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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SOLANO

MELISSA JOSEPHINE FLUTY, on behalf
of herself and others similarly situated,

Plaintiff,

v.

ZEPEXCO, INC. dba ZEPHYR
EXPRESS, a California Corporation;
WINEBOW, INC., dba WINEBOW, a
Delaware Corporation; CENTRAL
COAST WINE COMPANY, a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: CU23-05443

CLASS ACTION

Assigned for All Purposes

To: Hon. Christine A. Carringer, Dept 12

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARILY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

*[Filed concurrently with Plaintiff's Notice of
Motion and Motion; Declaration of Enoch J.
Kim; Declaration of Melissa Josephine Fluty; and
[Proposed] Order]*

Date: August 13, 2025

Time: 8:30 a.m.

Dept.: 12

Original Complaint Filed: November 17, 2023

First Amended Complaint Filed: January 23, 2024

Trial Date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Melissa Josephine Fluty (“Plaintiff”) filed a class and representative action
4 complaint in this Court against Defendant Zepexco, Inc. dba Zephyr Express (“Defendant
5 Zepexco”), Defendant Winebow, Inc. dba Winebow (“Defendant Winebow”), and Defendant
6 Central Coast Wine Company (“Defendant Central Coast Wine”) (hereinafter collectively referred
7 to as “Defendants,” and Plaintiff and Defendants collectively referred to as the “Parties”). Plaintiff
8 alleged claims against Defendants for failure to minimum and overtime wages, failure to provide
9 meal and rest breaks, failure to provide accurate, itemized wage statements, failure to timely pay
10 all wages owed during employment and upon termination of employment, failure to provide
11 reimbursements for business expenses incurred, and for civil penalties for California Labor Code
12 violations under the Private Attorneys General Act (“PAGA”).

13 After engaging in substantial investigation and extensive negotiations with the assistance
14 of a respected mediator, the Parties agreed to settle all claims alleged in this action on a class-wide,
15 non-reversionary basis for \$619,500.00, inclusive of all fees and costs. The Parties’ Class Action
16 and PAGA Settlement Agreement (“Settlement” or “Settlement Agreement”) defines the class as
17 all persons employed by Defendants in California and classified as a non-exempt hourly employee
18 who worked for Defendants during the Class Period, which is November 17, 2019 through October
19 19, 2024 (“Class”). All 303 Class Members will receive a settlement payment unless they opt out
20 of the Settlement.

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

4 **A. Procedural History**

5 On November 17, 2023, Plaintiff commenced a Class Action by filing a Complaint alleging
6 causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay
7 Wages and Overtime under Labor Code 510; (3) Meal Period Liability Under Labor Code 226.7;
8 (4) Rest Break Liability Under Labor Code § 226.7; (5) Reimbursement of Necessary Expenditures
9 Under Labor Code § 2802; (6) Violation of Labor Code § 226(a); (7) Failure to Keep Required
10 Payroll Records Under Labor Code §§ 1174 and 1174.5; (8) Penalties Pursuant to Labor Code §
11 203; and (9) Violation of Business & Professions Code 17200 *et seq.* (“Action”). (Kim Decl., ¶ 3.)

12 On November 16, 2023, pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave
13 timely written notice to Defendants and California’s Labor and Workforce Development Agency
14 (“LWDA”) by sending her letter detailing the alleged violations of the California Labor Code by
15 Defendants (LWDA-CM-994886-23) (“PAGA Notice”). (Kim Decl., ¶ 3.) On January 23, 2024,
16 Plaintiff filed a First Amended Complaint adding a cause of action for penalties under PAGA
17 (“Operative Complaint”). (*Id.*)

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

20 **B. Plaintiff’s Claims and Defendant’s Denials**

21 Plaintiff’s claims are based on Defendants’ alleged failure to pay wages (including overtime
22 and off-the-clock work), failure to provide meal and rest periods, failure to reimburse business
23 expenses, the resulting failure to pay final wages when required and provide accurate wage
24 statements, and largely derivative claims under the Unfair Competition Law (“UCL”) and PAGA.
(Kim Decl., ¶ 5.)

