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of himself and others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GERARDO DE LEON, an individual, on
behalf of himself and others similarly
situated,

Plaintiffs,

v.

B2SIGN INC, a California stock
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CLASS ACTION

Case No. 24STCV15638

Assigned for All Purposes To:
Honorable Lawrence P. Riff
Department 7

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

Hearing Information:
Date: February 11, 2027
Time: 10:00 a.m.
Dept: 7

Action filed: June 21, 2024
FAC Filed: March 11, 2025
Trial date: None Set

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Gerardo De Leon (“Plaintiff”) seeks preliminary approval of a putative class and
4 representative action settlement with Defendant B2Sign, Inc. (“Defendant”) (Plaintiff and
5 Defendant are collectively referred to herein as “the Parties”) on behalf of himself and a
6 proposed Settlement Class of all persons who worked for Defendant in California as non-exempt,
7 hourly employees at any time during the Class Period of June 21, 2020, through January 4, 2026
8 (“Class”). After participating in mediation, the Parties reached a settlement in the gross amount
9 of \$580,000.00 to resolve the instant action, subject to this Court’s final approval.

10 Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff respectfully requests
11 that this Court grant preliminary approval of the proposed settlement agreement between the
12 Parties, the terms of which are set forth in the Parties’ Joint Stipulation of Class and PAGA
13 Representative Action Settlement (“Settlement Agreement” or “Settlement”). (See Kim Decl.,
14 Exhibit 1). The Settlement was reached after the Parties engaged in informal discovery and
15 investigation, participated in mediation with a skilled mediator, and negotiated at arms-length
16 through experienced counsel on both sides.

17 As discussed below, the proposed Settlement satisfies all criteria for preliminary approval
18 under California law, falls well within the range of reasonableness, and is in the best interests of
19 the Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary
20 approval of the Settlement; (2) conditionally grant certification of the proposed Class solely for
21 the purposes of Settlement, (3) approve the appointment of Phoenix Class Action Administration
22 (“Phoenix”) as Settlement Administrator, (4) authorize the Settlement Administrator to send the
23 Notice of Settlement (“Class Notice”), attached to the Settlement Agreement as Exhibit A, to the
24 Class Members, (5) appoint Plaintiff as the Class Representative and Plaintiff’s Counsel as Class
25 Counsel, (6) and schedule a final approval hearing.

26 **II. STATUS OF THE LITIGATION**

27 **A. Procedural History**

28 Plaintiff worked as an hourly, non-exempt employee for Defendant and seeks to represent

1 approximately 569 current and former non-exempt employees who worked for Defendant in
2 California during the Class Period. (Kim Decl., ¶ 3.) Defendant focuses on providing large
3 format printing related services. (*Id.*) Defendant operates a facility based in Pomona, California.
4 (*Id.*) Class Members worked as forklift operators, warehouse workers, and in similar and related
5 positions in connection with printing-related services. (*Id.*)

6 On June 21, 2024, Plaintiff commenced a Class Action by filing a Complaint alleging
7 causes of action against Defendant for (1) Failure to Pay Minimum Wages; (2) Failure to Pay
8 Wages and Overtime Under Labor Code § 510; (3) Meal Period Liability Labor Code § 226.7;
9 (4) Rest Break Liability Labor Code § 226.7; (5) Violation of Labor Code § 226; (6) Violation of
10 Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9)
11 Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to
12 Reimburse Necessary Business Expenses Under Labor Code § 2802; and (11) Violation of
13 Business & Professions Code §§ 17200, *et seq.* (the “Class Action”). (Kim Decl., ¶ 4.)

14 Plaintiff also submitted a PAGA notice (LWDA-CM-1035778-24) to the Labor and
15 Workforce Development Agency (“LWDA”) on June 21, 2024. (Kim Decl., ¶ 5.) On March 11,
16 2025, Plaintiff filed a First Amended Complaint (“Operative Complaint”) adding a claim for
17 civil penalties under the California Private Attorneys General Act.

18 Plaintiff contends that Defendant violated California’s wage and hour laws by failing to
19 pay minimum wages, wages, and overtime, meal period violations, rest period violations, failing
20 to issue accurate, itemized wage statements, unlawful wage deductions, failing to pay timely
21 wages, failing to pay final wages and waiting time penalties, failing to keep payroll records,
22 failing to reimburse necessary business expenses, and unfair competition. (*Id.* at ¶ 6.)

