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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

RICHARD WEST, an individual on behalf of himself and all others similarly situated,

Plaintiffs,

v.

METAL ART OF CALIFORNIA, INC. d/b/a SIGN MART, a California corporation; METAL ART OF CALIFORNIA, a business entity of unknown form; PLASTICS PLUS, a business entity of unknown form; and DOES 1 through 50, inclusive,

Defendants.

CLASS ACTION

Case No.: 30-2024-01381223-CU-OE-CXC

Assigned for All Purposes To:
Hon. William Claster
Department CX101

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

[filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Enoch J. Kim; Declaration of Jodey Lawrence; Declaration of Richard West; and [Proposed] Order]

Hearing Information:
Date: April 24, 2026
Time: 9:00 a.m.
Department: CX101

Reservation Number: 74813003

Action filed: February 23, 2024
FAC filed: June 13, 2024
Trial: None Set

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I. INTRODUCTION

Plaintiff Richard West ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with Defendants Metal Art of California, Inc. d/b/a Sign Mart, and Metal Art of California (collectively referred to as "Defendants") (Plaintiff and Defendants are collectively referred to herein as "the Parties") on behalf of himself and a proposed settlement class of all current and former non-exempt hourly employees employed by Defendants in California during the Class Period ("Class"). After participating in mediation, the Parties reached a settlement in the gross amount of $295,000.00 to resolve the instant 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 Parties' proposed settlement agreement, the terms of which are set forth in the Parties' Class Action and PAGA Settlement Agreement and Class Notice ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), (Kim Decl., Exhibit 1).) The Settlement 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 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 Phoenix Class Action Administration ("Phoenix") as Settlement Administrator, (4) authorize the Settlement Administrator to send the Notice of 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

Plaintiff worked for Defendants and seeks to represent approximately 153 current and former California non-exempt employees of Defendants. (Kim Decl., ¶ 3.)

On February 23, 2024, Plaintiff commenced the Action by filing a class action complaint against Defendants Metal Art of California, Inc. d/b/a Sign Mart, and Metal Art of California (collectively referred to as "Defendants") for various violations of the California Labor Code on an individual and class-wide basis. (Kim Decl., ¶ 4.) Plaintiff gave timely written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendants that Plaintiff also intended to proceed with a representative action under the Private Attorneys General Act of 2004 ("PAGA"), (LWDA-CM-1012933-24) (the "Class Action"). (Kim Decl., ¶ 5.)

On June 13, 2024, after the 65-day statutory period passed, Plaintiff filed a First Amended Complaint ("FAC"), adding a claim for civil penalties under PAGA, Labor Code §2698, *et seq*. The FAC includes the following causes of action against Defendants for: (1) Failure to Pay Minimum Wages; (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) Violation of Labor Code § 226(a); (6) Violation of Labor Code § 203; (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174 and 1174.5; (9) Failure to Reimburse Necessary Business Expenses § 2802; (10) Failure to Produce Requested Employment Records Under Labor Code §§ 226(b), 1198.5; (11) Violation of Business & Professions Code § 17200 et seq.; and (12) Penalties under PAGA Labor Code § 2698 ("Operative Complaint"). (Kim Decl., ¶ 6.)

B. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (*Id*. at ¶ 7.) 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 formal and informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendant in response to formal and 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.*) (*See* Kim Decl., Exhibit 3, the resume of the expert Class Counsel consulted, Jarett Gorlick of Berger Consulting Group).

