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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF TUOLUMNE**

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| CHAD A. LEONHARDT, an individual; TOOK BUCKSEN, an individual, on behalf of themselves and others similarly situated,<br><br>Plaintiffs,<br><br>vs.<br><br>DODGE RIDGE MOUNTAIN RESORT, LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive<br><br>Defendants | Case No. CV65934<br><br><u>CLASS ACTION</u><br><br><u>Assigned for all purposes to:</u><br>Hon. Kevin M. Seibert<br>Dept.: 1<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARILY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT**<br><br>*[filed concurrently with Plaintiffs' Notice of Motion; Declaration of Marta Manus; Declaration of Chad A. Leonhardt; Declaration of Took Bucksen; Declaration of Michael Sutherland; Declaration of Jarret Gorlick; and [Proposed] Order]*<br><br>Date: August 8, 2025<br>Time: 8:30 a.m.<br>Dept.: 1<br><br>Original Complaint: February 29, 2024<br>First Amended Complaint: March 18, 2024<br>Trial Date: None Set |

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiffs CHAD A. LEONHARDT and TOOK BUCKSEN (hereinafter "Plaintiffs"), on behalf of themselves and all other similarly situated non-exempt, hourly employees employed by Defendant DODGE RIDGE MOUNTAIN RESORT, LLC. ("Defendant") on behalf of themselves and a proposed class of all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California at any time during the Class Period (i.e., the period from February 29, 2020, through August 8, 2025). After participating in mediation, the Parties reached a settlement in the gross amount of $450,000.00 to resolve the foregoing action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiffs respectfully request 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 ("Settlement Agreement" or "Settlement"). (*See* Declaration of Marta Manus ("Manus 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 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, Plaintiffs respectfully request 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 Administrator, (4) authorize the Administrator to send the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Class Notice") to the Class Members, (5) appoint Plaintiff as the Class Representative and Plaintiffs' Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

## II. STATUS OF THE LITIGATION

### A. Procedural History

On February 29, 2024, Plaintiff Leonhardt commenced the Action by filing a complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages and for Hours Worked; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Meal Period Liability; (4) Rest-break Liability; (5) Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Employment records under Labor Code §§ 226, 1198.5; (11) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; (12) Violation of Business & Professions Code § 17200 *et seq.* (Manus Decl., ¶ 3).

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Leonhardt gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on February 28, 2024 (LWDA- CM-1013748-24). (*Id.*) On October 9, 2024, after the 65-day statutory period passed, Plaintiff Leonhardt filed his First Amended Complaint, adding Plaintiff Bucksen and a claim for penalties under PAGA, Labor Code §2698. ("the Action"). The First Amended Complaint is the "Operative Complaint." (*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. Plaintiffs' Claims and Defendant's Denials

Plaintiffs' claims are based on Defendant's alleged failure to pay all wages (including overtime), failure to provide all meal and rest periods, failure to pay all sick 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, Plaintiffs allege that Class Members who worked as non-exempt employees, including as lift operators for Defendant at its campground facilities, were required to perform job duties off-the-clock. Due to Defendant's timekeeping system, Plaintiffs and Class Members were frequently required to wait to clock in, delaying punch times by several minutes while under the Defendant's control. Additionally, Plaintiffs and Class Members were required to round their time entries on handwritten timesheets, resulting in underpayment of wages. Similar timekeeping issues were encountered by Plaintiffs and Class Members with respect to recording meal periods. Furthermore, due to the heavy volume of work and personnel shortages, Plaintiffs alleged Class Members were required to perform job duties off-the-clock after the end of work shifts, without compensation. Plaintiff Bucksen and Class Members were also required to walk approximately one mile from the assigned employee parking lot to the lodge where the locker room was located, which meant employees had to spend an approximately ten minutes walking to and from work without being compensated. (Manus Decl. at ¶ 6).