23 **B. Investigation**

24 Before filing the lawsuit, Class Counsel conducted a thorough investigation and
25 researched the facts and circumstances underlying the pertinent issues and applicable law. (*Id.* at
26 ¶ 7.) This required thorough discussions and interviews between Class Counsel and Plaintiff, in
27 addition to the above-described research into the various legal issues involved in the case. (*Id.*)
28 After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims

1 giving rise to the action, including (1) conducting informal discovery and meeting and conferring
2 with defense counsel about same; (2) reviewing and analyzing records and data, as well as
3 employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation;
4 (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law
5 and potential defenses; (6) constructing damage models based on interpretations of California
6 law and the facts and numbers provided by Defendant; and (7) reviewing information provided
7 by Defendant in response to informal discovery and in advance of the mediation. (*Id.*)

8 Defendant, for its part, vigorously contested liability, the amount of claimed damages,
9 and the propriety of class certification. (*Id.* at ¶ 8.) After analyzing the relevant documents and
10 other gathered data, Class Counsel believed that this case was appropriate for resolution via
11 mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate
12 Plaintiff's claims and attempt settlement. (*Id.*)

13 **C. Settlement Efforts**

14 On July 16, 2025, the Parties attended an all-day mediation session with Lonnie Giamela,
15 Esq., an experienced litigator and mediator in the field of wage and hour class actions. (Kim
16 Decl., ¶ 9.) During mediation, counsel for Plaintiff and Defendant discussed all aspects of the
17 case, including the risks of continued litigation and the risks to all parties of proceeding with a
18 class certification motion, as well as the merits of the primary claims in this case. (*Id.*) Following
19 mediation, the Parties accepted a mediator's proposal outlining general settlement terms. (*Id.*)
20 The Parties continued to work together on a long-form Settlement Agreement following
21 mediation, which resulted in the Settlement Agreement before the Court for approval. (*Id.*)

22 From Class Counsel's review of the strengths and weaknesses of the case and the risks
23 and delays posed by further litigation, Class Counsel believes that the Settlement is fair and
24 reasonable. (*Id.* at ¶ 10.) Further, the Settlement Agreement was the product of a non-collusive
25 settlement process in which the Parties were forced to make significant compromises in the
26 interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

27 ///

28 ///

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Settlement Class/Class Period and Aggrieved Employees/PAGA Period: The Settlement Agreement defines the Class as all persons who worked for Defendant in California as non-exempt, hourly employees at any time during the Class Period (i.e. the period from June 21, 2020, through January 4, 2026.) (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 1.5, 1.12.) The Settlement Agreement also defines “Aggrieved Employees” as all persons who worked for Defendant in California as non-exempt, hourly employees at any time during the PAGA Period (i.e. June 21, 2023, through January 4, 2026.) (*Id.* at Exhibit 1, Settlement Agreement, ¶ 1.4, 1.31.)

Key Financial Terms: Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay \$580,000.00 (“Gross Settlement Amount”) on a non-reversionary basis and to pay the employer’s portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.1.)

The “Net Settlement Amount” available for distribution to Class Members is the Gross Settlement Amount less the following payments in the amount approved by the Court: Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, the Administration Expenses Payment, Individual PAGA Payments, and the LWDA PAGA Payment. (Exhibit 1, Settlement Agreement, ¶ 1.27.) These amounts are detailed as follows:

- Class Counsel’s Fees and Litigation Expenses Payment: Up to one-third of the Gross Settlement Amount, or **\$193,333.33**, to Class Counsel as attorneys’ fees for the litigation and resolution of this Action and actual costs incurred in this Action. (Exhibit 1, Settlement Agreement, ¶ 3.2.2.);
- Class Representative Enhancement Award to Named Plaintiff: Up to **\$5,000.00** to Plaintiff as an award for his service as the class representative (Exhibit 1, Settlement Agreement, ¶ 3.2.1.);
- Administration Expense Payment: A not-to-exceed amount of **\$12,000.00** to the

Settlement Administrator for its costs of administration of the Settlement (Exhibit 1, Settlement Agreement, ¶ 3.2.3);

