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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JOSE NAVARRO, an individual on behalf of himself and all others similarly situated, Plaintiffs, v. BETA BIONICS, INC., a Massachusetts corporation; and DOES 1 to 50, inclusive, Defendants.	**<u>CLASS ACTION</u>** Case No.: 30-2024-01392520-CU-OE-CXC <u>Assigned for all purposes to:</u> Honorable Melissa R. McCormick **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 Jose Navarro; and [Proposed] Order]* <u>Hearing Information:</u> Date: February 5, 2026 Time: 2:00 p.m. Department: Department CX105 Reservation Number: 74730487 Action filed: April 8, 2024 FAC filed: October 22, 2024 Trial date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Jose Navarro ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with Defendant Beta Bionics, Inc. ("Defendant") (Plaintiff and Defendant are collectively referred to herein as "the Parties") on behalf of himself and a proposed settlement class of persons employed by Defendant in California and classified as hourly, non-exempt employees who worked for Defendant during the Class Period ("Class"). After participating in mediation, the Parties reached a settlement in the gross amount of $200,000.00 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 formal and 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. BACKGROUND OF PLAINTIFF'S ALLEGATIONS

Here, Plaintiff alleges that Defendant adopted a uniform set of policies and practices applicable to all Class Members that resulted in Defendant's alleged failure to pay minimum wage, failure to pay overtime wage, failure to pay vacation wages, failure to pay sick pay, 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 maintain accurate records or provide requested records, failure to timely pay wages during employment or upon separation, and failure to indemnify reasonable and necessary business expenses. Some of the salient factual allegations underlying Plaintiff's claims, described in greater detail herein, are as follows:

- That Defendant 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;
- That Defendant failed to provide Plaintiff and Class Members with lawful first and second meal periods;
- That Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof;
- That Defendant paid non-discretionary bonuses and/or commissions to Plaintiff and Class Members but failed to include these forms of remuneration in the regular rate of pay upon which vacation wages were calculated and paid;
- That Defendant also required Plaintiff and Class Members to incur necessary business expenses in the course of performing their required job duties without reimbursement;
- That Defendant 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 Defendant.

Plaintiff details herein the commonality and typicality of their claims that justify class treatment for settlement purposes, and the corresponding reasonableness of the Settlement based on Plaintiff's allegations and Defendant's defenses to those allegations.

III. STATUS OF THE LITIGATION

A. Procedural History

Plaintiff worked for Defendant and seeks to represent approximately 97 current and former California non-exempt employees of Defendant. (Kim Decl., ¶ 3.) Defendant operates as a for-profit corporation, which focuses on the manufacture of medical devices such as insulin pumps for use by the general public. (*Id.*) Defendant has offices nationwide including several based in California and Orange County. (*Id.*) Class members worked as machine operators, line workers, maintenance workers, and quality assurance technicians in a factory and built insulin pumps and other medical devices at Defendant's facilities in California. (*Id.*)

On April 8, 2024, Plaintiff Jose Navarro commenced a class action by filing a Complaint alleging causes of action against Defendant for (1) failing to pay minimum wages; (2) failing to pay overtime under Labor Code § 510; (3) failing to pay vacation wages; (4) failing to comply with Labor Code §§ 245 et seq. and 246; (5) meal period liability under Labor Code § 226.7; (6) rest-break liability under Labor Code § 226.7; (7) failing to provide accurate wage statements under Labor Code § 226(a); (8) failing to maintain records under Labor Code §§ 1174 and 1174.5; (9) failing to timely pay wages upon termination under Labor Code § 203; (10) violation of Labor Code § 201.3; (11) failing to reimburse necessary business expenses under Labor Code § 2802; and (12) violation of Business & Professions Code § 17200 *et seq*. (the "Class Action"). (Kim Decl., ¶ 4.)

Plaintiff Navarro submitted a PAGA notice (LWDA-CM-1021094-24) to the Labor and Workforce Development Agency ("LWDA") on April 8, 2024. (Kim Decl., ¶ 5.) On October 22, 2024, Plaintiff Navarro filed a First Amended Complaint adding a claim for civil penalties under the California Private Attorneys General Act ("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 Defendant; 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.*)

Defendant, for its 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 5, 2025, the Parties attended an all-day mediation session with Brandon McKelvey, Esq., an experienced litigator and mediator in the field of wage and hour class actions. (Kim Decl., ¶ 9.) During mediation, counsel for Plaintiff and Defendant 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 on a long-form Settlement Agreement following mediation, 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.*)

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III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Settlement Class/Class Period and Aggrieved Employees/PAGA Period: The Settlement Agreement defines the Class "a person employed by Defendant in California and classified as an hourly, non-exempt employee who worked for Defendant during the Class Period," which is "April 8, 2020, through August 10, 2025." (Kim Decl., ¶ 11, Exhibit 1, Settlement Agreement, ¶ 1.5, 1.12.) The Settlement Agreement defines an Aggrieved Employee as, "a person employed by Defendant in California and classified as an hourly, non-exempt employee who worked for Defendant during the PAGA Period" which is, "April 8, 2023, through August 10, 2025." (*Id.* at ¶11, Exhibit 1, Settlement Agreement, ¶ 1.4, 1.30.)

