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on behalf of himself and others similarly situated and aggrieved

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

RICHARD A. AZHOCAR, an individual, on of himself and others similarly situated, Plaintiff, vs. ACCEL FRAMING, INC, a California stock corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 37-2023-00053185-CU-OE-CTL CLASS ACTION Assigned for All Purposes To: Hon. Marcella O. McLaughlin Dept.: C-72 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT AGREEMENT** Date: April 10, 2026 Time: 9:30 a.m. Location: Department C-72 Original Complaint Filed: December 06, 2023 Amended Complaint Filed: August 20, 2025 Trial Date: none set

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I. INTRODUCTION

Plaintiff Richard A. Azhocar ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with defendant Accel Framing, Inc. ("Defendant") (Plaintiff and Defendant collectively referred to herein as "the Parties") on behalf of himself and a proposed class consisting of all non-exempt, hourly individuals that worked for Defendants in California during the Settlement Class Period, which is the period from December 6, 2019, through August 11, 2025 ("Class" or "Class Members"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1, Settlement Agreement, ¶ 5.) After participating in mediation, the Parties reached a settlement in the gross amount of $240,000.00 to resolve the foregoing action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff respectfully requests that this Court grant preliminary approval of the proposed settlement agreement between the Parties, the terms of which are set forth in the Parties' Class and PAGA Action Settlement Agreement ("Settlement Agreement" or "Settlement"). (Kim Decl., Exhibit 1, Settlement Agreement.) The Settlement Agreement was reached after the Parties engaged in informal discovery and investigation, participated in mediation with a skilled mediator, and negotiated at arms-length through experienced counsel on both sides.

As discussed below, the proposed Settlement Agreement satisfies all criteria for preliminary approval under California law, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally grant certification of the proposed Class solely for the purposes of settlement, (3) approve the appointment of Apex Class Action Administrators ("Apex") as Settlement Administrator, (4) authorize the Settlement Administrator to send the Notice of Class and PAGA Settlement ("Class Notice"), attached to the Settlement Agreement as Exhibit 1, to the Class Members, (5) appoint Plaintiff as the class representative and Plaintiff's Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On December 6, 2023, Plaintiff filed a class action complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Violations Under Labor Code § 226.7; (4) Rest Period Violations Under Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation Labor Code § 221; (7) Violation Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required Under Labor Code §§ 1174, 1174.5; (10) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; and (12) Violation of California Business and Professions Code § 17200 *et seq*. (the "Action"). (Kim Decl., ¶ 3.)

Simultaneously, on December 6, 2023, and pursuant to Labor Code §2699.3, subd.(a), Plaintiff gave timely notice to the LWDA and Defendant that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-998240-23). (*Id.*) On August 8, 2025, after the 65-day statutory period had passed, and this honorable Court granted Plaintiff leave, Plaintiff filed his First Amended Complaint ("Operative Complaint"), which added claims for penalties under PAGA, Labor Code §2698. (*Id.*)

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged. (Kim Decl., ¶ 4.) On June 10, 2025, after exchanging and reviewing informal discovery, the Parties participated in a mediation presided over by Kelly Knight, Esq., and reached settlement. (*Id.*)

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., ¶ 16.) This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to research into the various legal issues involved in the case, and speaking to current and former employees of Defendant regarding Defendant's employment policies and practices. Defendant's

Counsel also provided Class Counsel with a comprehensive listing of informal discovery items required to constructively mediate, including a sampling of timekeeping and payroll data from the approximately 657 putative class members. (*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 Defendant; and (7) reviewing information provided by Defendant 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.*)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.* at ¶ 17.) After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On June 10, 2025, the Parties participated in an all-day mediation with Kelly Knight, Esq., a respected and experienced mediator in wage and hour class actions. (*Id.* at ¶ 18.) During mediation, counsel for Plaintiff 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 unpaid wages, meal periods, rest periods, wage statements, final pay, and reimbursement. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit through a mediator's proposal. (*Id.*) The Parties continued to work together to finalize a long-form settlement agreement, which resulted in the Settlement Agreement now before the Court for approval. (*Id.*)

