D.LAW, INC.
Emil Davtyan (SBN 299363)
Emil@d.law
David Yeremian (SBN 226337)
d.yeremian@d.law
Enoch J. Kim (SBN 261146)
e.kim@d.law
Arianna N. Razi (SBN 356930)
a.razi@d.law
450 N Brand Blvd, Suite 840
Glendale, CA 91203
Telephone: (818) 962- 6465
Facsimile: (818) 962-6469

Attorneys for Plaintiffs David Pete and Thomas Miller,
on behalf of themselves and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF BUTTE

DAVID PETE, on behalf of himself and others similarly situated, Plaintiff, vs. TINK, INC., a California corporation; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV01499 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Hon. Stephen E. Benson Dept.: 6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARILY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[filed concurrently with Plaintiffs' Notice of Motion and Motion; Declarations of Enoch J. Kim, Jarrett Gorlick, Michael Sutherland, David Pete, and Thomas Miller; and [Proposed] Order]* Date: December 10, 2025 Time: 9:00 a.m. Dept.: 6 Original Complaint Filed: May 8, 2024 First Amended Complaint Filed: July 12, 2024 Second Amended Complaint Filed: October 9, 2024 Trial Date: None Set

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs David Pete and Thomas Miller ("Plaintiffs") seek preliminary approval of a putative class and representative action settlement with Defendant Tink, Inc. ("Defendant") (Plaintiffs and Defendant collectively referred to herein as "the Parties") on behalf of themselves and a proposed class of all persons employed by Defendant in California and classified as non-exempt hourly employees who worked for Defendant during the Class Period, which is the period from May 8, 2020 to April 15, 2025 ("Class" or "Class Members"). After participating in mediation, the Parties reached a settlement in the gross amount of $309,000.00 to resolve the foregoing action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiffs respectfully request that this Court grant preliminary approval of the proposed settlement agreement between the Parties, the terms of which are set forth in the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), **Exhibit 1**). The Settlement Agreement was reached after the Parties engaged in informal discovery and investigation, participated in mediation with a skilled mediator, and negotiated at arms-length through experienced counsel on both sides.

As discussed below, the proposed Settlement Agreement satisfies all criteria for preliminary approval under California law, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally grant certification of the proposed Class solely for the purposes of Settlement, (3) approve the appointment of Apex Class Action LLC ("Apex") as Administrator, (4) authorize the Administrator to send the Court Approved Notice of Class Action Settlement and Hearing Date for Final Court Approval ("Class Notice"), attached to the Settlement Agreement as Exhibit A, to the Class Members, (5) appoint Plaintiffs as the Class Representatives and Plaintiffs' Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On May 8, 2024, Plaintiff David Pete commenced a Class Action by filing a Complaint alleging twelve 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 Under Labor Code § 226.7, (4) Rest-Break Liability Under Labor Code § 226.7, (5) Failure to Pay Vacation Wages, (6) Failure to Comply With Labor Code § 245 *et seq*. and 246, (7) Failure to Comply with Labor Code 2751, (8) Violation of Labor Code § 226(a), (9) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5, (10) Reimbursement of Necessary Expenditures Under Labor Code § 2802, (11) Penalties Pursuant to Labor Code § 203, and (12) Violation of Business & Professions Code § 17200 *et seq*. (the "Action"). (Kim Decl., ¶ 3.)

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff David Pete gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending his PAGA Notice on May 8, 2024 (LWDA-CM-1027156-24). (Kim Decl., ¶ 4.) Plaintiff David Pete subsequently filed his First Amended Complaint, which adds a thirteenth cause of action for Penalties Pursuant to Labor Code § 2699, *et seq*., on July 12, 2024. (*Id*.)

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiffs David Pete and Thomas Miller gave timely written notice to Defendant and the LWDA by sending their amended PAGA Notice on October 2, 2024. (Kim Decl., ¶ 5.) Plaintiff David Pete subsequently filed his Second Amended Complaint ("Operative Complaint"), which adds Thomas Miller as a named Plaintiff and Class Representative on October 9, 2024. (*Id*.)

