D.LAW, INC.
Alvin B. Lindsay (SBN 220236)
Enoch Kim (SBN 261146)
Bradford Smith (SBN 345879)
250 N. Madison Ave., 2nd Floor,
Pasadena, CA 91101-1639
Telephone: (818) 962-6465
Fax: (818) 962-6469
Emails: a.lindsay@d.law, e.kim@d.law,
b.smith@d.law

Attorneys for Plaintiff RAJU THAPA,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

RAJU THAPA, an individual, on behalf of himself and others similarly situated, Plaintiffs, v. FS SAN FRANCISCO EMPLOYMENT INC., a California stock corporation; and DOES 1 through 50, inclusive, Defendants.	**CLASS ACTION** Case No. CGC-24-612058 Assigned for All Purposes to: Hon. Ethan P. Schulman **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** Hearing Information: Date: December 22, 2026 Time: 10:00 a.m. Department: 304 Original Complaint filed: February 1, 2024 FAC Filed: June 27, 2024 Trial date: None Set

TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATUS OF THE LITIGATION 1

A. PROCEDURAL HISTORY 1

B. INVESTIGATION 2

C. SETTLEMENT EFFORTS 2

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS 3

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE 4

A. THERE IS A NUMEROUS AND ASCERTAINABLE CLASS 4

B. THERE IS A WELL-DEFINED COMMUNITY OF INTEREST 5

C. THE NAMED PLAINTIFF'S CLAIMS ARE TYPICAL 6

D. ADEQUACY OF CLASS COUNSEL AND CLASS REPRESENTATIVES 6

E. PREDOMINANCE AND SUPERIORITY 7

V. THE PRELIMINARY APPROVAL PROCESS 7

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE 8

A. THE SETTLEMENT IS THE RESULT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS. 9

B. EXTENT OF DISCOVERY AND STAGE OF PROCEEDINGS 9

C. THE STRENGTH OF PLAINTIFF'S CASE AND THE RISK, EXPENSE, COMPLEXITY AND LIKELY DURATION OF ANY LITIGATION. 9

D. THE RISK OF MAINTAINING CLASS ACTION STATUS THROUGH TRIAL. 11

E. THE PRESENCE OF A GOVERNMENTAL PARTICIPANT 12

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 ¶ 35). 12

F. THE AMOUNT OFFERED IN SETTLEMENT IS FAIR GIVEN THE POTENTIAL VALUE OF THE CLAIMS. 12

G. A BALANCE OF RISK FACTORS AND *KULLAR* ANALYSIS SUPPORT APPROVAL 12

H. EXPERIENCE AND VIEWS OF COUNSEL 13

VII. THE CLASS REPRESENTATIVE'S SERVICE PAYMENT IS FAIR AND REASONABLE 13
VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS. 14
IX. THE STIPULATED AWARD OF ATTORNEYS' FEES AND COSTS IS REASONABLE AND SHOULD BE APPROVED. 15
X. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL 15

TABLE OF AUTHORITIES

Cases

B.W.I. Custom Kitchens v. Owens-Illinois, Inc. (1987) 191 Cal.App.3d 1341 ..... 5, 6

Cartt v. Superior Court (1975) 50 Cal.App.3d 960 14

Cellphone Term. Fee Cases (2010) 186 Cal.App.4th 1380 14

Clark v. Am. Residential Services LLC (2009) 175 Cal.App.4th 785 13

Class Plaintiff v. City of Seattle (1992) 955 F.2d 1268 9

Classen v. Weller (1983) 145 Cal.App.3d 27 6

Daar v. Yellow Cab Company (1967) 67 Cal. 2d 695 4

Duran v. U.S. Bank Nat. Assn. (2014) 59 Cal. 4th 1 11

In Re NASDAQ Market-Makers Antitrust Litigation (SDNY 1997) 172 F.R.D. 119 5

Linder v. Thrifty Oil Co. (2000) 23 Cal. 4th 429 ..... 4, 9

Mullane v. Central Hanover Bank & Trust Co. (1950) 339 U.S. 306 14

Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles (2010) 186 Cal. App. 4th 399 ..... 8, 13