- **PAGA Payment:** **\$50,000.00** for settlement of claims for civil penalties under PAGA, with 35% (\$17,500.00) allocated to the Aggrieved Employees (“Individual PAGA Payments”) and 65% (\$32,500.00) allocated to the LWDA (“LWDA PAGA Payment”) (Exhibit 1, Settlement Agreement, ¶ 3.2.5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount (“NSA”) is estimated to be approximately **\$299,666.67**. (Kim Decl., at ¶ 12.) The “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period. (Kim Decl., at ¶ 12, Exhibit 1, Settlement Agreement, ¶ 1.22.) Each Participating Class Member’s “Individual Class Payment” shall be calculated by the Settlement Administrator using the following formula: (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member’s Workweeks. (Kim Decl., at ¶ 12, Exhibit 1, Settlement Agreement, ¶ 3.2.4.)

For the approximately 569 Class Members (if no exclusions), the average Gross Individual Settlement Payment, using a straight average, is \$526.65. (Kim Decl., ¶ 12.)

Class Notice Procedures: Not later than 14 days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 4.2.) Using best efforts to perform as soon as possible, and in no event later than 7 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish, Vietnamese, Mandarin, and Cantonese translations. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class

1 Member per Defendant's records. (Kim Decl., ¶ 13.)

2 Not later than 3 business days after the Administrator's receipt of any Class Notice
3 returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any
4 forwarding address provided by the USPS. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶
5 7.4.3.) If the USPS does not provide a forwarding address, the Administrator shall conduct a
6 Class Member Address Search, and re-mail the Class Notice to the most current address
7 obtained. (*Id.*) The Administrator has no obligation to make further attempts to locate or send
8 Class Notice to Class Members whose Class Notice is returned by the USPS a second time. (*Id.*)
9 Class Members who wish to exclude themselves from the Class Settlement must send the
10 Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60
11 days after the Administrator mails the Class Notice (plus an additional 14 days for Class
12 Members whose Class Notice is re-mailed). (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement,
13 ¶ 7.5.1.)

14 **Releases:** Effective on the date when Defendant fully funds the entire Gross Settlement
15 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
16 Payments, Plaintiff, Class Members, and Aggrieved Employees will release claims against all
17 Released Parties as follows. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.)

18 Release by Participating Class Members: All Participating Class Members, together and
19 individually, on their behalf and on behalf of their respective heirs, executors, administrators,
20 agents, and attorneys, release and forever discharge the Released Parties from all claims that
21 were alleged or reasonably could have been alleged based on the facts stated in the Operative
22 Complaint ("Released Class Claims"). The Released Class Claims only apply to claims arising
23 during the Class Period. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.2.)

24 Release by Aggrieved Employees: All Aggrieved Employees, together and individually,
25 on their behalf and on behalf of their respective heirs, executors, administrators, agents, and
26 attorneys, are deemed to release and forever discharge the Released Parties from any and all
27 claims for civil penalties under PAGA that were alleged or reasonably could have been alleged
28 based on the facts stated in the PAGA Notice ("Released PAGA Claims"). The Released PAGA

Claims only apply to claims arising during the PAGA Period. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 5.3.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

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

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

A. There Is a Numerous and Ascertainable Class

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

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all persons who worked for Defendant in California as non-exempt, hourly employees during the Class Period. Defendant has identified 569 Class Members based on a review of its payroll and personnel records. (*Id.*, ¶ 15.) Therefore, 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

1 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

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

12 *Id.* at 809.

13 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
14 common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the
15 Class is united in its proof. (Kim Decl., ¶ 16.) Because Plaintiff has alleged a single scheme, "the
16 relevant proof [does] not vary among class members" and "clearly presents a common question
17 fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation*
18 (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*,
19 (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-
20 wide causation, class-wide injury, and class-wide damages when a common course of action has
21 been shown. *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1350.
22 This inference "eliminates the need for each class member to prove individually the
23 consequences of the defendants' actions to him or her." *Id.* at 1351 (quoting *Rosack v. Volvo of*
24 *America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