Plaintiffs contend that Defendant failed to pay all wages due by requiring Class Members to work off the clock, failed to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failed to furnish accurate wage statements, failed to timely pay wages including final wages, failed to provide paid sick time, failed to keep required payroll records, and failed to reimburse necessary business expenses. (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. (Kim Decl., ¶ 7.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the various legal issues involved in the case. (*Id.*) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) meeting and conferring with defense counsel and conducting informal discovery; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiffs' personnel files and other documentation; (4) interviewing Plaintiffs regarding Defendant's policies and workplace; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. (*Id.*) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Kim Decl., ¶ 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 Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On March 7, 2025, the Parties participated in an all-day mediation with mediator Lonnie Giamela, Esq., a respected and highly experienced mediator in wage and hour class actions, and the Parties were able to reach an agreement on general settlement terms. (Kim Decl., ¶ 9.) During mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case, including the risks of litigation and the risks to both Parties of proceeding with a class certification motion, as well as the law on unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. (*Id.*)

The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id.*)

Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims, and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. (*Id*. at ¶ 10.) Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims. (*Id.*) Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. (*Id.*) As a result, Class Counsel has determined that the Settlement set forth in this Settlement Agreement is in the best interests of the Class. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $309,000.00 (Three Hundred Nine Thousand Dollars and Zero Cents) ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the Operative Complaint on behalf of the proposed Class. (Kim Decl., ¶ 11, Exhibit 1, Settlement Agreement, ¶ 1.22.) The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Administration Expenses Payment. (*Id*.) The Gross Settlement Amount does not include the employer's share of payroll taxes, which will be paid by Defendant in addition to the Gross Settlement Amount. (*Id*.)

The Settlement Agreement defines the "Class" as all persons employed by Defendant in

California and classified as non-exempt hourly employees who worked for Defendant during the Class Period, which is the period from May 8, 2020 to April 15, 2025. (*Id*. at ¶¶ 1.5, 1.12.) Based on its records, Defendant estimated that, as of the date of the Settlement Agreement, (1) there are 227 Class Members and 15,974 total workweeks from May 8, 2020 to April 15, 2025 and (2) there were 123 Aggrieved Employees who worked 3,073 Pay Periods from May 8, 2023 to April 15, 2025. (*Id*. at ¶ 8.) If the number of Total Workweeks encompassed within the Class Period exceeds 15,000 by more than 10%, then the GSA shall be increased in proportion to the percentage increase in the number of Total Workweeks encompassed in the Class Period in excess of 10%. (*Id*.)

The Settlement Agreement also defines "Aggrieved Employee" as a person employed by Defendant in California and classified as a non-exempt hourly employee who worked for Defendant during the PAGA Period, which is the period from May 8, 2023 to April 15, 2025. (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶¶ 1.4, 1.31.)

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 Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payments, and the Administration Expenses Payment. (Kim Decl., ¶ 12.) The remainder is to be paid to Participating Class Members as Individual Class Payments. (*Id*.) These amounts are detailed as follows:

- <u>Class Counsel Fees Payment</u>*:* Up to one-third (1/3) of the Gross Settlement Amount, or **$103,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action. (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.2.);
- <u>Class Counsel Litigation Expenses Payment</u>: Up to **$25,000.00** for reimbursement of reasonable expenses incurred to prosecute the Action. (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶¶ 3.2.2.);
- <u>Class Representative Service Payments</u>: Up to **$5,000.00** to each Plaintiff (for a total of **$10,000.00**) as an award for their service as the Class Representatives (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- <u>Administration Expenses Payment</u>: Up to **$7,500.00** to the Administrator for its fees and

costs to administer the Settlement (Kim Decl., ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.3.); and

