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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ERIC CARDENAS, on behalf of himself and all others similarly situated, and the general public, *Plaintiff*, v. LOEWS HOLLYWOOD HOTEL, LLC, a Delaware limited liability company; LOEWS HOTELS & CO, a business entity of unknown form; LOEWS CORPORATION, a business entity of unknown form; and DOES 1 through 50, inclusive, *Defendants*.	Case No. 24STCV15653 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Hon. Elihu M. Berle Dept.: 6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARILY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[filed concurrently with Plaintiff's Notice of Motion and Motion; Declarations of Marta Manus, Declaration of Eric Cardenas and [Proposed] Order* Date: August 27, 2026 Time: 11:00 a.m. Dept.: 6 Action filed: June 21, 2024 First Amended Complaint: April 27, 2026 Trial date: None Set

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I. INTRODUCTION

Plaintiff ERIC CARDENAS (hereinafter "Plaintiff") seeks preliminary approval of a Class Action and PAGA Settlement with defendants LOEWS HOLLYWOOOD HOTEL, LLC ("Defendant Loews Hollywood"), LOEWS HOTELS & CO ("Defendant Loews Hotels"), and LOEWS CORPORATION ("Defendant Loews Corp") (collectively "Defendants") on behalf of himself and a proposed class of all current and former hourly-paid or non-exempt employees of Defendants in California employed during the Class Period (defined as June 21, 2020, through January 15, 2025). After participating in mediation, the Parties reached a settlement in the gross amount of $1,000,000.00 to resolve the action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff 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 Representative Settlement Agreement ("Settlement Agreement" or "Settlement"). (*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 request that the Court: (1) grant preliminary approval of the settlement; (2) conditionally grant certification of the proposed Settlement Class solely for the purposes of settlement, (3) approve the appointment of Apex Class Action LLC ("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, and (6) schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On June 21, 2024, Plaintiff commenced this Action by filing a Complaint in Los Angeles Superior Court, Case No. 24STCV15653, alleging causes of action against Defendants for (1) Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512 and 1198); (2) Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7, and 1198); (3) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (4) Failure to Pay Proper Vacation Wages (Lab. Code § 227.3); (5) Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a)); (6) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); (7) Failure to Indemnify (Lab. Code § 2802); and (8) Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*) (the "Class Action"). Simultaneously, on June 21, 2024, Plaintiff gave timely notice to the LWDA and Defendants that Plaintiff intended to proceed with a representative action under PAGA (LWDA-CM-1035793-24) pursuant to Labor Code § 2699.3, subd.(a). On July 26, 2024, after filing a notice of removal, Defendants removed the Class Action to the United States District Court for the Central District of California, Case No. 2:24-cv-0634GW(MARx). On September 5, 2024, Plaintiff filed a complaint in Los Angeles Superior Court, Case No. 24STCV22767, alleging claims for civil penalties under Labor Code § 2698, *et seq.* (the "PAGA Action"). (Manus Decl., ¶ 3).

On December 12, 2024, the Parties participated in private mediation before Lonnie Giamela, Esq., but were unable to reach an agreement on general terms. After further settlement discussions, the Parties agreed to settle the Class Action and the PAGA Action. Thereafter, the Parties stipulated to remand the Class Action, which was remanded on March 16, 2026. On April 27, 2026, Plaintiff filed a First Amended Complaint consolidating the Class Action and the PAGA Action. The First Amended Complaint is the operative complaint in the Action (the "Operative Complaint"). (*Id*. at ¶ 4).

B. Plaintiff's Claims and Defendants' Denials

Plaintiff's claims are based on Defendants' alleged failure to provide all compliant meal and rest periods, failure to pay all wages including overtime wages, failure to reimburse all business expenses, failure to provide compliant wage statements under Labor Code § 226, and failure to timely pay all wages due under Labor Code §§ 201-203. Plaintiff further alleged that Defendants owe penalties under the PAGA, Labor Code §§ 2698, et seq., and engaged in unlawful, unfair, and/or fraudulent business acts and practices in violation of Business & Professions Code §§ 17200, et seq. (*Id*. at ¶ 5).

Specifically, Plaintiff alleged that Class Members were required to perform work, off-the-clock, during meal and rest periods as well as before and after their shifts, for which they were not paid wages. Specifically, Plaintiff alleged that Class Members were required to wait in line to clock in for work for the day. Plaintiff alleged that there was only one machine for clocking in, and the wait times could exceed 10 minutes when the machine was functional (the second machine was on the second floor, near the cafeteria, and could only be used for meal period clock ins). Additionally, at the end of their shifts, Class Members had to wait in the same line to clock out for the day. As there were Class Members who were clocking in for the night shift while the Class Members working during the day shift were leaving, there was frequently a long line and waiting periods after the end of the first shift which were even greater than those encountered during clock in. (Manus Decl. at ¶¶ 6, 39).