Key Financial Terms: Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $200,000.00 ("Gross Settlement Amount") on a non-reversionary basis. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 3.1.) In addition to the Gross Settlement Amount, Defendant 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 Enhancement Award, 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:

- <u>Class Counsel's Fees and Litigation Expenses Payment</u>: Up to one-third of the Gross Settlement Amount, or **$66,666.67**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action and up to **$25,000.00** for actual costs incurred in this Action. (Exhibit 1, Settlement Agreement, ¶ 3.2.2.);
- <u>Class Representative Enhancement Award</u>: Up to **$5,000.00** to Plaintiff as an award for his service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1.);
- <u>Administration Expenses Payment</u>: A not-to-exceed amount of **$6,850.00** 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 $**76,483.33**. (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) Each Participating Class Member's "Individual Class Payment" shall be calculated by the Settlement Administrator using the following formula: "(a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks." (Exhibit 1, Settlement Agreement, ¶ 3.2.4.) Twenty percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. (Exhibit 1, Settlement Agreement, ¶ 3.2.4.1.)

For the approximately 97 Class Members (if no exclusions), the average Gross Individual Settlement Payment, using a straight average, is $788.49. The highest estimated Gross Individual Settlement payment is $3,038.54, and the lowest estimated Gross Individual Settlement payment is $10.93. The estimated average amount each Class Member will receive per workweek based on the Net Settlement Amount and 7,000 workweeks is $10.93. (Kim Decl., ¶ 12.) If the Court (or any appellate court) awards less than the amount requested for attorneys' fees and/or costs, or less than the amount requested for the Enhancement Award for the Class Representative, only the awarded amounts shall be paid and shall constitute satisfaction of the obligations of Defendant under this Stipulation. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 3.2.1-

3.2.5.2.)

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. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties ($5,000.00) by the total number of PAGA Pay Periods worked by all the Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee’s PAGA Pay Periods. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 1.24, 3.2.5.1.) For the approximately 79 Aggrieved Employees, the average Individual PAGA Payment, using a straight average, is $63.29. The highest estimated Individual PAGA Payment is $78.54, and the lowest estimated Individual PAGA Payment is $2.31. The estimated average amount each Aggrieved Employee will receive per Pay Period based on the 25% share of PAGA Penalties and 2,169 Pay Periods is $2.31. (Kim Decl., at ¶ 12.)

No affirmative duties imposed on Class: The Settlement Agreement does not impose any affirmative duties on Participating Class Members. (Kim Decl., ¶ 69.) No claim form is required to participate in the Settlement. (*Id.*) Class Members who wish to opt out or object may do so. (*Id.*)

Class Notice Procedures: Not later than 15 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Kim Decl., ¶ 13, 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 to all 97 Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant’s records. (Kim Decl., ¶ 69.)

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., ¶ 69, Exhibit 1, Settlement Agreement, ¶ 7.4.3.) 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.*) Settlement Class Members who want to opt out must timely submit a signed and dated written request to be excluded from the class portion of the Settlement to the Settlement Administrator ("Opt-Out Request"). Class Members who wish to exclude themselves from (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed.) (Kim Decl., ¶ 69, Exhibit 1, Settlement Agreement, ¶ 7.5.1.)

Settlement Administrator: The Parties have jointly selected Phoenix Class Action Administration ("Phoenix") to serve as the Administrator and verified that, as a condition of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements. (Kim Decl., ¶ 13.). Phoenix has experience administering class action and PAGA settlements, has procedures in place to protect the security of class data, adequate insurance in the event of a data breach or defalcation of funds, and is qualified to administer the Settlement. (*See Declaration of Jodey Lawrence*, which also includes a breakdown of the anticipated costs of class notice.) In addition, Phoenix will have a website for Class Members to review and reference for details regarding the Final Approval Hearing and any Final Approval Order and Judgement. (Kim Decl., ¶ 13.) If the Court grants final approval of the Settlement, a copy of the Final Approval Order and Judgment will be posted on this website for Class Members to review. (*Id.*) The website will be provided to Class Members in the Class Notice that is mailed to them. (*Id.*)

Funding and Payment of Settlement: Defendant shall fully fund the Gross Settlement

Amount, and also fund the amounts necessary to fully pay Defendant's share of payroll taxes, by transmitting the funds to the Administrator no later than 14 days after the Effective Date. In no event shall Defendant be required to fund the settlement prior to the Judgment becoming final. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 4.3.)