From Class Counsel's review of the facts, strengths, and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the risks of further litigation, the possibility of losing class certification and/or dispositive motions, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (*Id*. at ¶ 19.) Further, the Settlement Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $240,000.00 (Two Hundred Forty Thousand Dollars with Zero Cents) ("Gross Settlement Amount" or "GSA") on a non-reversionary basis. (Kim Decl., Settlement Agreement, ¶ 53.) In addition to and separate from the Gross Settlement Amount, Defendant will pay the employers' portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. (*Id*.)

The Settlement Agreement defines the "Class" as all non-exempt, hourly individuals that worked for Defendant in California during the Settlement Class Period, which is December 6, 2019, through August 11, 2025. (Kim Decl., Settlement Agreement, ¶ 5), and the "Participating Class Members" are members of the Class who do not submit valid and timely requests for exclusion from the Settlement. (Kim Decl., Settlement Agreement, ¶ 36.) The Settlement Agreement also defines "Aggrieved Employees" as all Class Members who worked during the PAGA Period, which is December 6, 2022, through August 11, 2025. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 4.) The "Net Settlement Amount" means the Gross Settlement Amount, less Court-approved PAGA Penalties, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Settlement Administration Costs. (Kim Decl., Settlement Agreement, ¶ 28.) These amounts are detailed as follows:

- <u>Class Counsel Fees Payment</u>: Up to one-third of the Gross Settlement Amount, that is up to

$80,000.00 for attorneys' fees, plus reasonable litigation costs and expenses incurred in the action[1] (Kim Decl., Settlement Agreement, ¶ 57.2);

- Class Representative Enhancement Award: Up to $5,000.00 to Plaintiff as an enhancement for service as the class representative (Kim Decl., Settlement Agreement, ¶ 57.1);
- Settlement Administration Costs: Up to $12,500.00 to the Settlement Administrator for its fees and costs to administer the Settlement (Kim Decl., Settlement Agreement, ¶ 57.3);
- PAGA Payment: $16,000.00 for settlement of claims for civil penalties under PAGA, with 25% ($4,000.00) to be paid on a pro rata basis to the PAGA Employees based on the number of pay periods each PAGA Employee worked during the PAGA Period ("Individual PAGA Payment") and 75% ($12,000.00) to be paid to the LWDA ("LWDA Payment") (Kim Decl., Settlement Agreement, ¶ 57.5.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **$108,668.05**. Each Settlement Class Member's share of the Net Settlement Amount ("Individual Class Payment") will be calculated based on the number of workweeks the Class Member worked in a non-exempt, hourly position during the Settlement Class Period. (Kim Decl., Settlement Agreement, ¶ 57.4.) For the 675 Settlement Class Members estimated as of the date of the Parties' Settlement, the average gross Individual Class Payment using a straight average, is $160.99. 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 Settlement Class Members. (Kim Decl., Settlement Agreement, ¶¶ 57.1-57.3.)

The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, to all Class Members in no event later than fourteen (14) calendar days after receiving the Class Data via first-class United States Postal Service ("USPS") mail. (Kim Decl., ¶ 22, Settlement Agreement, ¶ 77.2.) The Class Notice provides each Class Member's period of employment in a class position during the Class Period, the number of Workweeks, and the

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[1] Class Counsel's costs currently total $17,831.95.

Settlement Administrator's calculation of each Class Member's estimated Individual Class Payment and Individual PAGA Payment. (Kim Decl., ¶ 22, Settlement Agreement, ¶ 77.2.) 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., ¶ 22, Settlement Agreement, Exhibit A, Class Notice.) Class Members will have forty-five (45) days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of Workweeks and/or pay periods. (Kim Decl., ¶ 22, Settlement Agreement, ¶¶ 44, 77.4.) Class Members who received a re-mailed Class Notice shall have their Response Deadline extended fourteen calendar (14) days from the original Response Deadline. (Kim Decl., ¶ 22, Settlement Agreement, ¶ 77.4.)