Prince v. CLS Transp., Inc. (2004) 118 Cal. App. 4th 1320 4

Reyes v. Board of Supervisors of San Diego County (1987) 196 Cal. App. 3d 1263 4

Richmond v. Dart Industries, Inc. (1981) 29 Cal. 3d 462 4

Rodriguez v. West Publ'g Corp. (9th Cir. 2009) 563 F.3d 948 13

Vasquez v. Superior Court (1971) 4 Cal. 3d 800 ..... 4, 5

Wershba v. Apple Computer, Inc. (2001) 91 Cal.App.4th 224 ..... 6, 8

Statutes

Business & Professions Code § 17200 2

Labor Code § 1174.5 1

Labor Code § 1198 1

Labor Code § 203 ..... 1, 11

Labor Code § 204 1

Labor Code § 226 ..... 1, 11

Labor Code § 226.7 1

Labor Code § 2698 2
Labor Code § 2699 12
Labor Code § 2699.3 2
Labor Code § 2802 2
Labor Code § 510 1
Labor Code §§ 1174 1
Labor Code §§ 201 11

Other Authorities

Manual for Complex Litigation (1993) Second 7, 8
Newberg on Class Actions (5th ed.) 9

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Raju Thapa (hereinafter "Plaintiff") seeks preliminary approval of a Class Action and PAGA Settlement with Defendant FS San Francisco Employment, Inc. ("Defendant") on behalf of himself and a proposed class of persons employed by Defendant in California and classified as hourly, non-exempt employees who worked for Defendant during the Class Period, which is February 1, 2020 through July 31, 2025. After participating in mediation, the Parties reached a settlement in the gross amount of $1,500,000.00 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 and Class Notice along with the Amendment thereto ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim, 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 Settlement satisfies all criteria for preliminary approval and is fair, reasonable, and adequate, and in the best interest of the Class. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On February 1, 2024, Plaintiff commenced this Action by filing a complaint alleging causes of action against Defendant for: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7; (4) Rest-Break Liability Labor Code § 226.7; (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 Records, Labor Code §§ 226 and 1198; (11) Failure to Reimburse Necessary

Business Expenses under Labor Code § 2802; and (12) Violation of Business & Professions Code § 17200 *et seq*. (Kim Decl., ¶ 3.)

Pursuant to Labor Code § 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on February 1, 2024 (LWDA- CM-1008741-24). (*Id*.) On June 27, 2024, Plaintiff filed a First Amended Complaint adding a claim for civil penalties under PAGA, Labor Code § 2698 ("Operative Complaint"). (*Id*.)

B. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. 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. 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 with the assistance of an expert; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. (*Id*. at ¶ 14).

After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id*. at ¶ 15).

C. Settlement Efforts

On March 5, 2025, the Parties participated in a mediation with respected wage and hour mediator David Phillips, Esq. (*Id*. at ¶ 16). 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 mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together negotiating the memorandum of understanding following mediation, ultimately resulting in the Settlement Agreement now before the Court for approval. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the Settlement Agreement, Defendant will pay $1,500,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis. (Kim Decl., Ex. 1, ¶¶ 3, 6). 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:

- Class Counsel's Fees and Litigation Expenses Payment: Up to one-third of the Gross Settlement Amount, or **$500,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action and actual costs incurred in this Action up to **$40,000.00**. (Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Representative Service Payment to Named Plaintiff: Up to **$10,000.00** to Plaintiff as an award for his service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- Administration Expense Payment: A not-to-exceed amount of **$13,000.00** to the Settlement Administrator for its costs of administration of the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3);
- PAGA Payment: **$100,000.00** for settlement of claims for civil penalties under PAGA, with 25% ($25,000.00) allocated to the Aggrieved Employees ("Individual PAGA Payments") and 75% ($75,000.00) 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 is estimated to be $837,000.00. (Kim Decl. at ¶ 20). Each Participating Class Member's pro rata share of the Net Settlement Amount will be calculated according to the number of Workweeks worked during the Class Period. (*Id.,* Exhibit 1, Settlement Agreement, ¶

1.23.) For the approximately 792 Class Members (if no exclusions), the average gross individual settlement payment, using a straight average, is $1,056.82. (Kim Decl. at ¶ 20).

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 who wish to exclude themselves from the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 15 days for Class Members whose Class Notice is remailed.) (*Id*. at ¶ 1.43, 7.5.1.)