Plaintiff also alleged that Class Members were, at times, deprived of meal and rest periods, or those meal and rest periods were systemically interrupted because of sustained flow of guests and the need to take care of them, including greeting them to the hotel, taking their bags to the rooms, or answering their questions. Despite doing this off-the-clock work, Class Members were not paid wages for the foregoing and uncompensated working time, which was under the direction and control of Defendants. (*Id*. at ¶ 7).

Additionally, Plaintiff contended that Defendants failed to maintain a proper electronic clock-in and clock-out system to contemporaneously record the employees' time, particularly when it came to the tracking of meal periods. Plaintiff contends that Defendants implemented an unlawful time-rounding policy and practice which rounded down and reduced the actual working hours recorded by Class Members. As such, these records do not comport with Plaintiff's and

Class Members' reports about the actual hours they worked, the actual times when they took their meal periods, the interruptions of meal periods to complete assigned tasks, and the off-the-clock work that delayed meal periods or prevent Plaintiff and Class Members from taking all compliant meal periods. In practice, too, Plaintiff and Class members were allegedly not provided the opportunity to take their meal periods prior to the completion of their fifth hour of work due to heavy workloads due to a sustained flow of guests and the need to take care of them, including greeting them to the hotel, taking their bags to the rooms, or answering their questions. Similarly, Class Members were allegedly denied the opportunity to take rest periods since they were not relieved of their duties and were consistently required to work through their rest breaks, performing the duties described above. (*Id*. at ¶ 8).

Plaintiff also alleged Defendants failed to reimburse Class Members for all necessary expenditures incurred to perform their duties under Defendants' employ. Class Members were required to download an application on their phones in order to access their schedules and to use their personal cell phones to communicate with their managers, after work hours off-the-clock. (*Id*. at ¶ 9). Plaintiff also alleged that Defendant had a common policy and practice of failing to pay Plaintiff and Class Members accrued vacation wages, at the proper rates of pay, resulting in a failure to pay all accrued vacation wages upon termination of employment. (*Id*. at ¶ 10).

Plaintiff's claim for failure to provide accurate wage statements under Labor Code § 226 and failure to timely pay all wages due upon separation of employment under Labor Code §§ 201-203 are derivative of the underlying claims for failure to pay all wages. (*Id*. at ¶ 11).

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. (Manus Decl. at ¶ 12).

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 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. Plaintiff hired an expert damages consultant to analyze class data and formulate a damages model for mediation. (*Id*. at ¶ 13).

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 ¶ 14).

D. Settlement Efforts

In advance of mediation, Class Counsel conducted a thorough investigation into the facts of, and applicable law to, the Action, including reviewing documents and data regarding Defendants' employment policies and practices. Plaintiff's counsel provided Defendants' counsel with a comprehensive listing of informal discovery items required to constructively mediate. Defendants responded by producing timekeeping and corresponding payroll records for approximately 175 Class Members (30%) along with policy documents and sample meal waiver forms. (See Declaration of Kenneth Creal ¶ 7, Ex. 2 to Manus Decl.). Prior to mediation, Plaintiff therefore obtained and analyzed the production of time and payroll data for Class Members and Aggrieved Employees and the necessary policy documents through informal discovery to properly evaluate the strengths and weaknesses of their claims and engage in meaningful settlement discussions. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*., 48 Cal.App.4th 1794, 1801 (1996) and *Kullar v. Foot Locker Retail, Inc*., 168 Cal.App.4th 116, 129-130 (2008) ("*Dunk/Kullar*"). (Manus Decl. ¶ 15).

On December 12, 2024, the Parties participated in a mediation presided over by respected wage and hour mediator Lonnie Giamela, Esq., but were unable to reach an agreement. After further settlement discussions, the Parties agreed to settle this matter. 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. (*Id*. at ¶ 16).

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 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. (*Id*. at ¶ 17).

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Settlement Agreement is attached to the Declaration of Marta Manus as Exhibit 1 with the Class Notice attached thereto as Exhibit A. Under the terms of the proposed Settlement Agreement, the Defendants will pay $1,000,000 ("Gross Settlement Amount" or "GSA") on a nonreversionary basis to settle and release all claims asserted by Plaintiff in the operative complaint on behalf of the proposed Class. (Manus Decl., Ex. 1, p. 2). The Settlement Agreement defines "Class" as "all current and former hourly-paid or non-exempt employees of Defendants in California employed during the Class Period (defined as June 21, 2020, through January 15, 2025. (*Id.*, Ex. 1, p. 1).