25 Specifically, Plaintiff alleges that Defendants required Plaintiff and Class Members to wear
26 protective gear, including safety vests, when entering the shipping and storage area where the time
27 clocks are located. (Kim Decl., ¶ 6.) As such, Plaintiff and Class Members were required to don
28 safety vests, which were kept in a separate location, and walk to the area where the time clocks are

1 located to clock in and out, resulting in approximately three to five minutes of off-the-clock work
2 per day. (*Id.*) Plaintiff also alleges that Plaintiff and Class Members were required to respond to
3 work-related calls after having clocked out for the day. (*Id.*) Defendants' practice led to Plaintiff
4 and Class Members not being compensated for all hours worked, resulting in unpaid regular and
5 overtime wages. (*Id.*)

6 Plaintiff also alleges that Defendants frequently interrupted Plaintiff's and Class Members'
7 meal periods with work related tasks and questions that they were told required immediate
8 attention. (Kim Decl., ¶ 7.) Accordingly, Defendants' practice led to Plaintiff and Class Members
9 to suffer from short, late, and interrupted meal periods. (*Id.*) Plaintiff also alleges that Defendant
10 failed to pay the legally required premium at their regular rate of pay whenever meal periods were
11 missed, interrupted, or late. (*Id.*)

12 Plaintiff also alleges that Defendants failed to authorize and permit Plaintiff and Class
13 Members to leave Defendants' premises during rest periods. (Kim Decl., ¶ 8.) Specifically, Plaintiff
14 and Class Members were explicitly told by their supervisors that they were not allowed to leave the
15 premises during their rest period. (*Id.*) Furthermore, Plaintiff and Class Members would often have
16 to answer work related questions from their supervisors during their rest periods. (*Id.*) Plaintiff also
17 alleges that Defendant failed to pay the legally required premium at their regular rate of pay
18 whenever rest periods were missed, interrupted, or late. (*Id.*)

19 Additionally, Plaintiff alleges that Defendants required Plaintiff and Class Members to use
20 their personal cellular phones for work-related communications, for which they were not
21 reimbursed. (Kim Decl., ¶ 9.) Furthermore, Plaintiff and Class Members occasionally worked from
22 home which required home internet usage. (*Id.*) Accordingly, Plaintiff alleges that Defendants
23 failed to reimburse Plaintiff and Class Members for their personal cellular phone and home internet
24 usage which were required to perform their job duties for Defendants. (*Id.*)

25 Defendants generally deny all claims alleged in the Action and further deny class and/or
26 representative treatment is appropriate for any purpose other than this Settlement and that they
27 complied with all applicable laws. (Kim Decl., ¶ 10.) However, after careful consideration,
28 Defendants have concluded that further litigation would be protracted and expensive and that it is

desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

C. Investigation

Before filing the Action, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 11.) This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. (*Id.*) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the Action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. (*Id.*) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*)

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (Kim Decl., ¶ 12.)

D. Settlement Efforts

On August 20, 2024, the Parties participated in an all-day mediation with Brandon McKelvey, a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 13.) During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks associated with continued litigation and class certification issues, as well as the law and how it applied to the claims in this case. (*Id.*) As a result of the mediation, the Parties

1 agreed to settle the Action according to the terms set forth in the Settlement Agreement. (*Id.*)

2 From Class Counsel’s review of the facts, strengths, and weaknesses of the case and the
3 risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class
4 Member is fair and reasonable taking into consideration the amounts received in other wage and
5 hour class actions, the risks inherent in litigation of this genre, and the reasonable tailoring of each
6 Class Member’s claim to the settlement award he or she will receive. (Kim Decl., ¶ 14.) Further,
7 and based on the settlement negotiations, which were extensive and conducted in good faith and at
8 arm’s length between attorneys with substantial experience litigating class actions and wage and
9 hour cases, the Settlement Agreement was the product of a non-collusive settlement process in
10 which the Parties were forced to make significant compromises in the interest of reaching a full and
11 complete settlement of the Action. (*Id.*)

12 **III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS**

13 Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay a non-
14 reversionary settlement amount of \$619,500.00 (“Gross Settlement Amount” or “GSA”) and to
15 separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual
16 Class Payments. (Kim Decl., Ex. 1, ¶ 3.1.)

17 The Settlement Agreement defines “Class Member” or “Settlement Class Member” as a
18 member of the Class: “all persons employed by Defendants in California and classified as a non-
19 exempt hourly employee who worked for Defendants during the Class Period,” which is November
20 17, 2019 through October 19, 2024. (Kim Decl., Ex. 1, ¶¶ 1.5, 1.9, and 1.12.) The Settlement
21 Agreement also defines “Aggrieved Employees” as “a person employed by Defendants in
22 California and classified as a non-exempt hourly employee who worked for Defendants during the
23 PAGA Period,” which is November 17, 2022 through October 19, 2024. (Kim Decl., Ex. 1, ¶¶ 1.4
24 and 1.31.)

