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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

THOMAS GENE NAPPO, an individual, on behalf of himself and others similarly situated,

Plaintiff,

vs.

FINISHMASTER, INC., an Indiana corporation; LKQ AUTO PARTS OF CENTRAL CALIFORNIA, INC., a California Corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24STCV14107

CLASS ACTION

Assigned for All Purposes to
Hon. Stuart M. Rice
Dept: 1

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

[filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Marta Manus; Declaration of Thomas Gene Nappo; Declaration of Michael Sutherland; Declaration of Jarrett Gorlick; and [Proposed] Order]

Date: January 12, 2026
Time: 10:30 a.m.
Dept.: 1

Original Complaint Filed: June 6, 2024
First Amended Complaint: August 12, 2024
Trial Date: None Set

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I. INTRODUCTION

Plaintiff Thomas Gene Nappo ("Plaintiff") seeks preliminary approval of a class and PAGA representative action settlement with Defendants Finishmaster, Inc. and LKQ Auto Parts of Central California, Inc. ("Defendants") (Plaintiff and Defendants are collectively referred to herein as "the Parties") on behalf of himself and a proposed class of all individuals employed as non-exempt, hourly individuals that worked for Finishmaster in California during the Class Period (i.e. the period from February 19, 2021, through December 31, 2024) ("Class Period"). After participating in mediation, the Parties reached a settlement in the gross amount of $315,000.00 (Three Hundred Fifteen Thousand Dollars and Zero Cents) to resolve the foregoing action, subject to this Court's approval.

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

As discussed below, the proposed Settlement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. Indeed, the Settlement was the product of hard-fought negotiations with the assistance of an experienced mediator. The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the settlement; (2) conditionally grant certification of the proposed Settlement Class solely for the purposes of settlement, (3) approve the appointment of Apex Class Action ("Apex") as Administrator, (4) authorize the Administrator to send the Notice of Proposed Class Action Settlement and Hearing Date for Court Approval ("Class Notice") to the Class Members, (5) appoint Plaintiff as the Class Representative and Plaintiff's Counsel as Class

Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On June 06, 2024, Plaintiff commenced the Action by filing a complaint alleging causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Wages; (3) Meal Period Liability; (4) Rest Break Liability; (5) Violation of Labor Code Sections 226(a) and 226.2; (6) Violation of Labor Code Section 221; (7) Violation of Labor Code Section 204; (8) Violation of Labor Code 203; (9) Failure to Maintain Records Required Under Labor Code Sections 1174 and 1174.5; (10) Failure to Produce Requested Employment records under Labor Code sections 226 and 1198.5; (11) Failure to Reimburse Necessary business expenses; (12) Violation of Business & Professions Code Sections 17200, *et seq.* (Manus Decl., ¶ 11, Ex. 1 p. 6-7).

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending the PAGA Notice on June 6, 2024 (LWDA-CM-1032505-24). (*Id.*) On August 12, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under PAGA ("the Action"). (*Id.* at ¶ 12, Ex. 1 p. 6-7). Shortly after initiating the Action, the Parties agreed to explore early resolution via mediation and engage in informal discovery prior to mediation. (*Id.*).

B. Plaintiff's Claims and Defendant's Denials

Plaintiff's claims are based on Defendants' alleged failure to pay all wages (including overtime) for all hours worked, failure to provide meal and rest periods, failure to provide sick pay, failure to reimburse business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (*Id.* at ¶ 13.)

Specifically, Plaintiff alleges that Defendants instructed Plaintiff and Class Members to record time entries at the end of each shift and failed to provide any timekeeping mechanism allowing Plaintiff and Class Members to contemporaneously record time entries, which led to Plaintiff and Class Members not being compensated for all hours worked. Plaintiff also alleges that

Defendants required Plaintiff and Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, and including during breaks. Plaintiff further alleges that Defendants required Plaintiff and Class Members to remain responsive to customer inquiries and work demands, as well as remain on the employer's premises during their breaks. As a result, employees were unable to use their break time to do as they saw fit. (*Id*. at ¶ 14).