The "Net Settlement Amount," available for distribution to Class Members, is the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments. (Manus Decl. ¶ 19, Ex. 1, p. 3). These amounts are detailed as follows:

- Up to one-third (1/3) of the GSA, or $333,333.33, to Class Counsel for attorneys' fees ("Class Counsel Fees Payment"), and reimbursement of reasonable actual litigation expenses (not to exceed $25,000), incurred by Class Counsel to prosecute the Action ("Class Counsel Litigation Expenses Payment"). (Manus Decl. ¶ 19, Ex. 1, p. 6);
- Up to $10,000 to Plaintiff as a service payment for service as the class representative ("Class Representative Service Payment"). (*Id.*, Ex. 1, p. 6);
- Up to $10,000 to the Administrator for its fees and costs to administer the Settlement ("Administrator Expenses Payment"). (*Id.*, Ex. 1, p. 7);
- $150,000 for settlement of claims for civil penalties under PAGA, with 35% allocated to the Aggrieved Employees ($52,500) and 65% allocated to the LWDA ($97,500) will be paid to the LWDA ("LWDA PAGA Payment"). (*Id.*, Ex. 1, p. 7).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $471,666.67. (Manus Decl. at ¶ 20). 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. 3). For the estimated 499 Class Members (if no exclusions), the average gross individual settlement payment share, using a straight average, is $945.22 ($471,666.67/499). (*Id.*). If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Participating Class Members. (*Id.*, Ex. 1, pp. 6-8).

The Class Notice is attached to the Settlement Agreement as Exhibit A. (*Id.* at ¶ 21, Ex. 1, p. 2). The Administrator will mail the Class Notice to all Class Members no later than seven (7) days after receiving the Class Data from the Defendants. (*Id*. at ¶ 21, Ex. 1, ¶ 7.4.2, p. 13). 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 Defendants' records. Class Members will have sixty (60) 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 fifteen (15) days if they receive a re-mailed Notice. (*Id*. at ¶ 7.4.4., p. 14).

The Parties have agreed upon Apex Class Action LLC ("Apex") as the Administrator and request that this Court appoint Apex to handle the Class Notice and claims administration procedures, including posting the Judgment on its website. (*Id*. at ¶ 22, Ex. 1, p. 1; Declaration of Kimberly Sutherland of Apex attached as Exhibit 3 to the Manus Decl., at ¶ 6).

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 Defendants employed in California during the Class Period. (Manus Decl. ¶ 24, Ex. 1, p. 1). Defendants identified approximately 499 Class Members based on review of its payroll and personnel records. (*Id.*, Ex. 1, p. 17).

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 Plaintiff' 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., ¶ 25). 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 all meal and rest periods, failure to pay all wages and overtime due to allegedly common off-the-clock work, failure to correctly calculate the regular rate of 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., ¶ 25). 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.*).

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. Thus, Plaintiff's claims are typical of the claims of the putative Class. (Manus Decl., ¶ 26).

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., ¶¶ 72-77). The Class Representative's interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and has no conflicts of interest. (Manus Decl., ¶ 27; Declaration of Eric Cardenas ("Cardenas Decl."), filed herewith. Plaintiff has not shrunk from this responsibility. (*Id.* at ¶¶ 9-10). Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (Cardenas Decl. ¶ 13). 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., ¶ 28). As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendants. 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.*; Cardenas Decl., ¶ 6).

Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (Manus Decl. at ¶ 29). 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 499 individual actions against Defendants each for relatively small amounts. Hence, an individual suit would prove uneconomical for a potential plaintiff because litigation costs would dwarf a potential recovery. (*Id*.).

V. THE PRELIMINARY APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure for settlements of class actions. *See* Manual for Complex Litigation, 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 Plaintiff' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

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

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

The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. The negotiations have been, at all times, adversarial and non-collusive in nature. *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that their claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. 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. Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (Manus Decl., ¶

31).

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. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id.* at ¶ 32).

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

While Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (Manus Decl., ¶ 33). 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. 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.*)

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

Plaintiff has not yet filed the motion for class certification, and as such, the extent to which Plaintiff's proposed classes are certifiable is somewhat speculative. Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class resulting in less overall recovery. (*Id.* at ¶ 34).

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. Given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.* at ¶ 35).

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 ¶¶ 36, 79).