25 This action involves, *inter alia*, a determination about Defendant's alleged failure to pay
26 minimum wages, wages, and overtime, meal period violations, rest period violations, failure to
27 issue accurate, itemized wage statements, unlawful wage deductions, failure to pay timely wages,
28 failure to pay final wages and waiting time penalties, failure to keep payroll records, failure to
reimburse necessary business expenses, and largely derivative claims under the UCL and PAGA.
(Kim Decl., ¶ 16.) Plaintiff contends Defendant's practices affected Class Members in the same
way and presents questions that are suitable for common adjudication because all Class Members
were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in

1 this matter depends upon questions that are common to Class Members. (*Id.*)

2 **C. The Named Plaintiff's Claims Are Typical**

3 A class representative's claims are typical when they arise from the same event, practice,
4 or course of conduct that gives rise to the claims of other putative class members, and if their
5 claims rest on the same legal theories. The class representative's claims must be "typical" but not
6 necessarily identical to the claims of other class members. It is sufficient that the representative
7 is similarly situated so that he or she will have the motive to litigate on behalf of all class
8 members. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-*
9 *Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that
10 the class representative must have identical interests with the class members."). Thus, it is not
11 necessary that the class representative should have personally incurred all the damages suffered
12 by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
13 224, 228.

14 Plaintiff contends, and Defendant does not dispute for settlement purposes only, that
15 Plaintiff's claims are typical of Class Members' claims because they arose from the same factual
16 basis and are based on the same legal theories. (Kim Decl., ¶ 17.) Thus, Plaintiff's claims are
17 typical of the claims of the putative Class. (*Id.*)

18 **D. Adequacy of Class Counsel and Class Representative**

19 As detailed below, Class Counsel are experienced in class actions, have represented their
20 client and the Class zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 18, 69-78.) The
21 Class Representative's interests are aligned with those of the Class Members, as he has suffered
22 the same injuries as the Class Members and has no conflicts of interest. (*Id.* at ¶ 18.) Plaintiff has
23 not shrunk from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of
24 time and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class
25 Counsel and the Class Representative are adequate.

26 **E. Predominance and Superiority**

27 Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 19.)
28 As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff

1 and all Class Members were subjected to the same policies and pay practices during the relevant
2 time period. (*Id.*) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and
3 overtime, reimbursement for business expenses, and penalties for work performed as non-exempt
4 employees for Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common
5 adjudication because all Class Members were allegedly subject to the same employment policies,
6 and Plaintiff contends the practices applied uniformly to all Class Members. (*Id.*)

7 Plaintiff contends that class resolution is superior to other available methods for the fair
8 and efficient adjudication of the controversy as there is little interest or incentive for Class
9 Members to individually control the prosecution of separate actions. (*Id.* at ¶ 20.) Although the
10 alleged injury resulting from Defendant's policies and practices are real and significant, the cost
11 of individually litigating each such case against Defendant would easily exceed the value of any
12 relief that could be obtained by any one Class Member individually. (*Id.*) If Class Members are
13 forced to litigate their claims individually, it would potentially result in over 569 individual
14 actions against Defendant, each for relatively small amounts. (*Id.*) Hence, an individual suit
15 would prove uneconomical for potential plaintiff because litigation costs would dwarf a potential
16 recovery. (*Id.*)

17 **V. THE THREE-STEP APPROVAL PROCESS**

18 California Rule of Court 3.769 requires court approval of the settlement of class action
19 lawsuits. Preliminary approval is merely the first of three steps that comprise the approval
20 procedure for settlements of class actions. *See* Manual for Complex Litigation (1993) Second
21 §30.44; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is
22 the dissemination of notice of the settlement to all Class Members. *Id.* The third step is a final
23 settlement approval hearing, at which evidence and argument concerning the fairness, adequacy,
24 and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

25 The determination of whether a settlement should be preliminarily approved requires,
26 "basic information about the nature and magnitude of the claims in question and the basis for
27 concluding that the consideration being paid for the release of those claims represents a
28 reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133.

1 However, the record need not contain an explicit statement of the maximum theoretical amount
2 that the class could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010)
3 186 Cal. App. 4th 399, 409 (“*Kullar* does not... require any such explicit statement of value; it
4 requires a record which allows “an understanding of the amount that is in controversy and the
5 realistic range of outcomes of the litigation.”). “If the proposed settlement appears to be the
6 product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not
7 improperly grant preferential treatment to class representatives or segments of the class, and falls
8 within the range of possible approval, then the court should direct that notice be given to the
9 Class Members of a formal fairness hearing, at which evidence may be presented in support of
10 and in opposition to the settlement.” *Manual for Complex Litigation*, Second § 30.44, at 229.