Within 14 days after Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Enhancement Award. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 4.4.) The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 4.4.1.) For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b). (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 4.4.3.)

Release by Participating Class Members: The release of claims is tailored in scope to claims that were asserted or could have been asserted based on the facts in the Operative Complaint that arose during the Class Period. Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff and Class Members will release claims against all Released Parties as follows: (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.)

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims during the Class Period that were alleged, or reasonably could have been alleged, based on the facts stated in the Operative Complaint). […] Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.[1] (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.2.)

Release by the Aggrieved Employees: The release of claims is tailored in scope to claims for PAGA civil penalties that are asserted or which could have been asserted based on the facts alleged in the PAGA Notice to the LWDA that accrued during the PAGA Period. The Class Notice addresses the fact that an Aggrieved Employee may not opt out of the PAGA Settlement. (Kim Decl., Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.) Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Aggrieved Employees, and the State of California will release claims against all Released Parties as follows: (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.)

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for civil penalties under PAGA that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.3.)

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

[1] The Parties will stipulate and inform the Court prior to the preliminary approval hearing of Defendant's election to roll back the Class Period under the escalator clause if said option to do so is exercised. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 8.)

allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class, and the means available for identifying class members. *See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are "ascertainable" when they may be readily identified without unreasonable expense or time.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are a person employed by Defendant in California and classified as an hourly, non-exempt employee who worked for Defendant during the Class Period, which is April 8, 2020, through August 10, 2025. Defendant has identified 97 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 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., ¶ 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 Defendant's alleged failure to pay minimum wage, failure to pay overtime wage, failure to pay vacation wages, failure to pay sick pay, 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 maintain accurate records or provide requested records, failure to timely pay wages during employment or upon separation, failure to indemnify reasonable and necessary business expenses, and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 16.) Plaintiff contends Defendant's practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

C. The Named Plaintiff's Claims Are Typical

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

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 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 their clients 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 Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members. (*Id.*)

Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (*Id.* at ¶ 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 Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. (*Id.*) If Class Members are forced to litigate their claims individually, it would potentially result in over 97 individual actions against Defendant, each for relatively small amounts. (*Id.*) Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

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.

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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, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. (*Id.*) Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from 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 Defendant's alleged failure to pay minimum wage, failure to pay overtime wage, failure to pay vacation wages, failure to pay sick pay, 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 maintain accurate records or provide requested records, failure to timely pay wages during employment or upon separation, failure to indemnify reasonable and necessary business expenses, and largely derivative claims under the UCL and PAGA. (*Id*. at ¶ 24).

Plaintiff alleges that Defendant 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.) Specifically, Plaintiff alleges that Class Members were required to boot up their machines, prepare their workspaces, retrieve their tools, etc. prior to clocking in. (*Id*.) Plaintiff alleges that Class Members were also required to wait in line at the time clocks in order to clock in for their shifts. (*Id*.) This resulted in off the clock work prior to clocking in every day. (*Id*.) Further, at the end of their shifts, Plaintiff alleges that they were required to continue working after clocking out for the day until the work they were assigned was finished. (*Id*.) Plaintiff also alleges that Defendant paid non-discretionary bonuses and/or commissions to Plaintiff and Class Members but Defendant failed to include these forms of remuneration in the regular rate of pay upon which overtime, vacation, and sick pay were calculated and paid.

Defendant contends that it 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 Defendant's 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 Defendant failed to provide Plaintiff and Class Members with lawful first and second meal periods. (Kim Decl., ¶ 27.) Specifically, Plaintiff alleges that Class Members were not provided with timely and uninterrupted meal periods by Defendant and were not compensated with meal period premiums when compliant meal periods were not provided. (*Id.*)

Defendant contends that Class Members were given a reasonable opportunity to take their meal periods, and when compliant meal periods were not provided, Defendant provided premium pay to Class Members as reflected in their time and pay records. (Kim Decl., ¶ 28.) Defendant also contends that the relevant Class Members signed valid meal period waivers. (*Id.*) Defendant further contends that the meal break claim requires individualized inquiries which would preclude class certification. (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim. (*Id.*)

Plaintiff also contends that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 29.) Specifically, Plaintiff alleges that Plaintiff and Class Members were not able to take their required rest breaks due to the job duties and demands imposed on them by Defendant. (*Id.*)

Defendant maintains that it 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 Defendant required Plaintiff and Class Members to incur certain expenses for their jobs with Defendant, including but not limited to use of their personal cellular phones and computers, without reimbursement. (Kim Decl., ¶ 31.) These included the cell phone-related expenses Plaintiff and Class Members incurred in responding to work related communications as well as home internet usage when they were required to work from home. (*Id.*)

