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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

WILLIAM R. R. LITTLE, an individual, on behalf of himself and others similarly situated, Plaintiff, vs. STARVISTA, a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24-CIV-00279 CLASS ACTION Assigned for All Purposes To: Hon. Nicole S. Healy Department: 28 **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 William R. R. Little; Declaration of David Yeremian; and [Proposed] Order]* Date: March 26, 2025 Time: 2:00 p.m. Dept.: 28 Original Complaint Filed: January 16, 2024 First Amended Complaint Filed: March 21, 2024 Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff William R. R. Little ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with Defendant StarVista ("Defendant") (Plaintiff and Defendant collectively referred to herein as "the Parties") on behalf of himself and a proposed class of all persons employed as non-exempt, hourly employees by Defendant within the state of California from January 16, 2020 through October 20, 2024 ("Class Period"). After participating in mediation, the Parties reached a settlement in the gross amount of $425,000.00 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 Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1). The Settlement Agreement was reached after the Parties engaged in 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 and falls well within the range of reasonableness. Indeed, the Settlement was the product of hard-fought negotiations with the assistance of an experienced mediator. The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and 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 Settlement Class solely for the purposes of settlement, (3) approve the appointment of Apex Class Action ("Apex") as Settlement Administrator, (4) authorize the Settlement Administrator to send the Notice of Class Action and PAGA Settlement ("Class Notice"), attached to the Settlement Agreement as Exhibit A, 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 January 16, 2024, Plaintiff filed a class action complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages and for All Hours Worked; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Pay Reporting Time Pay under 8 CCR § 11050(5); (6) Failure to Provide One Day's Rest from Seven under Labor Code §§ 551 and 552; (7) Violation of Labor Code § 226(a); (8) Violation of Labor Code § 221; (9) Violation of Labor Code § 204; (10) Violation of Labor Code § 203; (11) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (12) Failure to Produce Requested Records, Labor Code §§ 226 and 1198; (13) Failure to Reimburse Necessary Business Expenses Under Labor Code § 2802; (14) Violation of Business & Professions Code § 17200 *et seq*. (the "Action"). (Kim Decl., ¶ 3).

Simultaneously, on January 16, 2024, 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-1005126-24). (*Id*.) On March 21, 2024, after the 65-day statutory period passed, Plaintiff filed his First Amended Complaint ("Operative Complaint"), which added claims for penalties under PAGA, Labor Code §2698. (*Id*.)

Shortly after initiating the Action, the Parties agreed to explore early resolution via mediation and engage in informal discovery prior to mediation. (*Id*. at ¶ 4).

B. Plaintiff's Claims and Defendant's Denials

Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to provide reporting time pay, failure to reimburse business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (*Id*. at ¶ 5).

Specifically, Plaintiff alleges Defendant required Plaintiff and Class Members to record their scheduled hours rather than their actual hours worked in an online employee portal and paid Plaintiff and Class Members only for their scheduled hours. As a result, Plaintiff alleges that

Plaintiff and Class Members had to work off the clock, including responding to communications from management, conducting client intakes, and performing other pre and post-shift job duties (Kim Decl., ¶ 6). Plaintiff further alleges that Defendant maintained an unlawful policy of rounding employee time punches to the nearest quarter hour, which was not neutral as applied and had a clear net-negative impact in reducing employee work hours and compensation. Plaintiff also alleges that Defendant failed to compensate Plaintiff and Class Members for travel time between Defendant's facilities. (*Id*.)

Plaintiff alleges that Defendant instructed Plaintiff and Class Members to record any hours exceeding twelve in a day on the time record for the following day in order to avoid paying double-time rates to Plaintiff and Class Members. (Kim Decl., ¶ 7).

Plaintiff also alleges that Defendant failed to provide proper and lawful meal periods to Plaintiff and Class Members and required them to be "on duty" and remain on Defendant's premises during meal periods by erroneously relying on a meal period exemption under the Labor Code and relevant wage orders which exempts employees who work with children under 18 years old or those working in 24-hour residential care facilities for the elderly, blind, or developmentally disabled from receiving proper meal periods. (Kim Decl., ¶ 8). Plaintiff alleges that the meal period exemption does not apply to Plaintiff and Class Members and that Plaintiff and Class Members were entitled to, but did not receive, duty-free meal periods of at least 30 minutes. (*Id*.)