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

19 **VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE**

20 The Court’s decision to preliminarily approve a settlement is granted great deference as
21 an exercise within its broad discretion. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th
22 224, 234-235. As a matter of public policy, courts both encourage the use of the class action
23 device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000)
24 23 Cal. 4th 429, 434 (“Courts have long acknowledged the importance of class actions as a
25 means to prevent a failure of justice in our judicial system.”); *Class Plaintiffs v. City of Seattle*
26 (1992) 955 F.2d 1268, 1276 (“[S]trong judicial policy . . . favors settlements, particularly where
27 complex class action litigation is concerned.”). Applying the above factors, the proposed
28 settlement provides a substantial benefit to the Class. It is fair, reasonable, and adequate, and

1 should be preliminarily approved.

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

4 The proposed Settlement was reached as a result of arm's length negotiations after the
5 completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 22.)
6 The negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) *See*, 4
7 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation,
8 "a court will presume that a proposed class action settlement is fair when certain factors are
9 present, particularly evidence that the settlement is the product of arms-length negotiation,
10 untainted by collusion."). Although Plaintiff steadfastly maintains that his claims are meritorious,
11 Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with
12 litigation. (*Id.*) As discussed below, Defendant presented multiple defenses to Plaintiff's claims,
13 both on the merits and with respect to class certification. (*Id.*) Thus, while Plaintiff was prepared
14 to litigate these claims through class certification, and ultimately trial, success was far from
15 guaranteed. (*Id.*) Assistance from a well-respected mediator ensured negotiations between the
16 Parties were non-collusive and well-informed. (*Id.*)

17 **B. Extent of Discovery and Stage of Proceedings.**

18 As stated above, the Parties engaged in substantial informal discovery before the
19 Settlement was reached to allow them to fully evaluate the class claims and Defendant's
20 defenses. (*Id.* at ¶ 23.) This litigation has reached the stage where the Parties have a clear view of
21 their respective strengths and weaknesses in this case. (*Id.*)

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

24 Plaintiff's claims are based on Defendant's alleged failure to pay minimum wages,
25 wages, and overtime, meal period violations, rest period violations, failure to issue accurate,
26 itemized wage statements, unlawful wage deductions, failure to pay timely wages, failure to pay
27 final wages and waiting time penalties, failure to keep payroll records, failure to reimburse
28 necessary business expenses, and largely derivative claims under the UCL and PAGA. (*Id.* at ¶

1 24).

2 Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least
3 minimum wages for all hours worked and proper overtime wages for hours worked in excess of
4 eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 25.) Specifically, Plaintiff alleges that
5 Plaintiff and Class Members were required to work off the clock, including having to wait for
6 time clocks to become available to clock in and receiving work-related calls from Defendant's
7 managers after work hours. (*Id.*)

8 Defendant contends that it did not require off the clock work, paid for all reported hours
9 worked, that Class Members were instructed and required to record all hours worked, that any
10 alleged off the clock work was performed without Defendant's knowledge, and that it paid
11 wages at the proper rates. (Kim Decl., at ¶ 26.) Defendant also argued that given its written
12 policies and practices, any unrecorded hours are likely subject to individualized inquiry and
13 unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class Counsel applied a
14 significant discount to damages based on this theory. (*Id.*)

15 Plaintiff also alleged that Defendant failed to provide Plaintiff and Class Members with
16 lawful first and second meal periods. (Kim Decl., ¶ 27.) For example, Plaintiff alleges that
17 Plaintiff and Class Members were often unable to take a timely meal period before the start of
18 the fifth hour of work or take an uninterrupted and full meal period due to the volume of work
19 and demands from managers. (*Id.*)