Defendant will fund the Gross Settlement Amount by making installment payments to the Qualified Settlement Fund established by the Settlement Administrator. (Kim Decl., ¶ 23, Exhibit 1, Settlement Agreement, ¶ 54.) The first payment of $60,000.00 will be made within 30 days of the Court's order granting preliminary approval of the Settlement and then every six (6) months thereafter until the Gross Settlement Amount is fully funded. (*Id.*) Plaintiff agreed to this payment installment plan to maximize the Gross Settlement Amount while also considering Defendant's financial circumstances and ability to fund the settlement. (*Id.*)

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

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all non-exempt, hourly individuals that worked for Defendants in California during the Settlement Class Period, which is the period from December 6, 2019, through August 11, 2025 (Kim Decl., Exhibit 1, Settlement Agreement ¶ 5.) Defendant has identified 675 Class Members based on a review of its payroll and personnel records as of the date of the Parties' mediation. (*Id.*, Exhibit 1, Settlement Agreement ¶ F.)

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

B. There Is a Well-Defined Community of Interest

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

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

Id. at 809.

Plaintiff contends, and 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. (Kim Decl., ¶ 25.) Because Plaintiff has 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 provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to reimburse business expenses, failure to pay final wages when required, and failure to provide accurate wage statements. (Kim Decl., ¶ 5.) Plaintiff contends Defendant's practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

C. The Named Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. It is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members.

Classen v. Weller (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary that the class representative should have personally incurred all the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 27.) Thus, Plaintiff's claims are typical of the claims of the putative Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representative

As detailed below, Class Counsel are experienced in class actions, have represented Plaintiff and Class Members zealously, and have no conflicts of interest. (Kim Decl., ¶ 28.) Plaintiff's interests are aligned with those of the Class Members, as he has suffered the same injuries as the Class Members and has no conflicts of interest. (*Id.*) Plaintiff has not shrunk from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel and the class representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 29.) As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id.*) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members. (*Id.*)

Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (*Id.* at ¶ 30.) Although the alleged injury 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 over 675 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.* The Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

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

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

The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 32.) The negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. (*Id*.) As discussed below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. (*Id*.) Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. (*Id*.) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id*.)

B. Extent of Discovery and Stage of Proceedings

As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. (*Id.* at ¶ 33.) This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id*.)

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

Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, failure to pay final wages when required, and failure to maintain and provide accurate wage statements. (*Id*. at ¶ 5.)

Specifically, Plaintiff alleges that Defendant did not have a timekeeping method for tracking actual time worked by Class Members, but instead required Class Members to sign in with only their name and signature on a sign in sheet after a required morning meeting and then inputted shift start and end times at the end of each work week. (Kim Decl., ¶ 6.) Plaintiff alleges that Defendant's managers and foremen then inputted Class Members' scheduled shift start and end time into Defendant's timekeeping records at the end of each work week, relying on Plaintiff and Class

Members' scheduled shift times rather than the actual times they began and ended work. (*Id.*) Plaintiff also alleges that Defendant had a uniform policy of requiring Plaintiffs and Class Members' to arrive prior to their scheduled shift start times to prepare for the start of their shifts and would be reprimanded when not. This included searching for the jobsite and unloading tools and equipment in the areas assigned for the day. (*Id.*)

Defendant contends that it did not require off the clock work or have a time rounding policy, paid for all reported hours worked, paid wages at the proper rates, that Class Members were instructed to record all hours worked, and that any off-the-clock work was performed without Defendant's knowledge and de minimis and therefore not compensable. (Kim Decl., ¶ 7.) 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.*) Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id.*)

Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff and Class Members. (Kim Decl., ¶ 8.) For example, due to work demands, Plaintiff alleges that Plaintiff and Class Members were often unable to take a duty-free 30-minute meal break during their shifts, and that many meals were systematically taken late. (*Id.*) Furthermore, Plaintiff alleges that their meal periods were constantly interrupted by work-related demands and tasks that required Plaintiff and Class Members to remain under Defendant's control during breaks. (*Id.*)