Plaintiff also alleges Defendant's uniformly applied policies and practices resulted in untimely and shortened or on-duty rest breaks when they were authorized and permitted. (Kim Decl., ¶ 9). Plaintiff and Class Members worked shifts of at least eight hours, which required at least two rest breaks, and often worked shifts over ten hours, which required at least three rest breaks. (*Id.*) Even on the occasions when Defendant authorized and permitted Plaintiff and Class Members to take a first rest break, Plaintiff alleges that they were not permitted to take a second or a third break, and those that were provided were often late and generally interrupted by job duties and requirements that they could not leave the facilities. (*Id.*)

Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to use their cellular phones for work, for which they were not reimbursed (Kim Decl., ¶ 10). Finally, Plaintiff alleges that Defendant failed to provide all required paid sick days and COVID-19 supplemental sick leave to Plaintiff and Class Members. (*Id.*)

Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (Kim Decl.,¶ 11). 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*.)

C. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (*Id*. at ¶ 12). 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 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 ¶ 13). 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*.)

D. Settlement Efforts

On August 21, 2024, the Parties participated in an all-day mediation with Louis Marlin, a respected and highly experienced mediator in wage and hour class actions and were able to reach an agreement on general settlement terms. (*Id*. at ¶ 14). During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both parties, as well as the law and how it applied to the facts of this case. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. (*Id.*) The Parties continued to work together on a long-form settlement agreement following mediation, which resulted in the Settlement Agreement before the Court for approval. (*Id.*)

Based on their own independent investigations and evaluations, Class Counsel believes that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. (*Id*. at ¶ 15). Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims, and Defendant's financial condition which would restrict its ability to pay any settlement or judgment. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay $425,000.00 (Four Hundred Twenty-Five Thousand Dollars with Zero Cents) ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Kim Decl., Settlement Agreement, ¶ 3.1). The Settlement Agreement defines the "Class" as all persons employed by Defendant in California as non-exempt hourly employees who worked for Defendant during the Class Period." (*Id.*, Exhibit 1, Settlement Agreement, ¶ 1.5). The Class Period is January 16, 2020 through October 20, 2024. (*Id.*, Exhibit 1, Settlement Agreement, ¶ 1.13). The "Net Settlement Amount," available for distribution to Class Members, is the Gross Settlement Amount less the following payments in the amounts approved by the Court: PAGA Penalties, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. (*Id.*, Exhibit 1, Settlement Agreement, ¶ 1.28). The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id*). These amounts are detailed as follows:

- Up to thirty-five (35%) of the GSA, that is up to $148,750.00, as a Class Counsel Fees Payment and a Class Counsel Litigation Expenses Payment for actual costs, not to exceed $20,000.00 (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.4.2);
- Up to Plaintiff as a Class Representative Service Payment for service as the class representative (*Id*., Exhibit 1, Settlement Agreement, ¶ 3.4.1);
- Up to $16,000.00 to the Settlement Administrator for its fees and costs to administer the Settlement (*Id*., Exhibit 1, Settlement Agreement, ¶ 3.4.3);
- $30,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees ($22,500.00) and 75% allocated to the LWDA ($7,500.00) will be paid to the LWDA ("LWDA Payment") (*Id*., Exhibit 1, Settlement Agreement, ¶ 3.4.5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $200,250.00. (Kim Decl., at ¶ 17). 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. (*Id.*, Exhibit 1, Settlement Agreement, ¶ 1.24). For the 402 Class Members (if no exclusions), the average gross individual class payment share, using a straight average, is $498.13. (Kim Decl., at ¶ 17). 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. (*Id.*, Exhibit 1, Settlement Agreement, ¶ 3.4.1, 3.4.2, 3.4.3, 3.4.5).

The Class Notice is attached to the Settlement Agreement as Exhibit A. (Kim Decl., ¶ 18). Not later than twenty (20) days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. 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 14 (fourteen) days after receiving the Class Data via first-class United States Postal Service ("USPS") mail. (Kim Decl., ¶ 18, Exhibit 1, Settlement Agreement, ¶ 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., ¶ 18, Exhibit A, Class Notice). Class Members will have forty-five (45) days from the mailing of the Class Notice (plus an additional 14 days if they receive a re-mailed Notice) to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods. (Kim Decl., ¶ 18, Exhibit 1, Settlement Agreement, ¶¶ 7.6, 7.7.2).

Under the terms of the Settlement, the Gross Settlement Amount will be funded by Defendant to the Administrator in two (2) equal installments of $212,500 each. (Kim Decl., ¶ 19, Exhibit 1, Settlement Agreement, ¶ 3.2). The first payment is within fourteen (14) days after Final Approval and Judgment, or the date any appeal period runs if there is an objector, or if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur ("First Payment"). (*Id*.) The second payment must be made one year from the first payment ("Second Payment"). The installment plan outlined in the Settlement Agreement was crucial for the Parties to reach a settlement, particularly since Defendant is a non-profit organization and its financial circumstances made such an arrangement essential to move forward with the settlement and help avoid unnecessary costs and expenses associated with prolonged litigation and trial.