- PAGA Penalties: **$30,900.00** for settlement of claims for civil penalties under PAGA, with 25% allocated to the Individual PAGA Payments ($7,725.00) to be paid on a pro-rata basis to the Aggrieved Employees and 75% allocated to the LWDA ($23,175.00) to be paid to the LWDA ("LWDA PAGA Payment") (Kim Decl., ¶ 12, 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 **$132,600.00** (Kim Decl., ¶ 13.) Each Class Member's share of the Net Settlement Amount ("Individual Class Payment") will be calculated by (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. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 227 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **$584.14.** (Kim Decl., ¶ 13.) If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, none of the Gross Settlement Amount would revert to Defendant. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 3.1.) Instead, the remainder will be added to the Net Settlement Amount to be distributed to Participating Class Members. (*Id.*)

Not later than fifteen (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., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation substantially in the form attached to the Settlement Agreement as Exhibit A. (Kim Decl., ¶ 14, 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 challenge the number of Workweeks and/or PAGA

Pay Periods attributed to each Class Member per Defendant's records. (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice). Class Members will have sixty (60) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, or dispute the number of Workweeks and/or PAGA Pay Periods ("Response Deadline"). (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶¶ 1.43, 7.4.4, 7.4.5.)

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 on 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.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all persons employed by Defendant in California and classified as non-exempt hourly employees who worked for

Defendant during the Class Period, which is the period from May 8, 2020 to April 15, 2025. (Kim Decl., ¶ 16, Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) At the time of executing the Settlement Agreement, Defendant has identified 227 Class Members based on a review of its payroll and personnel records. (Kim Decl., ¶ 16.)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is a Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

Id. at 809.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is united in its proof. (Kim Decl., ¶ 17.) Because Plaintiffs have alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her." *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendant's alleged failure to pay wages and overtime due to allegedly common off-the-clock work, failure to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failure to furnish accurate wage statements, failure to timely pay wages including final wages, failure to provide paid sick time, failure to keep required payroll records, and failure to reimburse necessary business expenses. (Kim Decl., ¶ 17.) Plaintiffs contend 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 Plaintiffs' Claims Are Typical

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

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 18.) Thus, Plaintiffs' claims are typical of the claims of the putative Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representatives

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶ 19.) The Class Representatives' interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and have no conflicts of interest. (*Id.*) Plaintiffs have not shrunken from this responsibility. (*Id.*) Indeed, Plaintiffs have devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id*.) Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. (Kim Decl., ¶ 20.) As explained, *supra*, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and all Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id*.) Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id*.) Plaintiffs allege that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiffs contend the practices applied uniformly to all Class Members. (*Id*.)

Plaintiffs contend that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy, as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (Kim Decl., ¶ 21.) Although the alleged injuries resulting from Defendant's policies and practices are real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. (*Id*.) If Class Members are forced to litigate their claims individually, it would potentially result in over 227 individual actions against Defendant, each for relatively small amounts. (*Id*.) Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id*.)

V. THE THREE STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure for settlements of class actions. *See* Manual for Complex Litigation, Second § 30.44 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is the dissemination of notice of the settlement to all Class Members. *Id*. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and Class Members may be heard. *Id.*

The determination of whether a settlement should be preliminarily approved requires "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. However, the record need not contain an explicit statement of the maximum theoretical amount that the class could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409 ("*Kullar* does not,… require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."). "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement." Manual for Complex Litigation, Second § 30.44, at 229.

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Court's decision to preliminarily approve a settlement is granted great deference as an exercise within its broad discretion. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-235. As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned."). Applying the above factors, the proposed Settlement provides a substantial benefit to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

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

The proposed settlement was reached as a result of arm's-length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 23.) 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 Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. (*Id*.) As discussed below, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. (*Id*.) Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. (*Id*.) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id*.)

B. Extent of Discovery and Stage of Proceedings

As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. (*Id.* at ¶ 24.) 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 Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.

Plaintiffs' claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, failure to pay final wages when required, failure to provide accurate wage statements, failure to pay all sick pay owed, and largely derivative claims under the UCL and PAGA. (*Id*. at ¶ 25.)