Plaintiffs also allege that Defendant's practice of understaffing and the demands of the job resulted in not being provided the opportunity to take duty-free meal and rest breaks. Meal and rest periods were routinely interrupted or not provided at all due to work demands. In fact, Plaintiffs allege that Defendants required Plaintiff and Class Members to routinely work through their meal periods or take their meal periods late due to their work responsibilities and that Plaintiffs similarly allege that Plaintiffs and Class Members were unable to take two duty-free rest periods during their work shifts because they were required to respond to respond to work-related demands and communications including during breaks. Defendant failed to pay the legally required premium at their regular rate of pay whenever rest periods were missed, interrupted, or late. (*Id*. at ¶ 7).

Additionally, Plaintiffs allege that Defendant required Plaintiffs and Class Members to use provide tools and uniforms for discharge of their duties without reimbursement. Plaintiff Leonhardt was required to provide tools such as an impact drill, wrench, and hammer. Plaintiff Bucksen was required to provide his own boots, skis, helmet, goggles, gloves, jacket, ski equipment, camera, and lenses. Finally, to the extent Defendants paid overtime, it was underpaid as addressed above or Defendants failed to include all forms of remuneration in the regular rate used to calculate and pay overtime wages. This failure to include non-discretionary bonuses and shift differentials and the like in the overtime rate thus resulted in further underpayment of wages earned by Plaintiff and the Class members. (*Id*. at ¶ 8).

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. (Manus Decl. at ¶ 9).

**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. This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the various legal issues involved in the case. 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 Plaintiffs' personnel file and other documentation; (4) interviewing Plaintiffs 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. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id*. at ¶ 10).

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id*. at ¶ 11).

**D. Settlement Efforts**

In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including reviewing documents and data regarding Defendant's employment policies and practices. Plaintiffs' counsel provided Defendant's counsel with a comprehensive listing of informal discovery items required to constructively mediate.

Defendant responded by producing timekeeping and corresponding payroll records for approximately 10% sampled production of timekeeping and corresponding payroll data for Class Members along with policy documents and sample meal waiver forms. (Declaration of Jarret Gorlick ¶ 6, filed herewith). Prior to mediation, Plaintiffs therefore obtained and analyzed the production of time and payroll data for Class Members and Aggrieved Employees and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of their claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*"). (Manus Decl. ¶ 13).

On February 28, 2025, the Parties participated in a mediation presided over by respected wage and hour mediator Jason Marsili and were able to reach an agreement on general settlement terms. (*Id*. at ¶ 12). During mediation, counsel for Plaintiffs 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. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id.*)

Based on their own independent investigations and evaluations, Class Counsel is of the opinion 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. 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, and the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims. (*Id.*) Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has determined that the settlement set forth in this Settlement Agreement is in the best interests of the Class. (*Id*. at ¶ 14).

## III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendant will pay $450,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the operative complaint on behalf of the proposed Class. (Manus Decl., Ex. 1, p. 4). The GSA will be paid in 3 equal installments of $150,000.00 as follows: (a) First payment within 75 days following the Effective date; (b) Second payment to be made within 3 months from the first installment; and (c) Third and Final Payment to be made within 3 months after the second installment. (*Id.*, Ex. 1, p. 8). The Settlement Agreement defines "Class" as "all persons who are or were employed by Defendant as hourly paid, non-exempt employees in the State of California at any time during the Class Period (i.e., the period from February 29, 2020, through August 8, 2025). (*Id.*, Ex. 1, p. 2). 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 Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. (*Id.*, Ex. 1, p. 4). These amounts are detailed as follows:

- Up to one-third (1/3) of the GSA, or $150,000.00, to Class Counsel for attorneys' fees, and up to $30,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (Manus Decl., Ex. 1, p. 2-3);
- Up to $10,000.00 per each Plaintiff ($20,000.00 total) as an enhancement award for service as the class representatives (Manus Decl., Ex. 1, p. 3);
- Up to $9,250.00 to the Administrator for its fees and costs to administer the Settlement (Manus Decl., Ex. 1, p. 2);
- $40,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees ($10,000.00) and 75% allocated to the LWDA ($30,000.00) will

be paid to the LWDA ("LWDA Payment") (Manus Decl., Ex. 1, p. 5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $200,750.00. (Manus Decl. at ¶ 16). 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.*, Ex. 1, p. 4). For the 790 Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is $254.11. (Manus Decl. at ¶ 16). If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Participating Class Members. (*Id.*, Ex. 1, p. 8-10).