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.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are persons employed by Defendant in California and classified as hourly, non-exempt employees who worked for Defendant during the Class Period. (Kim Decl. ¶ 14, Exhibit 1, Settlement Agreement, ¶ 1.5, 1.12). Defendant has identified approximately 792 Class Members based on review of its payroll and personnel records. (*Id.*, Exhibit 1, Settlement Agreement, ¶ 8).

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 Plaintiff' 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., ¶ 15). 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 Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 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 a determination about Defendant's alleged failure to pay minimum wage and overtime wages, failure to provide compliant meal periods or meal break premium pay, failure to provide compliant rest breaks or rest break premium pay, failure to provide accurate, itemized wage statements, failure to timely pay wages upon separation, and failure to reimburse business expenses. (Kim Decl., ¶ 15). Plaintiff contends 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 the Class. (*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. Thus, Plaintiff's claims are typical of the claims of the putative Class. (Kim Decl., ¶ 16).

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., ¶¶ 59-67). 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. (Kim Decl., ¶ 17; Declaration of Raju Thapa ("Thapa Decl."), filed herewith). 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., ¶ 18). 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. 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*.; Thapa Decl., ¶ 6).

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. (Kim Decl., ¶ 19). 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 792 individual actions against Defendant each for relatively small amounts. Hence, an individual suit would prove uneconomical for potential Plaintiff because litigation costs would dwarf a potential recovery. (*Id*.)

V. THE PRELIMINARY 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 (1993) Second §30.44; *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 Plaintiff' 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 Plaintiff v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.")..

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

The 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 (5th ed.) § 13:45 (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 maintains that his claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation, including Defendant's defenses both on the merits and with respect to class certification. Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (Kim Decl., ¶ 21).

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 ¶ 22).

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

Plaintiff alleged that Class Members were required to perform work prior to the start of their shifts without compensation, including requiring Class Members to go to the locker rooms and change into their work uniforms before clocking in. Plaintiff also alleged Defendant's managers contacted Class Members by calling their personal cell phones regarding work-related

matters and scheduling after work hours without compensating for that time worked. Moreover, to whatever extent they were paid bonuses or shift differentials, Plaintiff alleged that Defendant failed to include these additional forms of remuneration in the regular rate used to calculate and pay overtime. (Id. at ¶ 30.)

Defendant contends that it did not require off-the-clock work, that Class Members were instructed to record all hours worked and that any off-the-clock was performed without Defendant's knowledge. Defendant contends it paid for all reported hours worked and that wages were paid at the proper rates. Defendant further asserts that any bonuses paid were discretionary in nature and not includible in the regular rate of pay. Defendant also argues that given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (*Id.* at ¶ 31.)

Plaintiff also alleged that Defendant failed to provide timely and uninterrupted meal breaks to Class Members. Specifically, Plaintiff alleged that meal periods for Class Members were delayed or interrupted by customer and management demands. However, Plaintiff alleged that Defendant instructed Class Members to record compliant meal breaks without regard to whether they were actually taken on time or for the full duration or were interrupted by customer and management demands and requirements. (*Id.* at ¶ 33.)

Defendant contends that Class Members were given a reasonable opportunity to take their meal period and that any deviations were at the voluntary election of Class Members. Defendant further contends that when any missed meal periods were properly reported to Defendant, Defendant provided premium pay to Class Members as reflected in their time and pay records. Defendant also contends that the meal break claim requires individualized inquiries, which would preclude class certification. (*Id.* at ¶ 35.)

Plaintiff also contended that Class Members were required to remain under Defendant's control and respond to calls and instructions from management and job and client demands during rest breaks. Plaintiff alleged that rest breaks were neither scheduled nor contemplated by Defendant. (Id. at ¶ 37.)

Similar to meal breaks, Defendant contends that Class Members were given a reasonable

opportunity to take their rest periods during their shifts. Considering that, unlike meal periods, rest breaks need not be recorded, Defendant contends that these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. (*Id.* at ¶ 38.)

Additionally, Plaintiff alleged that Defendant required Class Members to incur personal cell phone expenses for work-related activities without reimbursement. (Id. at ¶ 40.) Defendant maintained that Class Members were not required to use their personal cell phones to perform their job duties and that such expenses are not required to be reimbursed under the law in any event. Defendant contends that individualized issues relating to this claim would also preclude class certification.