Plaintiff also alleges that Defendants instructed Plaintiff and Class Members to record in the timekeeping system that they took a 30-minute meal period before the fifth hour of work without regard to whether their meal periods were taken on time or for the full duration or were interrupted by work requirements. In fact, Plaintiff alleges that due to the heavy workload, Plaintiff and Class Members frequently had to continue making deliveries during their meal breaks but were pressured by Defendants to record compliant meal breaks. Defendants required Plaintiff and Class Members to routinely work through their meal periods due to their work responsibilities and Defendants failed to pay the legally required premium at their regular rate of pay whenever meal periods were missed, interrupted, or late. Plaintiff similarly alleges that Plaintiff and Class Members were unable to take two duty-free rest periods during their work shifts because they were required to respond to respond to work-related calls throughout the day and meet the demands of the heavy workload, and Defendants failed to pay the legally required premium at their regular rate of pay whenever rest periods were missed, interrupted, or late. (Manus Decl. at ¶¶ 15, 43.)

Additionally, Plaintiff alleges that Defendants required Plaintiff and Class Members to use their cellular phones for work for which they were not reimbursed. Finally, Plaintiff alleges that Defendants failed to provide all required paid sick days and COVID-19 supplemental sick leave to Plaintiff and Class Members. (*Id*. at ¶ 16).

Defendants generally deny all claims alleged in the Action and further deny class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. However, after careful consideration, Defendants have concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id*. at ¶ 17).

C. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. After conducting their initial investigation, Class Counsel determined that Plaintiff's claims were well-suited for class and representative action adjudication owing to what appeared to be a common course of conduct affecting a similarly situated group of employees. (Manus Decl. at ¶ 18).

After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendants; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id*. at ¶ 19).

Defendants, for their part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id*. at ¶ 20).

D. Settlement Efforts

On December 10, 2024, the Parties participated in an all-day mediation with Darren Cohen, a respected and experienced mediator in wage and hour class actions. During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks of litigation and the risks to both parties as well as the law and how it applied to the facts of this case. Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (Manus Decl. at ¶ 21).

In advance of mediation, Plaintiff's counsel provided Defendants' counsel with a comprehensive listing of informal discovery items required to mediate. Defendants responded by producing 100% sampling of 2020 and 2021 time and payroll records; 50 percent of 2022 time and payroll records, and 100 percent of time and 33 percent of payroll of 2024; and 2022 Handbook acknowledgment and the 2022 Team Member Handbook, the California Meal and Rest Break Policy from 2019, and the Defendants' Fleet Handbook. Defendants' counsel also provided summary numbers drawn from the data for employees and workweeks and the like. Prior to mediation, Plaintiff therefore obtained and analyzed the production of payroll data for Class Members and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of the claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*"). Defendants produced a random sample taken from approximately 327 Class Members equal to approximately 43% containing around 141 individuals which was analyzed by Plaintiff's damages consultant. (*Id*. at ¶ 22, Ex. 1 p. 7; Declaration of Jarrett Gorlick ¶¶ 6-7, filed herewith).

Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendants for the consideration and terms set forth herein, considering the representative and class claims and the risk of loss, is fair, reasonable, and adequate considering all known facts and circumstances, and is in the best interests of the Class. Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendants have asserted and/or could assert as to the substantive merit of the claims. Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. As a result, Class Counsel has determined that the settlement set forth in this Settlement Agreement is in the best interests of the Class. (Manus Decl. at ¶¶ 23-24).