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 $1,000,000.00 as addressed above, the Net Settlement Amount is estimated to be $471,666.67. (*Id.* at ¶ 20). There are approximately 499 total Class Members. (*Id.*) If there are no exclusions from the Class, the average gross individual settlement payment shares per Class Member, using a straight average, is $945.22. (*Id.*)

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:

- $291,324 for unpaid wages, including overtime wages, due to off the clock work (95% attributed to overtime) and $104,785 due to rounding (84% attributed to overtime) for a total of unpaid wages equal to $369,109 (discounted by 80% to <u>$79,221.80</u>). (Manus Decl. ¶ 42);
- $6,771 for meal period violations. (*Id.* at ¶ 46);
- $3,394,410 for rest period violations (assuming a 100% violation rate on eligible shifts) (discounted by 90% to <u>$339,441</u>). (*Id*. at ¶ 48);
- Unreimbursed business expenses $240,214 (cell phone) (assuming $25/month) (discounted by 50% to $120,017). (*Id*. at ¶ 51);
- $1,371,030 in wage statement penalties (discounted by 75% to <u>$342,757.50</u>). (*Id*. at ¶ 54);
- $1,384,377.75 in waiting time penalties for 249 terminated employees (discounted

by 80% to $276,875.55). (*Id*. at ¶ 61); and

- $1,446,900 for PAGA penalties (discounted by 80% to $289,380). (*Id*. at ¶ 65).

As such, Plaintiff estimated that Defendant faced approximately $1,165,083.85 in exposure on Plaintiff's main claims and PAGA penalties of $289,380, for a total liability exposure of $1,454,463.85. The discounts applied take into consideration the difficulties of proof, the Defendant's defenses, and other attendant risks of each claim. The Gross Settlement Amount of $1,000,000 therefore represents a recovery for the Class Members of approximately 68% of the estimated liability exposure. Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial. (*Id*. at ¶ 68).

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' counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendants 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 68% of the estimated total realistic maximum liability exposure (*Id*.).

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

F. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Manus Decl., ¶¶ 72-77). Class Counsel submits the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (*Id*. at ¶ 77).

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

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

"Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit." *Clark v. Am. Residential Services LLC* (2009) 175 Cal.App.4th 785, 804. "[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they should be compensated for the expense or risk they have incurred in conferring a benefit on other members of the class." *Id*. at 806. "An incentive award is appropriated 'if it is necessary to induce an individual to participate in the suit.'" *Cellphone Term. Fee Cases* (2010) 186 Cal.App.4th 1380, 1394, quoting *Clark, supra*, 174 Cal.App.4th at 804. The "criteria courts may consider in determining whether to make an incentive award include: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation." *Id.* at pp. 1394-95.

Here, Plaintiff has a right to move the Court for an incentive award of up to $10,000 paid from the Gross Settlement Amount. As detailed in Plaintiff's concurrently filed declaration, Plaintiff devoted a great deal of time and work assisting Class Counsel in the case. (Manus Decl., ¶ 69; Cardenas Decl., ¶ 13). Plaintiff has devoted a substantial amount of time to helping Class Counsel effectively develop and prosecute this action at every stage of the litigation, including through settlement. (*Id*.) Both before and after filing, Plaintiff conferred with Class Counsel to discuss every aspect of this case. Plaintiff has invested a substantial number of hours in this action thus far. (*Id*.). Plaintiff provided Class Counsel with information about Defendant, reviewed documents, consulted Class Counsel throughout the litigation, participated in the mediation process, and reviewed and signed the Settlement Agreement. Plaintiff has diligently, adequately, and fairly represented the Class Members, and has not placed his interests above any member of the putative Class. (*Id*.)

Plaintiff's courage in proceeding with his class-wide claims should not be underestimated. By suing Defendants, 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. (*Id*.; Cardenas Decl., ¶ 15).

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., ¶¶ 70-71; *see also* Class Notice, Exhibit 1 thereto).

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Notice will be sent via first-class mail to each Class Members at their addresses from Defendants' records. (Manus Decl., ¶ 70, Ex. 1, p. 13). If any Notice Packets are returned undeliverable without a forwarding address, the Administrator will use the national change of address database and perform a skip trace to locate the Class Member and mail a new Notice to the correct address. (*Id.*). The Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice.

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

Class Counsel respectfully requests, without opposition from Defendants, an award of attorneys' fees of no more than $333,333.33 (one-third of the Gross Settlement Amount) and reasonable litigation costs not to exceed $25,000, subject to approval by the Court. (Manus Decl. ¶¶ 19, 78, Ex. 1 p. 2-3).

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Manus Decl., ¶¶ 72-77). Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. As such, the requested award of attorneys' fees and costs is reasonable. Class Counsel will submit billing records to support their fees and costs request at the time of final approval. (*Id.*)

X. ACTION REQUESTED AS A PART OF SETTLEMENT APPROVAL

Plaintiff respectfully requests the Settlement be preliminarily approved, the Class Notice be approved, Apex Class Action, LLC be appointed the Administrator, D.Law, Inc. be appointed Class Counsel, Eric Cardenas be appointed Class Representatives, and a Final Approval Hearing date be set.

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Dated: June 2, 2026

Respectfully submitted,

D.LAW, INC.

By ______________________________

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