Defendant contends that Class Members were given a reasonable opportunity to take their meal periods, and informed that they should report any missed meal periods to Defendant so that they could be properly compensated. (Kim Decl., ¶ 9.) Defendant also contends that the meal break claim requires individualized inquiries which would preclude class certification. (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim. (*Id.*)

Plaintiff also contends that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 10.) Plaintiff contends that Class Members consistently worked in excess of consecutive four-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive four-hour shift but were required to work through their rest breaks during their shifts due to heavy work demands from Defendant. (*Id.*)

Similar to meal breaks, Defendant contends that Class Members were (1) advised of their right to rest periods, (2) given a reasonable opportunity to take their rest periods during their shifts, and (3) informed that they should report any missed rest periods to Defendant so that they could be properly compensated. (Kim Decl., ¶ 11.) 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.*) Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim. (*Id.*)

Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to use their personal cellular phones and supply their own tools and equipment for work-related business, for which they were not reimbursed. (Kim Decl., ¶ 12.) Defendant maintained that Plaintiff and Class Members were not required to use their personal cell phones, tools, and equipment to perform their job duties and were advised to seek reimbursement if they were required to use their own personal devices. (*Id.*) Defendant further contends 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 Plaintiff and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶ 13.) Defendant further contends that even if they could first establish liability for the underlying claims, Plaintiff and 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 Plaintiff and Class Members. (*Id.*) Thus, Defendant contends that the wage statement and waiting time penalties claims to have little to no value. (*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., ¶ 14.) Defendant also contends that even if Plaintiff 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.*) Defendant also contended that trial of the PAGA claim would be unmanageable. (*Id.*)

Defendant generally denies all claims alleged in the Action and further deny class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (Kim Decl., ¶ 15.) However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (*Id.* at ¶ 34.) Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years, which would have further weakened Defendant's financial condition and significantly restricted its ability to pay any judgment. (*Id.*) Even if Plaintiff were to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

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

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed class is certifiable is somewhat speculative. (*Id.* at ¶ 35.) 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. (*Id.* at ¶ 36.) 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. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.*)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). (*Id.* at ¶ 37.)

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

Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Class, Class Counsel estimated the potential realistic exposure for the main claims as follows: $44,294.03 for unpaid wages claims, including minimum and overtime wages, due to off the clock work; $41,139.60 for meal period violations; $19,537.50 for rest period violations; $59,185.00 wage statement penalties; $149,546.15 in waiting time penalties; $6,750.00 for reimbursement; and $60,000.00 for PAGA penalties. (*Id.* at ¶ 40). As such, the total estimated realistic exposure Defendant could face is $399,989.78. (*Id.*)

The Gross Settlement Amount of $240,000.00 represents a recovery for the Class of approximately 60% of the total realistic exposure Class Counsel estimated that Defendant could face on the primary claims in this case. (*Id.* at ¶ 41.) Plaintiff 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, particularly in light of Defendant's financial limitations. (*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. Plaintiff's counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendants faced on Plaintiff's main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Amount represents a recovery of approximately 60% of the estimated total realistic exposure facing Defendant. (Kim Decl., ¶ 63.)

Defendant staunchly contested Plaintiff's claim for PAGA penalties. The provisions of the Labor Code potentially triggering PAGA penalties in this case include but are not limited to Labor Code §§ 203, 226, 510, and 1194. PAGA penalties are not mandatory but permissive. Labor Code § 2699(e)(2) states that "a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." (See *Thurman v. Bayshore* (2012) 203 Cal. App. 4th 1112 (substantially reducing PAGA penalties by 30% under this provision) (emphasis added); see also *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) (affirming penalty reduction of 90% for practice that resulted in meal periods occasionally starting minutes after the fifth hour of work); *Sanchez v. McDonald's Corp.* (2017), LASC Case No. No. BC 499888 (98% reduction from $41 million to $775,000); *Ghrdilyan v. RJ Financial* (2012), LASC Case No. BC430633 (94% reduction from $5.4 million to $325,000); *Fleming v. Covidien*, Inc. (2011), USDC Case No. ED CV 10-01487-