25 The “Net Settlement Amount,” available for distribution to Class Members, is the Gross
26 Settlement Amount, less the LWDA PAGA Payment, Individual PAGA Payment, Class
27 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
28 Payment, and the Administration Expenses Payment. (Kim Decl., Ex. 1, ¶ 1.28.) These amounts

are detailed as follows:

- Class Counsel Fees and Litigation Expenses Payment: Up to one-third (1/3) of the GSA, or \$206,500.00, to Class Counsel for attorneys' fees, and up to \$45,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (Kim Decl., Ex. 1, ¶ 3.2.2);
- Class Representative Service Payment: Up to \$5,000.00 to Plaintiff as an enhancement award for service as the class representative (Kim Decl., Ex. 1, ¶ 3.2.1);
- Administrator Expenses Payment: Up to \$8,500.00 to the Settlement Administrator for its fees and costs to administer the Settlement (Kim Decl., Ex. 1, ¶ 3.2.3);
- PAGA Penalties: \$50,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees (\$12,500.00) and 75% allocated to the LWDA (\$37,500.00) will be paid to the LWDA ("LWDA Payment"). (Kim Decl., Ex. 1, ¶ 3.2.5.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be \$304,500.00. (Kim Decl., Ex. 1, ¶ 1.28.) Each Class Member's share of the Net Settlement Amount will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Kim Decl., Ex. 1, ¶ 3.2.4.1.) For the 303 Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is \$1,004.95. (Kim Decl., at ¶ 16.) If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Kim Decl., Ex. 1, ¶ 3.2.1-3.2.5.2.)

The Class Notice is attached to the Settlement Agreement as Exhibit A. (Kim Decl., ¶ 17.) The Settlement Administrator will mail the Class Notice to all Class Members no later than 14 days after receiving the Class Data. (Kim Decl., Ex. 1, ¶ 7.4.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant's records. (Kim Decl., Ex. 1, ¶¶ 7.4-7.7.3.) Class Members will have 60 days from the mailing of the Class Notice to opt out of or object to the

1 Settlement or to dispute the number of workweeks and/or pay periods; Class Members will have
2 an additional 14 days if they receive a re-mailed Notice. (Kim Decl., Ex. 1, ¶¶ 7.5.1-7.7.3.)

3 **IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE**

4 Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v.*
5 *CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981)
6 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor
7 of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75.)
8 The decision to certify a class is a procedural one and should be based on the allegations in the
9 operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v.*
10 *Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

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

16 **A. There Is a Numerous and Ascertainable Class**

17 Whether a class is ascertainable is determined by examining the class definition, the size of
18 the class and the means available for identifying class members. *See Vasquez, supra*, 4 Cal. 3d at
19 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271.
20 Class members are “ascertainable” where they may be readily identified without unreasonable
21 expense or time.

22 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that the
23 numerosity and ascertainability elements are satisfied here. Class Members are all current and
24 former non-exempt, hourly employees of Defendants employed in California during the Class
25 Period (November 17, 2019 through October 19, 2024). (Kim Decl., ¶ 19; Ex. 1, ¶ 1.12.) Defendants
26 have identified 303 Class Members based on review of its payroll and personnel records. (*Id.*)

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

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

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

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

13 *Id.* at 809.

14 Plaintiff contends, and Defendants do not dispute for settlement purposes only, that
15 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
16 Class is united in its proof. (Kim Decl., ¶ 20.) Because Plaintiff has alleged a single scheme, “the
17 relevant proof [does] not vary among class members” and “clearly presents a common question
18 fundamental to all class members.” *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY
19 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY
20 1997) 169 F.R.D. 493, 518). California courts show “no hesitancy” in inferring class-wide
21 causation, class-wide injury, and class-wide damages when a common course of action has been
22 shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference ““eliminates the need for
23 each class member to prove individually the consequences of the defendants’ actions to him or
24 her.”” *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753
25 [emphasis added]).