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.* at ¶ 8.) 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 attempt settlement. (*Id.*)

C. Settlement Efforts

On June 4, 2025, the Parties attended an all-day mediation session with Lonnie Giamela, Esq., an experienced litigator and mediator in the field of wage and hour class actions. (Kim Decl., ¶ 9.) During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks of continued litigation and the risks to all parties of proceeding with a class certification motion, as well as the merits of the primary claims in this case. (*Id.*) Following mediation, the Parties accepted a mediator's proposal outlining general settlement terms. (*Id.*) The Parties continued to work together following mediation on a memorandum of understanding and ultimately 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 strengths and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable. (*Id.* at ¶ 10.) 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

The Settlement Class/Class Period and Aggrieved Employees/PAGA Period: The Settlement Agreement defines the Class "all current and former non-exempt hourly employees employed by Defendants in California during the Class Period," which is February 23, 2020, through June 4, 2025. (Kim Decl., ¶ 11, Exhibit 1, Settlement Agreement, ¶ 1.5, 1.12.) The Settlement Agreement defines an Aggrieved Employee as, "all current and former employees employes by Defendants in California during the PAGA Period" which is, February 23, 2023, through June 4, 2025. (*Id.* at ¶11, Exhibit 1, Settlement Agreement, ¶ 1.4, 1.32.)

Key Financial Terms: Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay $295,000.00 ("Gross Settlement Amount") on a non-reversionary basis. (*Id.* at Exhibit 1, Settlement Agreement, ¶¶ 3.1.) In addition to the Gross Settlement Amount, Defendants will pay the employer's portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. (*Id.*)

The "Net Settlement Amount" available for distribution to Participating Class Members is the Gross Settlement Amount less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. (Exhibit 1, Settlement Agreement, ¶ 1.28.) These amounts are detailed as follows:

- Class Counsel's Fees and Litigation Expenses Payment: Up to one-third of the Gross Settlement Amount, or **$98,333.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action and up to **$20,000.00** for actual costs incurred in this Action. (Exhibit 1, Settlement Agreement, ¶ 3.2.2.);
- Class Representative Service Payment: Up to **$5,000.00** to Plaintiff as an award for his service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1.);
- Administration Expenses Payment: A not-to-exceed amount of **$7,500.00** to the

Settlement Administrator for its costs in the administration of the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3);

- PAGA Payment: **$20,000.00** for settlement of claims for civil penalties under PAGA, with 25% ($5,000) allocated to Aggrieved Employees ("Individual PAGA Payments") and 75% ($15,000) allocated to the LWDA ("LWDA PAGA Payment") (Exhibit 1, Settlement Agreement, ¶ 3.2.5.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount ("NSA") is estimated to be **$144,167.00**. (Kim Decl., at ¶ 12.) The "Individual Class Payment" means the Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (Exhibit 1, Settlement Agreement, ¶ 1.23)

For the approximately 153 Class Members (if no exclusions), the average gross Individual Class Payment, using a straight average, is $942.27. The highest estimated gross Individual Class Payment is $2,859.51, and the lowest estimated gross Individual Class payment is $11.35. The estimated average amount each Class Member will receive per workweek based on the Net Settlement Amount and 12,705 workweeks is $11.35. (Kim Decl., ¶ 12.)

The "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period. For the approximately 77 Aggrieved Employees, highest estimated Individual PAGA Payment is $45.56, and the lowest estimated Individual PAGA Payment is $0.84. (Kim Decl., at ¶ 12.)

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 Defendants do 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 employed by Defendants in California during the Class Period, which is February 23, 2020, through June 4, 2025. Defendants have identified 153 Class Members based on a review of its payroll and personnel records. (*Id.*, ¶ 15.)

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 Defendants do 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., ¶ 16.) 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 Defendants' alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide all meal periods, failure to authorize and permit all paid rest periods, failure to provide accurate itemized wage statements, failure to timely pay wages, failure pay final wages due upon separation of employment, failure to maintain records, failure to reimburse business expenses, failure to produce requested employment records, and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 16.) Plaintiff contends Defendants' practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome 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 Defendants do 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., ¶ 17.) 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 the Class zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 18, 70-77.) 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 ¶ 18.) 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., ¶ 19.) 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, reimbursement for business expenses, and penalties for work performed as non-exempt employees for Defendants. (*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 ¶ 20.) Although the alleged injury resulting from Defendant's policies and practices is real and significant, the cost of individually litigating each such case against Defendants 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 153 individual actions against Defendants, 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.*)