20 Defendant contends that Class Members were given a reasonable opportunity to take their
21 meal periods and that any non-compliant meal periods were at the voluntary election of Class
22 Members. (Kim Decl., ¶ 28.) Further, when compliant meal periods were not provided,
23 Defendant provided premium pay to Class Members as reflected in their time and pay records.
24 (*Id.*) Defendant further contends that the meal break claim requires individualized inquiries
25 which would preclude class certification. (*Id.*) If Defendant's contentions are proven true and
26 prevail in trial, the likely outcome would be no recovery for the Class Members on the meal
27 break claim. (*Id.*)

28 Plaintiff also contends that Defendant did not provide Class Members with paid 10-

1 minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 29.) For example,
2 Plaintiff alleges that Class Members were either not permitted the opportunity to take a rest break
3 or were required to remain under Defendant's control and respond to calls and instructions from
4 management and job demands. (*Id.*)

5 Defendant maintains that it did provide a reasonable opportunity for Class Members to
6 take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not
7 provided. (Kim Decl., ¶ 30.) Considering that unlike meal periods, rest breaks need not be
8 recorded, these violations would likely be difficult to prove at trial and potentially depress the
9 damages ultimately awarded. (*Id.*) Therefore, Class Counsel applied significant and appropriate
10 discounts to the rest break claim. (*Id.*)

11 Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to
12 incur certain expenses for their jobs with Defendant, including the use of their personal cellular
13 phones for work purposes. (Kim Decl., ¶ 31.) Defendant contends that it did not require
14 employees to use their personal cellular phones for work and that it reimbursed employees for all
15 work-related expenses pursuant to its expense reimbursement policies. (*Id.*)

16 As for the wage statement and waiting time penalties claims, Plaintiff alleges that
17 Defendant consistently failed to provide Class Members with accurate and itemized wage
18 statements and all wages due to Class Members upon termination of their employment with
19 Defendant. (Kim Decl., ¶ 32.) Defendant contends that these claims are merely derivative of the
20 underlying claims and that Plaintiff and Class Members would be unable to first establish
21 liability for the underlying claims for the reasons described above. (*Id.*) Defendant further
22 contended that even if Plaintiff could first establish liability for the underlying claims, Plaintiff
23 and Class Members would be unable to establish that Defendant's conduct was willful and
24 knowing as required by the relevant statutes since Defendant acted in good faith to provide
25 accurate wage statements and pay all wages due to Plaintiff and Class Members. (*Id.*) Thus,
26 Defendant contends that the wage statement and waiting time penalties claims to have little to no
27 value. (*Id.*)

28 Further, Defendant contends that the PAGA claim is also derivative of the underlying

claims in the Action and ultimately fails because the underlying claims have no merit. (Kim Decl., ¶ 33.) Defendant also contends that even if Plaintiff and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*)

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl., ¶ 35.) 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 the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. (*Id.*) Even if Plaintiff was to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

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

Plaintiff has not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed classes are certifiable is somewhat speculative. (*Id.* at ¶ 36.) Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class, resulting in less overall recovery. (*Id.*)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (*Id.* at ¶ 37.) Cases like *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity and unsettled nature of the issues, it is somewhat likely that any outcome at trial

1 would have resulted in a lengthy and costly appeal. An appeal would result in further delay for
2 the Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and
3 legal uncertainty must be dealt with in any litigation, and this Settlement was the product of
4 compromise accounting for those risks and uncertainty. (*Id.*)

5 **E. The Presence of a Governmental Participant**

6 Class Counsel will be submitting the Settlement Agreement and this Motion to the
7 LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(1)(2). (*Id.* at ¶
8 38.)

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

11 Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay
12 records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as
13 follows: **\$62,606.20** for unpaid wages claims, including overtime, due to off the clock work;
14 **\$72,511.80** for meal period violations; **\$257,481.80** for rest period violations; **\$18,345.00** for
15 unreimbursed business expenses; **\$181,323.69** in waiting time penalties; **\$58,680.00** for wage
16 statement penalties; and **\$82,440.00** for PAGA penalties. (*Id.* at ¶¶ 41-59) As such, the total
17 estimated realistic exposure Defendant could face is **\$733,388.49**. (*Id.* at ¶ 61.)