26 This action involves, *inter alia*, a determination about Defendants’ alleged failure to provide
27 meal and rest periods, failure to pay minimum wages due to common off-the-clock work policies,
28 failure to pay overtime, failure to reimburse business expenses; the resulting failure to pay final
wages when required and to provide accurate wage statements; and largely derivative claims under
the UCL and PAGA. (Kim Decl., ¶ 20.) Plaintiff contends Defendants’ practices affected Class
Members in the same way and present questions that are suitable for common adjudication because
all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome

1 of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

2 **C. The Named Plaintiff's Claims Are Typical**

3 A class representative's claims are typical when they arise from the same event, practice,
4 or course of conduct that gives rise to the claims of other putative class members, and if their claims
5 rest on the same legal theories. The class representative's claims must be "typical" but not
6 necessarily identical to the claims of other class members. It is sufficient that the representative is
7 similarly situated so that he or she will have the motive to litigate on behalf of all class members.
8 *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.*
9 (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class
10 representative must have identical interests with the class members."). Thus, it is not necessary that
11 the class representative should have personally incurred all the damages suffered by each of the
12 other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

13 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
14 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
15 basis and are based on the same legal theories. (Kim Decl., ¶ 21.) Thus, Plaintiff's claims are typical
16 of the claims of the putative Class. (*Id.*)

17 **D. Adequacy of Class Counsel and Class Representative**

18 As detailed below, Class Counsel are experienced in wage and hour class actions, have
19 represented their clients zealously and have no conflicts of interest. (Kim Decl., ¶¶ 22, 65-69.) The
20 Class Representative's interests are aligned with those of the Class Members, as he has suffered
21 the same injuries as the Class Members and has no conflicts of interest. (*Id.* at ¶ 22). Plaintiff has
22 not shrunk from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of time
23 and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel
24 and the Class Representative are adequate.

25 **E. Predominance and Superiority**

26 Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 23.) As
27 explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and
28 all Class Members were subjected to the same policies and pay practices during the relevant time

1 period. (*Id.*) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime,
2 reimbursement for business expenses, and penalties for work performed as non-exempt employees
3 for Defendants. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because
4 all Class Members were allegedly subject to the same employment policies, and Plaintiff contends
5 the practices applied uniformly to all Class Members. (*Id.*)

6 Plaintiff contends that class resolution is superior to other available methods for the fair and
7 efficient adjudication of the controversy as there is little interest or incentive for Class Members to
8 individually control the prosecution of separate actions. (Kim Decl., ¶ 24.) Although the alleged
9 injury resulting from Defendants' policies and practices are real and significant, the cost of
10 individually litigating each such case against Defendants would easily exceed the value of any relief
11 that could be obtained by any one Class Member individually. (*Id.*) If Class Members are forced to
12 litigate their claims individually, it would potentially result in over 303 individual actions against
13 Defendant each for relatively small amounts. (*Id.*) Hence, an individual suit would prove
14 uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

15 **V. THE THREE STEP APPROVAL PROCESS**

16 California Rule of Court 3.769 requires court approval of the settlement of class action
17 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval
18 procedure for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44
19 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is
20 the dissemination of notice of the settlement to all Class Members. *Id.* The third step is a final
21 settlement approval hearing, at which evidence and argument concerning the fairness, adequacy,
22 and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

23 The determination of whether a settlement should be preliminarily approved requires, "basic
24 information about the nature and magnitude of the claims in question and the basis for concluding
25 that the consideration being paid for the release of those claims represents a reasonable
26 compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. However, the
27 record need not contain an explicit statement of the maximum theoretical amount that the class
28 could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th

399, 409 (“*Kullar* does not,... require any such explicit statement of value; it requires a record which allows “an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.”). “If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.” *Manual for Complex Litigation*, Second § 30.44, at 229.

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is “fair, adequate, and reasonable” and falls within the “range of approval.” *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as “the strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement.” *Id.* The Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

The Court’s decision to preliminarily approve a settlement is granted great deference, as an exercise within its broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235. As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.”). Applying the above factors, the proposed Settlement provides a substantial benefit to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

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

1 **Negotiations.**

2 The proposed Settlement was reached as a result of arm's length negotiations after the
3 completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 26.) The
4 negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) See, 4 Newberg
5 on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will
6 presume that a proposed class action settlement is fair when certain factors are present, particularly
7 evidence that the settlement is the product of arms-length negotiation, untainted by collusion."").
8 Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that
9 there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed above,
10 Defendants presented multiple defenses to Plaintiff's claims, both on the merits and with respect to
11 class certification. (*Id.*) Thus, while Plaintiff was prepared to litigate these claims through class
12 certification, and ultimately trial, success was far from certain. (*Id.*) Assistance from a well-
13 respected mediator ensured negotiations between the Parties were non-collusive and well-informed.
14 (*Id.*)