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendants will pay $315,000.00 ("Gross Settlement Amount" or "GSA") to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Manus Decl. ¶ 25, Ex. 1, p. 4). The Settlement Agreement defines the "Class" as all non-exempt, hourly individuals that worked for Finishmaster in California during the Settlement Class Period (i.e. the period from February 19, 2021, through December 31, 2024). (*Id.* at ¶ 26 , Ex. 1, p. 2). The Class Period is from February 19, 2021, through December 31, 2024. (*Id.* at ¶ 27, Ex. 1, p. 3). The "Net Settlement Amount," available for distribution to Class Members, is the Gross Settlement Amount, less the PAGA Penalties, Class Representative Enhancement Award, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. (*Id.*, Ex. 1, p. 4). These amounts are detailed as follows:

- Up to one-third (1/3) of the GSA, or $105,000.00, to Class Counsel for attorneys' fees, and up to $20,000.00 to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (*Id.*, Ex. 1, p. 2);
- Up to $10,000.00 to Plaintiff as an enhancement award for service as the class representative (*Id.*, Ex. 1, p. 3);
- Up to $7,750.00 to the Administrator for its fees and costs to administer the Settlement (*Id.*, Ex. 1, p. 2);
- $30,000.00 for settlement of claims for civil penalties under PAGA, with 25% allocated to the Aggrieved Employees ($7,500.00) and 75% allocated to the LWDA ($22,500.00) will be paid to the LWDA ("LWDA Payment") (*Id.* at ¶ 27, Ex. 1, p. 5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net

Settlement Amount is estimated to be $142,250.00. (*Id*. at ¶ 28). Each Class Member's share of the Net Settlement Amount will be calculated based on the number of workweeks the Class Member worked during the Class Period. (*Id.*, Ex. 1, p. 4). For the 327 Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is $435.02. (*Id*. at ¶ 28). If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Participating Class Members. (*Id.* at ¶ 29, Ex. 1, p. 2-4, 11).

The Class Notice is attached to the Settlement Agreement as Exhibit A. (Manus Decl. at ¶ 33). The Administrator will mail the Class Notice to all Class Members no later than 14 days after receiving the Class Data from Defendant (*Id.*, Ex. 1, p. 17). 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. (*Id.*, Ex. 1, p. 17-20). Class Members will have 45 days from the mailing of the Class Notice to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods; Class Members will have an additional 14 days if they receive a re-mailed Notice. (*Id*).

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v. CLS Transp., Inc.* (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

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

Company (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

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

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all current and former non-exempt, hourly employees of Defendant Finishmaster employed in California during the Class Period (February 19, 2021, through December 31, 2024). (Manus Decl., ¶¶ 9, 80, Ex. 1, p. 1). Defendant has identified 327 Class Members based on review of its payroll and personnel records. (*Id.*, Ex. 1, p. 22).

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

B. There Is a Well-Defined Community of Interest

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

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

Id. at 809.

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Manus Decl., ¶¶ 18, 80(e)). Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "'eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her.'" *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendants' alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and timekeeping practices, failure to provide sick pay, failure to reimburse business expenses; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. (Manus Decl., ¶ 14). Plaintiff contends Defendants' practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.* at 80).

C. The Named Plaintiff's Claims Are Typical

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

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Manus Decl., ¶ 80). 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. (Manus Decl., ¶¶ 3-8, 80). 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. Plaintiff has not shrunk from this responsibility. 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. (Manus Decl., ¶ 80). 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, expense reimbursement, and penalties for work performed as non-exempt employees for Defendant Finishmaster. (*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.*). Although the alleged injury resulting from Defendants' policies and practices are real and significant, the cost of individually litigating each such case against Defendants would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually, it would potentially result in over 327 individual actions against Defendants each for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

V. THE THREE STEP APPROVAL PROCESS

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

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

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

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

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

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

The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Manus Decl. ¶¶ 22-24). 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 above, Defendants presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. Thus, while Plaintiff was 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 Defendants' defenses. (Manus Decl. at ¶¶ 18-20, 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.

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. 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. This Settlement avoids those risks and the accompanying expense. (*Id.* at ¶ ¶ 23-24).