Plaintiffs allege 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., ¶ 26.) Plaintiffs allege Defendant required Plaintiffs and Class Members to work pre-shift and post-shift by requiring them to create task assignments for 10-15 minutes prior to clocking in and collecting employee time sheets roughly 5-10 minutes after clocking out. (*Id*.) Plaintiffs also allege that Defendant had a policy and practice of shaving off Plaintiffs' and Class Members' timecards to reflect only scheduled shift times. (*Id*.) Further, Plaintiffs allege that if an employee clocked out one minute or more before the tenth hour of their shift, Defendant would deduct fifteen minutes from the shift. (*Id*.) Similarly, Plaintiffs allege that if an employee worked less than thirty minutes past the end of their shift, they were not paid for that time since Defendant would only pay for time worked after the scheduled shift end time if the time worked was thirty minutes or more. (*Id*.)

Defendant contends that it did not require off-the-clock work, paid for all reported hours worked, that Class Members were instructed to record all hours worked, and that it paid wages at the proper rates. (Kim Decl., ¶ 27.) Defendant also argues that, given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id*.)

Plaintiffs also alleges that Defendant failed to provide proper meal breaks to Plaintiffs and Class Members. (Kim Decl., ¶ 28.) Plaintiffs allege Defendant required that Plaintiffs and Class Members work through their meal periods, especially their second meal periods. (*Id*.) In addition, Plaintiffs allege that when meal periods were provided, they were often untimely and provided after the fifth hour of work or were less than thirty minutes due to pressure from Defendant to timely complete projects. (*Id*.) Moreover, Plaintiffs allege that Plaintiffs and Class Members consistently worked shifts over ten hours but were not provided a second meal period. (*Id*.) Plaintiffs allege that Plaintiffs and Class Members did not receive meal period premium payments for those shifts they were not provided meal periods or were not provided timely meal periods. (*Id*.)

Defendant contends that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods. (Kim Decl., ¶ 29.) Defendant also contends that any deviations from compliant meal periods were at the voluntary election of Class Members. 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.*)

Plaintiffs also allege that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. (Kim Decl., ¶ 30.) Plaintiffs contend that Class Members were not permitted to leave Defendant's location during rest periods and would be interrupted with work tasks while on rest breaks, such as unloading trucks, or would have to work though their rest periods to complete projects. (*Id.*) Plaintiffs further allege that Defendant failed to pay Plaintiffs and Class Members one hour of premium pay for each rest break not provided. (*Id.*)

Defendant maintains that it did provide a reasonable opportunity for Class Members to take duty-free rest breaks during their shifts and disputes all allegations that rest breaks were interrupted or not provided. (Kim Decl., ¶ 31.) 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, Plaintiffs allege that Defendant required Plaintiffs and Class Members to purchase their own tool sets for work which included painting guns, welding helmets, wrenches, socket sets, torque wrenches, and screwdrivers, for which they were not reimbursed. (Kim Decl., ¶ 32.) Defendant maintains that Plaintiffs and Class Members received reimbursement of all reasonable and necessary business expenses, and that any expense that was not reimbursed was not reasonable and necessary. (*Id.*) Defendant also maintains that individualized issues relating to this claim would preclude class certification. (*Id.*)

Plaintiffs allege that Defendant failed to provide Plaintiffs and Class Members with the legally required minimum amount of paid sick time. (Kim Decl., ¶ 33.) Defendant contends that Plaintiffs and Class Members received payment for all sick leave pay pursuant to the law and that

Defendant provided sick leave to its employees in compliance with the state's legal requirements, including, without limitation, paid sick leave. (*Id*.) Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id*.)

As for the wage statement and waiting time penalties claims, Defendant contends that these claims are merely derivative of the underlying claims and that Plaintiffs and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶ 34.) Defendant further contends that even if they could first establish liability for the underlying claims, Plaintiffs 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 Plaintiffs and Class Members. (*Id*.) Thus, Defendant contends that the wage statement and waiting time penalties claims have little to no value. (*Id*.)

Similarly, 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., ¶ 35.) Defendant also contends that even if Plaintiffs 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 that class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (Kim Decl., ¶ 36.) However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id*.)

As stated above, while Plaintiffs 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., ¶ 37.) Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not been 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 Plaintiffs were to certify the class, 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.

