members were not paid for the time they worked in excess of their scheduled hours. (*Id*.)

Defendant contends that it instructed Class Members to record all hours worked, that it paid Class Members for all reported hours worked, that any off-the-work was performed without Defendant's knowledge and was de minimis, and that it paid wages to Class Members at the proper rates. (Kim Decl., ¶ 27.) Defendant contends that off-the-clock work allegations will be difficult to certify because Defendant has a lawful policy prohibiting off-the-clock work. (*Id.*) Defendant also argues that, given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (*Id.*)

Plaintiffs allege that Defendant failed to provide proper meal breaks to Class Members. (Kim Decl., ¶ 28.) Plaintiffs allege that Defendant required Class Members to work through their meal periods due to understaffing and large workload. (*Id*.) Plaintiffs further allege that on occasions when Plaintiffs and Class Members worked over ten hours on a shift, Defendant failed to provide them with a second uninterrupted, duty-free, and timely meal period. (*Id*.)

Defendant contends that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary election of Class Members. (Kim Decl., ¶ 29.) Further, Defendant argues that employees signed valid meal period waivers. (*Id.*) Defendant further contends that the meal break claim requires individualized inquiries, which would preclude class certification. (*Id.*)

Plaintiffs also allege that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. (Kim Decl., ¶ 30.) Plaintiffs contend that

Class Members were not permitted to leave Defendant's premises during rest periods, that rest breaks were often interrupted, and that employees were forced to monitor their cell phones during rest breaks. (*Id*.)

Defendant maintains that it authorized and permitted Class Members to take duty-free rest breaks of at least ten minutes for every four hours worked or major fraction thereof. (Kim Decl., ¶ 31.) Defendant contends that there are no restrictions, in policy or practice, on where employees can go during their rest breaks. (*Id*.) Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. (*Id*.)

Additionally, Plaintiffs allege that Defendant required Class Members to pay for costs associated with utilizing their personal cell phones and home internet systems for work. (Kim Decl., ¶ 32.) Defendant maintains that Class Members did not incur business expenses and/or were properly reimbursed for all business expenses and further contends that any unreimbursed business expenses were not necessary expenditures as required by Labor Code section 2802. (*Id*.) Defendant also maintains that individualized issues relating to this claim would preclude class certification. (*Id*.)

As for the wage statement and waiting time penalties claims, Defendant contends that these claims are merely derivative of the underlying claims and that Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶ 33.) Defendant further contends that even if they could first establish liability for the underlying claims, Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate wage statements and pay all wages due to Class Members. (*Id*.)

Similarly, Defendant contends 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., ¶ 34.) Defendant also contends 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 Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id*.)

As stated above, while Plaintiffs contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation that would have likely spanned several years at a heavy cost. (Kim Decl., ¶ 36.) This Settlement avoids those risks. (*Id*.)

D. The Risk of Maintaining Class Action Status Through Trial

Plaintiffs had not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed Class was certifiable is somewhat speculative. (Kim Decl., ¶ 37.) Absent a settlement, there was a risk that there would not be a certified class at the time of trial, or if there was, such a class could consist of a significantly smaller group of employees than the proposed Class, resulting in less overall recovery. (*Id*.)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (Kim Decl., ¶ 38.) 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*.)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). (Kim Decl., ¶ 39.)

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

Based on an analysis of Plaintiffs' 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: $438,599.60 for the unpaid wages claims, including minimum and overtime wages, due to off-the-clock work; $429,880.00 for meal period violations; $749,831.80 for rest period violations; $265,750.00 for wage statement penalties; $418,432.00 in waiting time penalties; $261.90 for unpaid sick pay and vacation pay; $126,432.00 for reimbursement for necessary business

expenditures; and $166,255.00 for PAGA penalties. (Kim Decl., ¶¶ 43-66.) As such, the total estimated realistic exposure Defendant could face is $2,595,180.40. (*Id*. at ¶ 67.)

The Gross Settlement Amount of $2,080,000.00 represents a recovery for the Class of approximately 80% of the total realistic exposure Plaintiffs estimated Defendant could face on the primary claims in this case. (*Id*.) 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 in light of all of the factors described above. (*Id*.)

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. As noted above, the Gross Settlement Amount represents a recovery of approximately 80% of the estimated total realistic exposure facing Defendant. (Kim Decl., ¶ 67.)

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were ultimately denied. Settlement is a prudent compromise that benefits the Class Members promptly.

H. 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 submits that 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., ¶¶ 10, 68, 73-78.)

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT 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.).

Plaintiffs are entitled to a reasonable service payment for their efforts and initiative in bringing and helping to prosecute this action and obtaining significant benefits from the Settlement for the Class. (Kim Decl., ¶ 69.) Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel. (*Id*.) Plaintiffs provided Class Counsel with information about Defendant, produced and reviewed documents, identified witnesses, monitored the progress of the litigation with Class Counsel, participated in the mediation process, and reviewed and signed the Settlement Agreement. (Kim Decl., ¶ 70.)

In light of the foregoing, Class Counsel believes that the $10,000.00 Class Representative Service Payment to each Plaintiff (for a total of $30,000.00) is fair and reasonable. (*Id*.)

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 afford Class Members the opportunity to present their objections. (*Id.*)

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 challenge the number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant's records. (Kim Decl., ¶ 71, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.)

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 USPS mail to each of the Class Members based on Defendant's records. (Kim Decl., ¶ 71, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) For Class Notices returned as undelivered, the Administrator will remail the Class Notice to a forwarding address (if provided) and conduct skip tracing to obtain a current address if no

forwarding address is provided. (Kim Decl., ¶ 71, Exhibit 1, Settlement Agreement, ¶ 7.4.3.)

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

Class Counsel respectfully requests, without opposition from Defendant, an award of $728,000.00 for attorneys' fees and up to $30,000.00 for reasonable expenses incurred to prosecute the Action, subject to approval by the Court. (Kim Decl., ¶ 68.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 73-78.) 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., ¶ 68.) 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.

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

The Parties respectfully request this Court: (1) grant preliminary approval of the Settlement, (2) certify the proposed Class for settlement purposes, (3) approve Plaintiffs as Class Representatives and D.Law, Inc. and Elkin Gamboa, LLP as Class Counsel, (4) approve Apex as the Settlement Administrator, and (5) schedule the Final Approval Hearing.

Dated: November 9, 2026

D.LAW, INC.

By _____
Enoch J. Kim
Matthew Carraher
Attorneys for Plaintiffs and Class