15 **B. Extent of Discovery and Stage of Proceedings**

16 As stated above, the Parties engaged in substantial informal discovery before the Settlement
17 was reached to allow them to fully evaluate the class claims and Defendants' defenses. (Kim Decl.,
18 ¶ 27.) This litigation has reached the stage where the Parties have a clear view of their respective
19 strengths and weaknesses in this case. (*Id.*)

20 **C. The Strength of Plaintiff's Case and the Risk, Expense, Complexity and**
21 **Likely Duration of Any Litigation.**

22 As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action
23 have merit, they also acknowledge the expense and delay of continued litigation. (*Id.* at ¶ 28.)
24 Although the Parties engaged in significant informal discovery in advance of mediation, the Parties
25 still had significant discovery to complete had the matter not settled. (*Id.*) This would have required
26 expenditure of substantial time and resources by both Parties that would have very likely spanned
27 several years. (*Id.*) Even if Plaintiff were to certify the classes, the Parties would incur considerably
28 more attorney fees and costs through a possible decertification motion, trial, and possible appeal.

(*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

D. The Risk of Maintaining Class Action Status Through Trial.

Plaintiff has not yet filed her motion for class certification, and as such, the extent to which Plaintiff's proposed classes are certifiable is somewhat speculative. (Kim Decl., ¶ 29.) Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class resulting in less overall recovery. (*Id.*)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (Kim Decl., ¶ 30.) Cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id.*) An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.*)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2). (Kim Decl., ¶ 31.)

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

If the Court approves the above allocations from the Gross Settlement Amount of \$619,500.00, the Net Settlement Amount is estimated to be \$304,500.00. (*Id.* at ¶ 16.) There are approximately 303 total Class Members. (*Id.*) If there are no exclusions from the Class, the average gross individual settlement payment share per Class Member, using a straight average, is \$1,004.95. (*Id.*)

1 Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay
2 records for the Class, and after taking into consideration Defendants' contentions relating to the
3 merits of each claim as well as the challenges in certifying each claim, Plaintiff estimated the
4 potential exposure for the main claims as follows: \$26,917.60 for unpaid wages, including
5 minimum and overtime wages; \$142,918.60 for meal period violations; \$375,192.60 for rest period
6 violations; \$14,746.20 for unreimbursed business expenses; \$53,980.00 in wage statement
7 penalties; \$236,651.60 in waiting time penalties; and \$275,800.00 for PAGA penalties. (*Id.* at ¶¶
8 34-58). As such, Plaintiff estimated the total realistic exposure Defendants could face is
9 \$1,126,206.60. (Kim Decl. ¶ 58.)

10 The Gross Settlement Amount of \$619,500.00 represents a recovery for the Class of
11 approximately 55% of the total realistic liability exposure Plaintiff estimated that Defendant could
12 face on the main claims in this case. (Kim Decl. ¶ 58.) Plaintiff and Class Counsel submit that this
13 is an excellent result in the face of uncertainty and the prospects of protracted and contested
14 litigation through class certification, summary judgment, and trial.

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

16 In deciding whether to approve the settlement, the Court must balance these risk factors
17 against an "understanding of the amount in controversy and the realistic range of outcomes of the
18 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI*
19 *Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop
20 short of the detailed and thorough investigation that it would undertake if it were actually trying
21 the case" *Munoz*, at 408. Class Counsel used the comprehensive data and documents provided
22 to perform an analysis of the potential liability exposure Defendants faced on Plaintiff's main class-
23 wide claims, establishing the realistic range of outcomes in this case. (Kim Decl. ¶¶ 34-58.) As
24 noted above, the Gross Settlement Amount represents a recovery of approximately 55% of the
25 estimated total realistic liability exposure (Kim Decl., ¶ 58.)

26 There was a very real prospect that nothing would be recovered by the Class if litigation
27 continued and class certification were ultimately denied. At the same time, further litigation would
28 require the expenditure of significant time and financial resources, and there is always the

possibility of adverse developments in the law and the likelihood of extended battles in both the trial court and courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

F. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented Plaintiff and Class Members zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 22, 65-69.) 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., ¶ 69.)