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. Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class resulting in less overall recovery. (*Id.* at ¶ 24).

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (*Id.*) 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 likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.*)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2). (*Id.* at ¶ 81).

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 $315,000.00 as addressed above, the Net Settlement Amount is estimated to be $142,250.00. There are approximately 327 total Class Members. If there are no exclusions from the Class, the average gross individual settlement payment per Class Member, using a straight average, is $435.02. (*Id.* at ¶ 28).

There can be no doubt that this Settlement is the result of vigorous, adversarial, non-collusive, and arms-length negotiations between the parties with an experienced mediator. To determine the approximate potential damages which would be owed to each of the Class Members, Class Counsel analyzed the data, documents, and time and pay records for Plaintiff and Defendants provided Class Counsel with records for a sampling of Class Members. By analyzing this information, Class Counsel was able to estimate the full value of the case if Plaintiff were to prevail at trial. (*Id.* at ¶¶ 35-60).

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

- $146,611.00 for meal period violations (discounted by 50% to$73,305.50);
- $3,145,572.00 for rest period violations (discounted by 75% to $786,393.00);
- $370,282.00 for unpaid wages, including minimum and overtime wages, due to off

the clock work (discounted by 75% to $92,570.50);

- $1,144.00 for underpaid sick pay and meal premiums due to miscalculation of the regular rate;
- $3,074.00 for underpaid overtime due to miscalculation of the regular rate of;
- $295,150.00 in wage statement penalties (discounted by 50% to $147,575.00);
- $883,043.00 in waiting time penalties (discounted by 75% to $208,260.75).

With the discounts applied, the total damages exposure amounts to $1,312,322.75. PAGA penalties were calculated at $987,400 (using the initial violation rate of $100 per employee per violation during the PAGA Period). (Manus Decl. at ¶¶ 36-37). PAGA penalties were discounted by 50% due to the discretionary nature and requirement to prove the underlying violation, bringing PAGA penalties to $493,700.00, and bringing the maximum total exposure to $1,806,022.75. (*Id.*)

The Gross Settlement Amount of $315,000.00 represents a recovery for the Class of approximately 17.44% of the total maximum exposure Plaintiff estimated that Defendant could face on the main claims in this case. (*Id*. at ¶ 37). However, taking into account the difficulties of proof, the Defendant's defenses, and other attendant risks, Plaintiff believes the realistic exposure is no more than 25% of the maximum, or $451,505.00 given that the total amount of damages, monetary penalties, or other relief that the class could reasonably expect to be awarded at trial is significantly less than the maximum exposure estimated above. Once Plaintiff was able to determine the realistic maximum exposure, Plaintiff was able to determine a fair and reasonable settlement for the Class. (*Id*.).

Plaintiff and Class Counsel submit that the $315,000.00 Gross Settlement Amount is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial. (*Id*.).

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 liability 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 17.44% of the estimated total maximum liability exposure. (Manus Decl., ¶ 37).

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were ultimately denied. At the same time, further litigation would require the expenditure of significant time and financial resources, and there is always the possibility of adverse developments in the law and the likelihood of extended battles in both the trial court and courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

F. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. 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. (Manus Decl., ¶¶ 9-10, 24).

VII. 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.). Plaintiff requests a reasonable enhancement payment for his effort and initiative in bringing and helping to prosecute this class action.

As an initial matter, Plaintiff's courage in proceeding with his class-wide claims should not be underestimated. By suing Defendant, Plaintiff increased his risk of retaliation by prospective employers, who must choose between an applicant who has never sued a prior employer and one who has. (Manus Decl., ¶ 76; Declaration of Thomas Gene Nappo ("Nappo Decl."), ¶¶ 11-12).

Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation. (Manus Decl., ¶ 78; Nappo Decl., ¶¶ 2-12). Both before and after filing, Plaintiff conferred with Class Counsel to discuss every aspect of this case. Plaintiff has invested approximately 25 hours in this action thus far. (Nappo Decl., ¶ 10). Plaintiff has provided Class Counsel with information about Defendants, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the settlement agreement. (*Id.*).

Plaintiff has spent a significant amount of time with Class Counsel detailing his knowledge of Defendants' practices. Plaintiff has diligently, adequately, and fairly represented the Class Members, and has not placed his interests above any member of the putative Class. This sort of payment to a Class representative has been a common feature of settlements negotiated by Class Counsel and routinely approved by courts. The class representative service payment of $10,000.00 to Plaintiff is fair and reasonable. (Manus Decl., ¶¶ 78-79; Nappo Decl., ¶¶ 2-16).

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

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

The proposed Class Notice provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all Class Members of the terms of the settlement, of its effect on their rights, of their options as Class Members (i.e., participate, object, opt-out, and dispute work weeks), and procedures for exercising those options. (Manus Decl., ¶¶ 33, 68-70; *see also* Class Notice, attached to the Settlement Agreement as **Exhibit A**).

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each of the 327 Class Members at their addresses from Defendants' records. (Manus Decl., ¶ 68). If any Notice Packets are returned undeliverable without a forwarding address, the Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Notice to the correct address. (*Id.*). The Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice.

Pursuant to controlling authority, the proposed Class Notice and method of distribution fully comport with due process requirements. Therefore, the Court should approve the Class Notice and direct that it be distributed as proposed herein.

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

California courts routinely look to the federal courts on class action approvals. The Ninth Circuit has recognized that an appropriate method for awarding attorneys' fees in class actions is to award a percentage of the "common fund." *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769. The purpose of the common fund approach is to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." *Id*. Accordingly, courts have discretion to choose either the percentage-of-the-fund method or the lodestar method. *In re Wash. Pub.Power Supply Sys. Sec. Litigation* (9th Cir. 1994) 19 F.3d 1291, 1295-96.

Several courts have, however, expressed frustration with the "lodestar" approach for deciding fee awards, which usually involves wading through voluminous time records. Thus, the percentage approach can be preferable to the lodestar in certain situations because: (1) it aligns the interests of class counsel and absent class members; (2) it encourages efficient resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and (3) it reduces the demands on judicial resources. *In re Activision Securities Litigation*, (N.D. Cal. 1989) 723 F.Supp. 1373, 1378-79. The Ninth Circuit has used the percentage of the common fund approach to determine the award of attorneys' fees. *In re Pacific Enterprises Securities Litigation* (9th Cir.

1994) 47 F.3d 373, 378-79 (approving attorneys' fee of 33 1/3% of settlement fund).

Under the Settlement Agreement, subject to approval by this Court, Class Counsel will seek an award of fees of no more $105,000.00, one-third of the Gross Settlement Amount, and actual reasonable litigation costs in an amount not to exceed $20,000.00. (Manus Decl. ¶ 72). The requested fees are fair compensation for a law firm involved in undertaking complex, risky, expensive, and time-consuming litigation solely on a contingent basis. Defendants do not oppose Class Counsel's above fees and cost request. *Id*.

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Manus Decl., ¶¶ 3-8, 72-74). Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. As such, the requested award of attorneys' fees and costs is reasonable.

X. CONCLUSION

Plaintiff respectfully requests the Settlement be preliminarily approved, Notice approved and ordered mailed to the Class, Apex be appointed Administrator, Emil Davtyan, David Yeremian, Alvin B. Lindsay, Enoch J. Kim, Marta Manus, and the other attorneys of D.Law, Inc. be appointed Class Counsel, Thomas Gene Nappo be appointed Class Representative, and a Final Approval Hearing date be set.

Dated: June 17, 2025

D.LAW, INC.

By ______________________

David Yeremian
Alvin B. Lindsay
Enoch J. Kim
Marta Manus
Attorneys for Plaintiff and Settlement Class