The Class Notice is attached to the Settlement Agreement as Exhibit A. (*Id.*, Ex. 1, p. 16). The Administrator will mail the Class Notice to all Class Members no later than 14 days after receiving the Class Data from the Defendants. (*Id.*). The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant's records. Class Members will have 45 days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods; Class Members will have an additional 14 days if they receive a re-mailed Notice. (*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" where they may be readily identified without unreasonable expense or time.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all current and former non-exempt, hourly employees of Defendant employed in California during the Class Period (February 29, 2020, through August 8, 2025). (Manus Decl., Ex. 1, p. 2). Defendant has identified approximately 790 Class Members based on review of its payroll and personnel records who worked for Defendant during the period February 29, 2029 – April 17, 2025. (*Id.* at ¶ 19, Ex. 1, p. 20).

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.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is united in its proof. (Manus Decl., ¶ 20). Because Plaintiffs have alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 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, failure to pay all 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. (Manus Decl., ¶ 20). Plaintiffs contend Defendant's practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*).

**C. The Named Plaintiffs' Claims Are Typical**

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

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. Thus, Plaintiffs' claims are typical of the claims of the putative Class. (*Id.*at ¶ 21).

**D. Adequacy of Class Counsel and Class Representatives**

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Manus Decl., ¶¶ 60-65). The Class Representatives' interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and has no conflicts of interest. (Manus Decl., ¶ 22; Declaration of Chad A. Leonhardt ("Leonhardt Decl."), ¶¶ 2, 6, 8; Declaration of Took Bucksen ("Bucksen Decl."), ¶¶ 2, 6, 8). Plaintiffs have not shrunk from this responsibility. (*Id.* at ¶¶ 9-10). Indeed, Plaintiffs have devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (Manus Decl. ¶ 22). Therefore, Class Counsel and the Class Representatives are adequate.

**E. Predominance and Superiority**

Individual issues do not predominate over those common to the class. (Manus Decl., ¶ 23). As explained, *supra*, Plaintiffs alleges there are common issues of law and fact given that Plaintiffs and all Class Members were subjected to the same policies and pay practices during the relevant time period. Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. Plaintiffs alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiffs contend the practices applied uniformly to all Class Members. (*Id.*; Leonhardt Decl., ¶¶ 2, 6, 8; Bucksen Decl. ¶¶ 2, 6, 8).

Plaintiffs contend that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (Manus Decl. at ¶ 24). 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. If Class Members are forced to litigate their claims individually, it would potentially result in over 790 individual actions against Defendant each for relatively small amounts. 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. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. As discussed above, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (Manus Decl., ¶ 26).

### 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. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id.* at ¶ 27).

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

As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (Manus Decl., ¶ 27). 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.* at ¶ 28). This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense. (*Id.*)

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

Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed classes are certifiable is somewhat speculative. 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.* at ¶ 29).

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. 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. 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. 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. 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.* at ¶ 30).

**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 ¶ 31).

**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 $450,000.00 as addressed above, the Net Settlement Amount is estimated to be $200,750.00. (*Id.* at ¶ 16). There are approximately 790 total Class Members. (*Id.*) If there are no exclusions from the Class, the average gross individual settlement payment shares per Class Member, using a straight average, is $254.11. (*Id.*)

Based on an analysis of Plaintiffs' time and pay records and a sampling of time and pay records for the Class, Plaintiffs estimated the potential exposure for the main claims as follows:

- $1,192,778 for unpaid wages, including overtime wages, due to off the clock work (assuming 20 minutes per shift with 75.1% during overtime hours) (discounted by 80% to **$238,555.00**) (Manus Decl. ¶ 35);
- $756,811 for meal period violations (discounted by 75% to **$95,726.38**) (*Id.* at ¶ 39);
- $2,518,330 for rest period violations (discounted by 90% to **$251,833.00**) (*Id.* at ¶

41);

- **$7,728** for underpaid overtime wages due to miscalculation of regular rate (*Id*. at ¶ 49);
- **$2,831** for underpaid sick pay and **$3,256** for underpaid meal period premiums due to miscalculation of regular rate (*Id*. at ¶ 49);
- $742,100 in wage statement penalties (discounted by 80% to **$148,420**) (*Id*. at ¶ 44);
- $2,528,600 in waiting time penalties for 450 employees (discounted by 80% to **$505,720.00**) (*Id*. at ¶ 48); and
- $3,429,300 for PAGA penalties (discounted by 80% to $685,860.00). (*Id*. at ¶ 53).