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.). Plaintiff requests a reasonable enhancement payment for her effort and initiative in bringing and helping to prosecute this class action (Kim Decl., ¶ 60.)

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

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

Plaintiff has spent a significant amount of time with Class Counsel detailing her knowledge

1 of Defendants’ practices. (Kim Decl., ¶ 61.) Plaintiff has diligently, adequately, and fairly
2 represented the Class Members, and has not placed her interests above any member of the putative
3 Class. (Fluty Decl., ¶¶ 2-10.) This sort of payment to a Class representative has been a common
4 feature of settlements negotiated by Class Counsel and routinely approved by courts. The class
5 representative service payment of \$5,000.00 to Plaintiff is fair and reasonable. (Kim Decl., ¶ 62;
6 Fluty Decl., ¶¶ 2-16.)

7 **VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE**
8 **CLASS MEMBERS.**

9 To be deemed proper, a notice must provide the Class Members with sufficient information
10 to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central*
11 *Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the Class Members
12 of the pendency of the action; reasonably convey information regarding the settlement and the Class
13 Members’ rights, entitlements, and obligations; and affords Class Members the opportunity to
14 present their objections. *Id.*

15 The proposed Class Notice provides all the information a reasonable person would need to
16 make a fully informed decision about the settlement. It will notify all Class Members of the terms
17 of the settlement, of its effect on their rights, of their options as Class Members (i.e., participate,
18 object, opt-out, and dispute work weeks), and procedures for exercising those options. (Kim Decl.,
19 ¶ 17; *see also* Class Notice, Exhibit 1 thereto).

20 The standard for determining the adequacy of notice is whether it has “a reasonable chance
21 of reaching a substantial percentage of the class members.” *Cartt v. Superior Court* (1975) 50
22 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each of the 303 Class
23 Members at their addresses from Defendant’s records. (Kim Decl., ¶ 63.) If any Notices Packets
24 are returned undeliverable, the Settlement Administrator shall re-mail the Class notice using any
25 forwarding address provided by the USPS. (*Id.*) The Class Notice should be approved as the best
26 and most practicable way to ensure the greatest possible number of Class Members will receive
27 notice.
28

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

3 Class Counsel respectfully requests, without opposition from Defendant, an award of
4 attorneys' fees of no more than \$206,500.00 (one-third of the Gross Settlement Amount) and
5 reasonable litigation costs not to exceed \$45,000.00, subject to approval by the Court. (Kim Decl.
6 ¶ 14.)

7 Class Counsel submits it has the requisite experience, knowledge, and resources to serve as
8 Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 65-69.) Class Counsel has
9 incurred substantial hours in prosecuting this action on a contingency basis and will not receive any
10 compensation for their efforts until recovery is obtained for the Class. (Kim Decl., ¶ 59.) In
11 addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a
12 significant benefit to the Class. (*Id.*) As such, the requested award of attorneys' fees and costs is
13 reasonable.

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

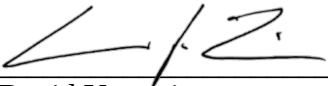
16 The Parties respectfully request this Court, as part of the preliminary approval process, to
17 grant the following relief and make the following orders:

- 18 1. Review and approve the Settlement Agreement;
- 19 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
20 A;
- 21 3. Consider and determine that the proposed class action settlement as set forth in the
22 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 23 4. Enter an order conditionally certifying the action as a class action for settlement
24 purposes only and preliminarily approving the proposed class action settlement and the
25 Settlement Agreement;
- 26 5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;
- 27 6. Approve and appoint Apex as the Administrator to handle the notice and claims
28 procedures as set forth in the Settlement Agreement;

- 1 7. Approve the proposed settlement’s allocation of funds to claims made under PAGA;
2 8. Order Defendants to disclose to Apex the names, last-known mailing addresses, Social
3 Security numbers, and number of Class Period Workweeks and PAGA Pay Periods as set forth in
4 the Settlement Agreement;
5 9. Order Apex to mail the Class Notice to Class Members; and
6 10. Set a date for the Final Approval Hearing.

7
8 Dated: March 18, 2025

D.LAW, INC.

9 By 
10 David Yeremian
11 Roman Shkodnik
12 Enoch J. Kim
13 Amanda Fazio
14 Emma Geesaman
15 Norayr Zakaryan
16 Attorneys for Plaintiff and Settlement Class