Plaintiffs had not yet filed their motion for class certification, and as such, the extent to which Plaintiffs proposed Class was certifiable is somewhat speculative. (Kim Decl., ¶ 38.) Absent a settlement, there was 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 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. (Kim Decl., ¶ 39.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 addresses the complexity of using statistical samples in class actions and demonstrates that decertification is a real risk that Class Counsel must consider. (*Id*.) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id*.) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id*.) 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 a compromise accounting for those risks and uncertainties. (*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). (Kim Decl., ¶ 40.)

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

If the Court approves the requested allocations from the Gross Settlement Amount of $309,000.00 as addressed above, the Net Settlement Amount is estimated to be $**132,600.00**. (Kim

Decl., ¶ 13.) There are approximately 227 total Class Members. (*Id*.) If there are no exclusions from the Class, the average gross Individual Class Payment per Class Member, using a straight average, is $**584.14**. (*Id*.)

Based on an analysis of Plaintiffs' time and pay records and a sampling of time and pay records for the Class, Plaintiffs estimated the potential realistic exposure for the main claims as follows: $41,663.70 for the unpaid wages claims, including minimum and overtime wages, due to off the clock work; $36,491.70 for meal period violations; $155,372.70 for rest period violations; $31,375.00 for wage statement penalties; $69,371.80 in waiting time penalties; $3,728.00 for unpaid sick pay; $2,270.00 for reimbursement for necessary business expenditures; and $32,000.00 for PAGA penalties. (Kim Decl., ¶¶ 43-66.) As such, the total estimated realistic exposure Defendant could face is $372,272.90. (*Id*. at ¶ 69.)

The Gross Settlement Amount of $309,000.00 represents a recovery for the Class of approximately 83% of the total realistic exposure Plaintiffs estimated Defendant could face on the primary claims in this case. (*Id*.) Plaintiffs and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, 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. Class Counsel used the comprehensive data and documents provided to perform an analysis of the potential exposure Defendant faced on Plaintiffs' main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Amount represents a recovery of approximately 83% of the estimated total realistic exposure facing Defendant. (Kim Decl., ¶ 69.)

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 the 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., ¶¶ 10, 19, 75-80.) Class Counsel submits that 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., ¶¶ 10, 80.)

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.).

Each Plaintiff is entitled to a reasonable service payment for their efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 71.) Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiffs discussing the case and the law. (*Id.*)

Both before and after the filing of this lawsuit, Plaintiffs conferred with Class Counsel to discuss every aspect of their case. (Kim Decl., ¶ 72.) Plaintiffs provided Class Counsel with information about Defendant and about the industry generally, produced and reviewed documents, identified witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In light of the foregoing, Class Counsel believes that the $5,000.00 Class Representative

Service Payment to each Plaintiff (for a total of $10,000.00) is fair and reasonable. (*Id.*)

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

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

The proposed Class Notice 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 challenge the number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendant's records. (Kim Decl., ¶ 73, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.)

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 USPS mail to each of the Class Members based on Defendant's records. (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) Not later than fifteen (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., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen (14) days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class USPS mail, the Class Notice with Spanish translation substantially in the form attached to the Settlement Agreement as Exhibit A. (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 7.4.2.)

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

Class Counsel respectfully requests, without opposition from Defendant, an award of

$103,000.00 for attorneys' fees and up to $25,000.00 for reasonable expenses incurred to prosecute the Action, subject to approval by the Court. (Kim Decl., ¶ 70, Exhibit 1, Settlement Agreement, ¶ 3.2.2.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 75-80.) 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. (Kim Decl. ¶ 70.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. (*Id.*) As such, the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

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

The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as **Exhibit A**;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex as the Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose to Apex Class Member identifying information in Defendant's possession including the Class Member's name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods;

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

10. Set a date for the Final Approval Hearing.

Dated: November 12, 2025

D.LAW, INC.

By ______________________________

David Yeremian
Enoch J. Kim
Arianna N. Razi
Attorneys for Plaintiffs and Class