As for the wage statement and waiting time penalties claims, Plaintiff alleges that Defendant 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 Defendant. (Kim Decl., ¶ 32.) Defendant contends that these claims are merely derivative of the underlying claims and that Plaintiff and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (*Id.*) Defendant further contends that even if they could first establish liability for the underlying claims, Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members. (*Id.*) Thus, Defendant contends that the wage statement and waiting time penalties claims to have little to no value. (*Id.*)

Plaintiff also alleges that Defendant violated Labor Code Sections 245 *et seq*., and 246 by not providing all required paid sick and vacation days to Plaintiff and Class Members. Plaintiff alleges that Defendant paid nondiscretionary bonuses and/or commissions to Plaintiff and Class Members but Defendant failed to include these forms of remuneration in the regular rate of pay upon which sick and vacation pay was calculated and paid. Accordingly, Plaintiff alleges that Defendant paid sick leave to Plaintiff and Class Members at a lower rate in violation of the law. Defendant contended that they provided paid sick leave at the proper regular rates when applicable. Defendant further contended that bonuses were discretionary in nature and not required to be included in the regular rate at all. (Kim Decl., ¶ 33.)

Further, Defendant contends that the PAGA claim is also derivative of the underlying claims in the Action and ultimately fails because the underlying claims have no merit. (Kim Decl., ¶ 34.) Defendant also contends that even if Plaintiff and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*)

Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (Kim Decl.,¶ 35.) However, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl.,¶ 36.) 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 ¶ 39.)

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: **$56,698.60** for unpaid wages claims, including minimum, overtime, and vacation wages, due to off the clock work; **$61,033.80** for meal period violations; **$46,741.14** for rest period violations; **$37,775** for unpaid sick and vacation pay; **$3,950.00** for unreimbursed business expenses; **$42,159.20** in waiting time penalties; **$36,530.00** for wage statement penalties; and **$20,000.00** for PAGA penalties. (*Id*. at ¶¶ 42-60.) As such, the total estimated realistic exposure Defendant could face is **$304,887.74**. (*Id*. at ¶ 63.)

The Gross Settlement Amount of $200,000.00 represents a recovery for the Class of approximately 66% of the total realistic exposure Plaintiff estimated that Defendant 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 Defendant faced on Plaintiff's main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Amount represents a recovery of approximately 66% of the estimated total realistic exposure facing Defendant. (Kim Decl., ¶ 63.)

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., ¶¶ 70-78.) 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., ¶ 64.)

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., ¶ 69.)

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 97 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 69, Exhibit 1, Settlement Agreement ¶ 7.4.2.) Not later than 15 days after the Court grants Preliminary

Approval of the Settlement, Defendant 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 to all 97 Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice. (Kim Decl., ¶ 69, 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., ¶ 69, 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., ¶ 69.)

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 $66,666.67 (up to one-third of the Gross Settlement Amount) and a reasonable Class Counsel Litigation Expenses Payment not to exceed $25,000.00, 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., ¶¶ 70-77.) 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. ¶ 64.) 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 Attorney's Fees and Class Counsel Costs Award 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 *lngram 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., ¶ 65.) 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.*)

Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on to discuss every aspect of his case. *See Declaration of Jose Navarro ("Navarro Decl.")* ¶ 21. *Kim Decl.* ¶ 66.

In agreeing to be the named plaintiff in this litigation, Plaintiff accepted a number of risks. For example, Plaintiff accepted the potential risk of being liable for Defendant's costs and potentially the company's fees if the lawsuit was unsuccessful. Further, Plaintiff risked the potential stigma of being a class representative in a class action labor dispute, which may affect his future employability. (*Kim Decl.*, ¶ 67.)

Plaintiff seeks an enhancement in the amount not to exceed $5,000.00 as Class Representative. Plaintiff secured a benefit for the Class worth $200,000.00. 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 2.5% of the total settlement amount. In light of the foregoing, Class Counsel believes that the $5,000.00 service award to the Class Representative is fair and reasonable. (Kim Decl., ¶ 68.)

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 D.Law, Inc., including Emil Davtyan, David Yeremian, Natalie Haritoonian, Enoch J. Kim, Matthew Carraher, and Antonia McKee, and all lawyers affiliated with this firm 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 Defendant to disclose to the Settlement Administrator the Class Members and Aggrieved Employees, and each of their respective first and last names, last-known mailing address, email address, and telephone number, Social Security number, the number of Workweeks during the Class Period in which the Class Members performed work as reflected in Defendant's existing business records, and the number of Pay Periods during the PAGA Period

in which the Aggrieved Employees performed work as reflected in Defendant's existing business records 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: December 16, 2025 D.LAW, INC.

By __/s/ *Enoch J. Kim*___________________
Natalie Haritoonian
Matthew Carraher
Enoch J. Kim
Antonia McKee
Attorneys for Plaintiff and Settlement Class