RGK (OPx) (87% reduction from $2.8 million to $375,000).). In departing from the $100.00/50.00 per pay period calculation to arrive at the $16,000.00 PAGA Penalties amount in this case, Plaintiff considered various reasons why the Court may reduce any eventual recovery at its discretion and considered that PAGA penalties are not mandatory but permissive. (Kim Decl., ¶ 58.)

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were ultimately denied. At the same time, further litigation would require the expenditure of significant time and financial resources, and there is always the possibility of adverse developments in the law and the likelihood of extended battles in both the trial court and courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

F. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 49-54.) 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., ¶¶ 53-54.)

VII. THE CLASS REPRESENTATIVE SERVICE AWARD IS FAIR AND REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.). Plaintiff requests a reasonable Class Representative Service Award for his effort and initiative in bringing and helping to prosecute this class action.

Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. (Kim Decl., ¶

45.) Both before and after filing this lawsuit, Plaintiff conferred with Class Counsel to discuss every aspect of this case. (*Id*.) 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 diligently, adequately, and fairly represented the Class Members, and has not placed his interests above any member of the putative Class. (*Id*.) This sort of payment to a Class representative has been a common feature of settlements negotiated by Class Counsel and routinely approved by courts. (*Id*.) The Class Representative Enhancement Award of **$5,000.00** to Plaintiff 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 affords Class Members the opportunity to present their objections. *Id.*

The proposed Class Notice provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all Class Members of the terms of the settlement, its effect on their rights, their options as Class Members (i.e., participate, object, opt-out, and dispute Qualified Workweeks), and procedures for exercising those options. (Kim Decl., ¶ 22; *see also* Class Notice, Exhibit 1 thereto.)

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 46.) The Settlement Administrator will mail the Class Notice to all Class Members in no event later than fourteen (14) calendar days after receiving the Class Data via first-class USPS mail. (Kim, Decl., ¶ 46, Exhibit 1, Settlement Agreement, ¶ 77.2.) Any Class Notices returned to the Settlement Administrator as non-delivered on or before the Response Deadline must be re-mailed to the forwarding address affixed thereto. (Kim, Decl., ¶ 47, Exhibit 1, Settlement Agreement, ¶ 77.3.) If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine a correct address by lawful use of skip-tracing, or other search using the name and/or address of the Class Member involved. (Kim, Decl., ¶ 47, Exhibit 1, Settlement Agreement, ¶ 77.3.) The Class Notice will be mailed to each Class Member whose Class Notice is returned to the Settlement Administrator within (5) calendar days of the initial mailing of the Class Notices by the Settlement Administrator, or other such notice as ordered by the Court. (*Id.*) This procedure for providing notice is the best and most practicable way to ensure the greatest possible number of Class Members will receive the Class Notice. (*Id.*)

IX. THE STIPULATED CLASS COUNSEL AWARD FOR ATTORNEYS' FEES PLUS REASONABLE LITIGATION EXPENSES ARE REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel Award of no more than $80,000.00 (up to one-third of the Gross Settlement Amount) for attorneys' fees plus reasonable litigation expenses currently estimated to be $17,831.95, subject to approval by the Court. (Kim Decl. ¶ 20.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 49-54). 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. ¶ 54.) 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 Award for attorneys' fees and litigation expenses are reasonable.

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

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

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit A;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex as the Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose to Apex the Class Member's identifying information as set forth in the Settlement Agreement;

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

10. Set a date for the Final Approval Hearing.

Dated: March 16, 2026

D.LAW, INC.

By ______________________________
Enoch J. Kim
Antonia McKee
Attorneys for Plaintiff and Settlement Class