VI. 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.

VII. 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. ¶ 22.) 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, Defendants 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 guaranteed. (*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 informal and formal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses. (*Id.* at ¶ 23.) 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 Defendants' alleged failure to pay minimum wages, failure to pay overtime wages, failure to provide all meal periods, failure to authorize and permit all paid rest periods, failure to provide accurate itemized wage statements, failure to timely pay wages, failure pay final wages due upon separation of employment, failure to maintain records, failure to reimburse business expenses, failure to produce requested employment records, and largely derivative claims under the UCL and PAGA. (*Id.* at ¶ 24).

Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 25.) For example, Plaintiff alleges that Class Members were required to perform work prior to clocking in for the day in order to be prepared to work at the start of their scheduled shifts. Similarly, Plaintiff alleges that Defendants required Class Members to work after clocking out at the end of their shifts in order to complete their job duties for the day. Defendants contend that they did not require off the clock work, paid for all reported hours worked, that Class Members were instructed and required to record all hours worked, that any alleged off the clock work was performed without Defendants' knowledge and was de minimis, and that it paid wages at the proper rates. (Kim Decl., at ¶ 26.) Defendant also argued 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 Defendants failed to provide Plaintiff and Class Members with lawful first and second meal periods as meal breaks were either not provided at all or interrupted by work demands from Defendants. (Kim Decl., ¶ 27.) Defendants contend that Class Members were given a reasonable opportunity to take their meal periods and that any deviations from their scheduled meal periods were at the voluntary election of Class Members. (Kim Decl., ¶ 28.) Defendants further contend that the meal break claim requires individualized inquiries which would preclude class certification. (*Id.*) If Defendants' 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 Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 29.) Defendants maintain that they did provide a reasonable opportunity for Class Members to take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not provided. (Kim Decl., ¶ 30.) 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 Defendants required Plaintiff and Class Members to incur certain expenses for their jobs with Defendants without reimbursement, including personal cell phone and mileage expenses. (Kim Decl., ¶ 31.) Defendants deny that such expenses were required to be incurred and contend that they reimbursed any expenses incurred that were required to be reimbursed under the law. (*Id.*)

As for the wage statement and waiting time penalties claims, Plaintiff alleges that Defendants consistently failed to provide Class Members with accurate and itemized wage statements and all wages due to Class Members upon termination of their employment with Defendants. (Kim Decl., ¶ 32.) Defendants contend 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. (*Id.*) Defendants further contend that even if they could first establish liability for the underlying claims, Plaintiff and Class Members would be unable to establish that Defendants' conduct was willful and knowing as required by the relevant statutes since Defendants acted in good faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members. (*Id.*)

Further, Defendants contend 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., ¶ 33.) Defendants 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 Defendants acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*)

Defendants generally deny all claims alleged in the Action and further deny that class and/or representative treatment is appropriate for any purpose other than this Settlement and that they complied with all applicable laws. (Kim Decl.,¶ 34.) However, Defendants have concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl.,¶ 35.) Although the Parties engaged in significant formal and 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. (*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 ¶ 36.) 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 ¶ 38.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity and unsettled nature of the issues, it is somewhat 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 ¶ 38.)

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, Plaintiff estimated the potential realistic exposure for the main claims as follows: **$60,431.40** for unpaid wages claims, including minimum and overtime wages, due to off the clock work; **$171,060.60** for meal period violations; **$58,768.10** for rest period violations; **$9,646.30** for unreimbursed business expenses; **$47,743.60** in waiting time penalties; **$2,584.00** for wage statement penalties; and **$29,670.00** for PAGA penalties. (*Id*. at ¶¶ 41-59.) As such, the total estimated realistic exposure Defendants could face is **$379,722.00**. (*Id*. at ¶ 63.)