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 current and former non-exempt, hourly employees of Defendant employed in California during the Class Period (January 16, 2020, through October 20, 2024). (Kim Decl., ¶ 21, Exhibit 1, Settlement Agreement ¶ 1.5). Defendant has identified 402 Class Members based on a review of its payroll and personnel records. (*Id.*, Exhibit 1, Settlement Agreement ¶ 4.1).

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., ¶ 22). 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 provide sick pay, 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., ¶ 22). 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., ¶ 23). 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 their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 24, 64-67). The Class Representative'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.* at ¶ 24). 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., ¶ 25). 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 ¶ 26). 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 402 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. ¶ 28). 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 above, 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 ¶ 29). 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.

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 ¶ 30). 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 classes are certifiable is somewhat speculative. (*Id.* at ¶ 31). 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 ¶ 32). 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 to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2). (*Id.* at ¶ 33).

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

If the Court approves the requested allocations from the Gross Settlement Amount of $425,000.00 as addressed above, the Net Settlement Amount is estimated to be $200,250.00. (Kim Decl., ¶ 17). There are approximately 402 total Class Members. (*Id*.) If there are no exclusions from the Class, the average gross individual class payment share per Class Member, using a straight average, is $498.13. (*Id*.)

Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Class, Plaintiff estimated the potential exposure for the main claims as follows: $66,078.88 for unpaid wages claims, including minimum and overtime wages, due to off the clock; $750,639.96 for meal period violations; $750,639.96 for rest period violations; $589,150 wage statement penalties; $1,143,832.32 in waiting time penalties; and $599,400.00 for PAGA penalties. (*Id*. at ¶¶ 34-58). As such, the total estimated exposure Defendant could face is $3,899,741.12.

The Gross Settlement Amount of $425,000.00 represents a recovery for the Class of approximately 10.89% of the total maximum exposure Plaintiff estimated that Defendant could face on the primary claims in this case. (*Id*. at ¶ 57). 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, and particularly in light of Defendant's financial condition as a non-profit organization.

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 Defendant 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 10.89 % of the estimated total maximum liability exposure (Kim Decl., ¶ 57).

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., ¶¶ 62-67; Yeremian Decl., ¶¶ 3-9). 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., ¶¶ 67; Yeremian Decl., ¶¶ 9-20).

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 Class Representative Service Payment for his effort and initiative in bringing and helping to prosecute this class action.

As an initial matter, Plaintiff's courage in proceeding with his class-wide claims should not be underestimated. By suing Defendant, Plaintiff increased his risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (*See* Declaration of William R. R. Little ("Little 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. (Little 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. (Little Decl., ¶ 10). Plaintiff has provided Class Counsel with information about Defendant, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the settlement agreement. (*Id.* at ¶ 10(a)-(f)).

Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge of Defendant's practices. Plaintiff has diligently, adequately, and fairly represented the Class Members, and has not placed his interests above any member of the putative Class. This sort of payment to a Class representative has been a common feature of settlements negotiated by Class Counsel and routinely approved by courts. The class representative service payment of **$10,000.00** to Plaintiff is fair and reasonable. (Kim Decl., ¶ 59; Little Decl., ¶¶ 2-16).

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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 work weeks), and procedures for exercising those options. (Kim Decl., ¶ 18; *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 Notice will be sent via first-class mail to each of the 402 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 60). Not later than five (5) calendar days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator will re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. (Kim Decl., ¶ 60, Exhibit 1, Settlement Agreement, ¶ 7.4.3). Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice. (Kim Decl., ¶ 60).

IX. THE STIPULATED CLASS COUNSEL FEE PAYMENT AND CLASS COUNSEL LITIGATION EXPENSE PAYMENT ARE REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel Fees Payment of no more than $148,750.00 (up to 35% of the Gross Settlement Amount) and a reasonable Class Counsel Litigation Expenses Payment not to exceed $20,000.00, subject to approval by the Court. (Kim Decl. ¶ 16).

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 62-67; Yeremian Decl., ¶¶ 3-9). 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. In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. As such, the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

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

The Parties respectfully request this Court, 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 name, last-known mailing address, email address, telephone number, Social Security number, hire dates, and termination dates 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: February 20, 2025

D.LAW, INC.

By ______________________

David Yeremian
Alvin B. Lindsay
Rose Sorial
Enoch J. Kim
Attorneys for Plaintiff and Settlement Class