18 The Gross Settlement Amount of \$580,000.00 represents a recovery for the Class of
19 approximately 79% of the total realistic exposure Plaintiff estimated that Defendant could face
20 on the primary claims in this case. (*Id.*) Plaintiff and Class Counsel submit that this is an optimal
21 result in the face of uncertainty and the prospects of protracted and contested litigation through
22 class certification, summary judgment, and trial, and particularly in light of all of the factors
23 described above. (*Id.*)

24 **G. A Balance of Risk Factors and Kullar Analysis Support Approval**

25 In deciding whether to approve the settlement, the Court must balance these risk factors
26 against an "understanding of the amount in controversy and the realistic range of outcomes of the
27 litigation." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v.*
28 *BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court

1 “must stop short of the detailed and thorough investigation that it would undertake if it were
2 actually trying the case” *Munoz*, at 408. Plaintiffs’ counsel used the comprehensive data and
3 documents provided to perform an analysis of the potential exposure Defendants faced on
4 Plaintiff’s main class-wide claims, establishing the realistic range of outcomes in this case. As
5 noted above, the Gross Settlement Amount represents a recovery of approximately 79% of the
6 estimated total realistic exposure facing Defendants. (Kim Decl., ¶ 61.)

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

13 **H. Experience and Views of Counsel**

14 Experienced counsel, operating at arm’s length, have weighed the strengths of the case,
15 examined all the issues and risks of litigation, and endorsed the proposed settlement. Class
16 Counsel are experienced in class actions, have represented their clients zealously, and have no
17 conflicts of interest. (Kim Decl., ¶¶ 69-78.) Class Counsel submits the Settlement is fair,
18 adequate, and reasonable in view of the risks and other considerations addressed and is well-
19 suited for final approval upon completion of the administration process. (Kim Decl., ¶¶ 62, 79.)

20 **VII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE** 21 **CLASS MEMBERS.**

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

28 The proposed Class Notice provides all the information a reasonable person would need

1 to make a fully informed decision about the settlement. It will notify all Class Members of the
2 terms of the Settlement, its effect on their rights, their options as Class Members (i.e., participate,
3 object, opt-out, and dispute work weeks), and procedures for exercising those options. (Kim
4 Decl., ¶ 13.)

5 The standard for determining the adequacy of notice is whether it has “a reasonable
6 chance of reaching a substantial percentage of the class members.” *Cartt v. Superior Court*
7 (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of
8 the 569 Class Members at their addresses from Defendant’s records. (Kim Decl., ¶ 13, Exhibit 1,
9 Settlement Agreement ¶ 7.4.2.) Not later than 14 days after the Court grants Preliminary
10 Approval of the Settlement, Defendant will deliver the Class Data to the Administrator, in the
11 form of a Microsoft Excel spreadsheet. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶
12 4.2.) Using best efforts to perform as soon as possible, and in no event later than 7 days after
13 receiving the Class Data, the Administrator will send to all Class Members identified in the Class
14 Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish,
15 Vietnamese, Mandarin, and Cantonese translations. (Kim Decl., ¶ 13, Exhibit 1, Settlement
16 Agreement ¶ 7.4.2.) Not later than 3 business days after the Administrator’s receipt of any Class
17 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
18 using any forwarding address provided by the USPS. (Kim Decl., ¶ 13, Exhibit 1, Settlement
19 Agreement ¶ 7.4.3.) The Class Notice should be approved as the best and most practicable way
20 to ensure the greatest possible number of Class Members will receive notice. (Kim Decl., ¶ 67.)

21 **VIII. THE STIPULATED CLASS COUNSEL ATTORNEYS’ FEES AND COSTS**
22 **AWARDS ARE REASONABLE AND SHOULD BE APPROVED.**

23 Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel
24 Fees Payment of **\$193,333.33** (up to one-third of the Gross Settlement Amount) and a reasonable
25 Class Counsel Litigation Expenses Payment of actual costs incurred, subject to approval by the
26 Court. (Kim Decl. ¶ 11.)

27 Class Counsel submits it has the requisite experience, knowledge, and resources to serve
28 as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 69-78.) Class Counsel have

1 incurred substantial hours in prosecuting this Action on a contingency basis and will not receive
2 any compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 62.) In
3 addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a
4 significant benefit to the Class. (*Id.*) As such, the requested Class Counsel Attorneys' Fees and
5 Class Counsel Costs Award are reasonable.