The Gross Settlement Amount of $295,000.00 represents a recovery for the Class of approximately 78% of the total realistic exposure Plaintiff estimated that Defendants could face on the primary claims in this case. (*Id*.) Plaintiff and Class Counsel submit that this is an optimal 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 all of the factors described above. (*Id*.)

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

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." *Munoz*, at 408. Plaintiff's counsel used the comprehensive data and documents provided to perform an analysis of the potential 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 78% of the estimated total realistic exposure facing Defendants. (Kim Decl., ¶ 62.)

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.

H. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 69-77.) 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., ¶ 63.)

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., ¶ 68.)

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 153 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 68, Exhibit 1, Settlement Agreement ¶ 7.4.2.) Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Exhibit 1, Settlement Agreement, ¶ 4.2.) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send the Class Notice to all Class Members identified in the Class Data via first-class United States Postal Service ("USPS") mail. (Kim Decl., ¶ 68, Exhibit 1, Settlement Agreement ¶ 7.4.2.) Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (Kim Decl., ¶ 68, 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., ¶ 68.)

IX. THE STIPULATED CLASS COUNSEL ATTORNEY'S FEES AND COSTS AWARDS ARE REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel Fees Payment of $98,333.00 (up to one-third 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. ¶ 11.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 69-76.) Class Counsel have 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. ¶ 63.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. (*Id.*) As such, the requested Class Counsel Fees and Litigation Expense Payments are reasonable.

X. 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.). Courts approve incentive awards to plaintiff when justified and appropriate to compensate plaintiffs for time, effort, and inconvenience. *Van Vranken v. Atl. Richfield Co.*, 901 F. Supp. 294, 297 (N.D. Cal. 1995). These payments are intended to recognize the time and efforts that the Class Representative has spent on behalf of the Class. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." See *Ingram v. The Coca-Cola Company* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (quoting *In re Southern Ohio Correctional Facility* (S.D. Ohio 1997) 175 F.R.D. 270, 272). In *Coca-Cola*, the court approved service awards of $300,000 to each named plaintiff in recognition of the services they provided to the class by responding to discovery, participating in the mediation process, and taking the risk of stepping forward on behalf of the class. *Ingram v. Coca-Cola Co.* (2001) 200 F.R.D. 685, 694; see also *Van Vranken*, *supra*, 901 F.Supp. at 299 (approving $50,000 participation award to plaintiffs).

Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 64.) 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 communicating with Class Counsel. Plaintiff was consistently communicative with counsel, routinely checked-in, and was responsive to Class Counsel's requests for information for discovery, documentation, and meetings. (*Id.*)

Plaintiff seeks a service payment in the amount not to exceed $5,000.00 as Class Representative. Plaintiff secured a benefit for the Class worth $295,000.00. In the aggregate, the requested enhancement represents only a small percentage of the settlement consideration. The total amount which Plaintiff is requesting to be allocated to a service award is approximately 1.7% of the total settlement amount. Plaintiff's total compensation expected to be received in connection with this lawsuit other than any service payment is approximately $1,827.35 as an Individual Class Payment, and $67.62 as an Individual PAGA Payment. (*Id.*) Plaintiff is not receiving any other additional consideration in exchange for a release of Individual, Class, or PAGA claims. (*Id.*) In light of the foregoing, Class Counsel believes that the $5,000.00 service payment to the Class Representative is fair and reasonable. (Kim Decl., ¶ 66.)

XI. THE 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 Natalie Haritoonian, Enoch J. Kim, Matthew Carraher, and Antonia McKee, of D.Law, Inc., as Class Counsel for settlement purposes;

6. Approve and appoint Phoenix Class Action Administration as the Settlement 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 Defendants to send the Class Data to the Settlement Administrator as set forth in the Settlement Agreement;

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

10. Set a date for the Final Approval Hearing.

Dated: March 31, 2026 D.LAW, INC.

By __/s/ *Enoch J. Kim*____________________
Enoch J. Kim
Antonia McKee
Attorneys for Plaintiff and Settlement Class