Plaintiff's claim for failure to provide accurate wage statements under Labor Code § 226 and failure to timely pay all wages due upon separation of employment under Labor Code §§ 201-203 are derivative of the underlying claims for failure to pay all wages. (Id. at ¶¶ 42-47.)

While Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation had the matter not settled. (Kim Decl., ¶ 23). This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. 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 the motion for class certification, and as such, the extent to which Plaintiff's 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 ¶ 24).

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. The Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.* at ¶ 25).

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 ¶ 26).

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 exposure for the main claims as follows: $302,349.30 for unpaid wages, including overtime wages, due to off the clock; $60,260.00 for meal period violations; $905,072.30 for rest period violations; $53,605.00 for unreimbursed business expenses; $181,085.00 for wage statement penalties; $88,353.20 for waiting time penalties; $184,410.00 for PAGA penalties. As such, Plaintiff estimated the total realistic exposure at $1,775,134.80. These estimates reflect Plaintiff's assessment of potential recovery based on disputed allegations and assumptions. Defendant disputes the alleged violations, Plaintiff's calculations, and the recoverability of the claimed damages and penalties, and denies any liability or wrongdoing.

The Gross Settlement Amount of $1,500,000.00 therefore represents a recovery for the Class Members of approximately 84.5% of Plaintiff's estimated total realistic exposure. The Settlement reflects a compromise of disputed claims and does not constitute an admission by Defendant regarding liability or the validity of Plaintiff's estimates. Plaintiff submits 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 ¶ 55).

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. As noted above, the Gross Settlement Amount represents a recovery of approximately 86.9% of the estimated total realistic exposure (Kim Decl., ¶ 55).

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 in both the trial court and courts of appeal. Settlement is a prudent compromise that benefits the Class 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 Settlement. Class Counsel submits the Settlement is fair, adequate, and reasonable and is well-suited for final approval upon completion of the administration process. (*Id*. at ¶ 68).

VII. THE CLASS REPRESENTATIVE'S SERVICE PAYMENT IS FAIR AND REASONABLE

Named plaintiffs in class action lawsuits "are eligible for reasonable incentive payments to compensate them for the expense or risk they have incurred in conferring a benefit on other members of the class." *Munoz, supra,* 186 Cal.App.4th at 412. 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 Rodriguez v. West Publ'g Corp.* (9th Cir. 2009) 563 F.3d 948, 958–59.

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." *Clark v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 804. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Id*. at 806. "An incentive award is

appropriated 'if it is necessary to induce an individual to participate in the suit.'" *Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, quoting *Clark, supra*, 174 Cal.App.4th at 804.

Here, Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation, including through settlement. (Kim Decl., ¶ 56; Thapa Decl., ¶ 10). Plaintiff conferred with Class Counsel to discuss every aspect of this case. (*Id*.) Plaintiff 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 and Amendment. Plaintiff has diligently, adequately, and fairly represented the Class Members, and has not placed his interests above any member of the Class. (*Id*.) As such, Plaintiff respectfully requests the Class Representative Service Payment of $10,000.00.

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 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. (Kim Decl., ¶¶ 57-58; *see also* Class Notice, Exhibit A 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 both first-class mail and email

to each of the approximately 792 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 66, Ex. 1, ¶ 16). 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. 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. (*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 an award of attorneys' fees of $500,000.00 (one-third of the Gross Settlement Amount) and reasonable litigation costs not exceed $40,000.00, subject to approval by the Court. (Kim Decl. ¶ 10, Ex. 1 ¶¶ 2-3).

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 59-66). 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. (*Id*.)

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

Plaintiff respectfully requests this Court: (1) grant preliminary approval of the Settlement, (2) certify the proposed Class for settlement purposes, (3) approve Plaintiff as Class Representative and D.Law, Inc. as Class Counsel, (4) approve Apex as the Settlement Administrator, and (5) schedule the Final Approval Hearing.

/ / /

/ / /

/ / /

Dated: October 21, 2026

Respectfully submitted,

D.LAW, INC.

By _____

Enoch J. Kim, Esq.
Bradford Smith, Esq.
Attorneys for Plaintiff and on behalf of himself and all others similarly situated