6 **IX. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND**
7 **REASONABLE**

8 "At the conclusion of a class action, the class representatives are eligible for a special
9 payment in recognition of their service to the class." 5 Newberg on Class Actions (5th ed.) §
10 17:1. Courts approve incentive awards to plaintiffs when justified and appropriate to compensate
11 plaintiffs for time, effort, and inconvenience. *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995)
12 901 F. Supp. 294, 297. These payments are intended to recognize the time and efforts that the
13 Class Representatives have spent on behalf of the Class. "Courts routinely approve incentive
14 awards to compensate named plaintiffs for the services they provide and the risks they incurred
15 during the course of the class action litigation." See *Ingram v. The Coca-Cola Company* (N.D.
16 Ga. 2001) 200 F.R.D. 685, 694 (quoting *In re Southern Ohio Correctional Facility* (S.D. Ohio
17 1997) 175 F.R.D. 270, 272). In *Coca-Cola*, the court approved service awards of \$300,000 to
18 each named plaintiff in recognition of the services they provided to the class by responding to
19 discovery, participating in the mediation process, and taking the risk of stepping forward on
20 behalf of the class. *Ingram v. Coca-Cola Co.* (2001) 200 F.R.D. 685, 694; see also *Van Vranken*,
21 *supra*, 901 F.Supp. at 299 (approving \$50,000 participation award to plaintiffs).

22 Plaintiff is entitled to a reasonable service payment for his efforts and initiative in
23 bringing and helping to prosecute this action. (Kim Decl., ¶ 63.) Plaintiff spent significant time
24 better apprising himself of his rights, deciding whether remedial action should be taken and how
25 it should be taken, searching for attorneys, and communicating with Class Counsel. Plaintiff was
26 consistently communicative with counsel, routinely checked-in, and was responsive to Class
27 Counsel's requests for information for discovery, documentation, and meetings. (*Id.*)

28 In agreeing to be the named plaintiff in this litigation, Plaintiff accepted a number of

1 risks. For example, Plaintiff accepted the potential risk of being liable for Defendant's costs and
2 potentially the company's fees if the lawsuit was unsuccessful. Further, Plaintiff risked the
3 potential stigma of being a class representative in a class action labor dispute, which may affect
4 his future employability. (Kim Decl., ¶ 65.)

5 Plaintiff seeks an enhancement in the amount not to exceed \$5,000.00 as Class
6 Representative. Plaintiff secured a benefit for the Class worth \$580,000.00. In the aggregate, the
7 requested enhancement represents only a small percentage of the settlement consideration. The
8 total amount which Plaintiff is requesting to be allocated to a service award is approximately
9 0.9% of the total settlement amount. In light of the foregoing, Class Counsel believes that the
10 \$5,000.00 service award to the Class Representative is fair and reasonable. (Kim Decl., ¶ 66.)

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

13 Plaintiff respectfully requests this Court, as part of the preliminary approval process, to
14 grant the following relief and make the following orders:

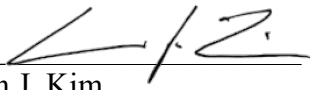
- 15 1. Review and approve the Settlement Agreement;
- 16 2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit
17 A;
- 18 3. Consider and determine that the proposed class action settlement as set forth in the
19 Settlement Agreement preliminarily appears fair, reasonable, and adequate;
- 20 4. Enter an order conditionally certifying the action as a class action for settlement
21 purposes only and preliminarily approving the proposed class action settlement and the
22 Settlement Agreement;
- 23 5. Approve and appoint D.Law, Inc. as Class Counsel for settlement purposes;
- 24 6. Approve and appoint Phoenix Class Action Administration ("Phoenix") as the
25 Settlement Administrator to handle the notice and claims procedures as set forth in the
26 Settlement Agreement;
- 27 7. Approve the proposed settlement's allocation of funds to claims made under PAGA;
- 28 8. Order Defendant to disclose the Class Data to the Settlement Administrator;

1 9. Order Phoenix to mail the Class Notice to Class Members; and

2 10. Set a date for the Final Approval Hearing.

3 Dated: September 22, 2026

D.LAW, INC.

4
5 By 
6 Enoch J. Kim
7 Bradford Smith
8 Attorneys for Plaintiff and Settlement Class
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