As such, Plaintiffs estimated that Defendant faced approximately $1,254,069.38 in exposure on Plaintiffs' main claims and PAGA penalties of $685,860.00, for a total liability exposure of $1,939,929.38. The discounts applied take into consideration the difficulties of proof, the Defendant's defenses, and other attendant risks of each claim. The Gross Settlement Amount of $450,000 therefore represents a recovery for the Class Members of approximately 23% of the total liability exposure. Excluding PAGA penalties, the Gross Settlement Amount of $450,000 represents a recovery of approximately 36% of the liability exposure on Plaintiff's main claims under the Labor Code. Plaintiffs and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial. (*Id*. at ¶ 56).

### 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. Plaintiffs' counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendant faced on Plaintiffs' 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 maximum liability exposure (Manus Decl., ¶ 56).

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. (Manus Decl., ¶¶ 60-65). 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. (*Id*. at ¶ 65).

## VII. THE CLASS REPRESENTATIVES' SERVICE PAYMENTS ARE FAIR AND REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.). Plaintiffs request a reasonable enhancement payment for their efforts and initiative in bringing and helping to prosecute this class action.

As an initial matter, Plaintiffs' courage in proceeding with their class-wide claims should not be underestimated. By suing Defendant, Plaintiffs increased their risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (Manus Decl., ¶ 57; Leonhardt Decl., ¶¶ 11-12; Bucksen Decl. ¶¶ 11-12).

Plaintiffs have devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (*Id*.) Both before and after filing, Plaintiffs conferred with Class Counsel to discuss every aspect of this case. Plaintiffs have each invested a substantial number of hours in this action thus far. (Leonhardt Decl., ¶ 10; Bucksen Decl. ¶ 10. Plaintiffs 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).

Plaintiffs spent a significant amount of time with Class Counsel detailing their personal knowledge of Defendant's practices. Plaintiffs have diligently, adequately, and fairly represented the Class Members, and have not placed their 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 payments of $10,000 to each named Plaintiff (for a total of $20,000) is fair and reasonable. (Manus Decl., ¶ 57; Leonhardt Decl., ¶ 12; Bucksen Decl. ¶ 12).

## VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.

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

The 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, of its effect on their rights, of their options as Class Members (i.e., participate, object, opt-out, and dispute work weeks), and procedures for exercising those options. (Manus Decl., ¶¶ 58-59; *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 approximately

790 Class Members at their addresses from Defendant's records. (Manus Decl., ¶ 58, Ex. 1, p. 16). If any Notice Packets are returned undeliverable without a forwarding address, the Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Notice to the correct address. (*Id.*). The Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice.

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

Class Counsel respectfully requests, without opposition from Defendants, an award of attorneys' fees of no more than $150,000.00 (one-third of the Gross Settlement Amount) and reasonable litigation costs not to exceed $30,000.00, subject to approval by the Court. (Manus Decl. ¶ 16, Ex. 1 p. 2-3).

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Manus Decl., ¶¶ 60-65). 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 award of attorneys' fees and costs is reasonable. Class Counsel will submit billing records to support their fees and costs request at the time of final approval. (*Id.*)

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

Plaintiff respectfully requests the Settlement be preliminarily approved, Notice approved and ordered mailed to the Class, Apex Class Action, LLC be appointed the Administrator, Emil Davtyan, David Yeremian, Alvin B. Lindsay, Enoch J. Kim, Marta Manus and the other attorneys of D.Law, Inc. be appointed Class Counsel, Chad A. Leonhardt and Took Bucksen be appointed Class Representatives, and a Final Approval Hearing date be set.

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Dated: July 17, 2025

Respectfully submitted,

**D.LAW, INC.**

By ______________________

Emil Davtyan
Alvin B. Lindsay
Enoch J. Kim
Marta Manus
Attorneys for Plaintiffs and on behalf of themselves and all others similarly situated