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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

GABRIEL MORIN, RAFAEL RODRIGUEZ, DANIEL COLOMA, and ZOEI HUTCHERSON, individually, and on behalf of all others similarly situated, and the State of California under the Private Attorneys General Act,

Plaintiffs,

v.

AMERICOLD LOGISTICS, LLC, a limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: CV-25-006362

CLASS AND REPRESENTATIVE ACTION

[*Assigned for all purposes to: Hon. John R. Mayne, Dept. 21*]

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

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs Gabriel Morin, Rafael Rodriguez, Daniel Coloma, and Zoei Hutcherson (collectively, "Plaintiffs") seek preliminary approval of a class and representative action settlement with Defendant Americold Logistics, LLC ("Defendant") (Plaintiffs and Defendant are collectively referred to herein as "the Parties") on behalf of themselves and a proposed Class of all persons currently and formerly employed by Defendant as non-exempt, hourly-paid employees during the Class Period in the State of California. After participating in mediation, the Parties reached a settlement in the gross amount of **$850,000.00** to resolve the instant action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769 (d) and (e), Plaintiffs respectfully request that this Court grant preliminary approval of the proposed settlement between the Parties, the terms of which are set forth in the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement"). (See Kim 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 Settlement satisfies all criteria for preliminary approval, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On September 30, 2024, Plaintiff Rodriguez filed a putative class action complaint in Stanislaus County Superior Court, asserting the following claims: (1) Failure to Provide Meal Periods (Lab. Code §§ 204, 223, 226.7, 512, and 1198); (2) Failure to Pay Hourly Wages and Overtime (Lab. Code §§ 223, 510, 1194, 1194.2, 1197, 1197.1, and 1198); (3) Failure to Pay Proper Sick Pay (Lab. Code § 246); (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); (8) Failure to Pay Wages Due, Negotiable and Payable in Cash on Demand (Lab. Code §§ 212 and 213); and (9) Unfair Competition (Bus. & Prof. Code §§ 17200 et seq.) ("Rodriguez Action"). Concurrently, Plaintiff Rodriguez submitted a PAGA notice to the Labor and Workforce Development Agency ("LWDA"). (Kim Decl., ¶ 3.)

On November 6, 2024, Defendant filed an Answer to the Rodriguez Action, generally and specifically denying all allegations and asserting applicable affirmative defenses. On November 8, 2024, Defendant removed the case to federal court, where it is currently pending before Judge William B. Shubb in the Eastern District of California. (Kim Decl., ¶ 4.)

On December 11, 2024, Plaintiff Rodriguez filed a First Amended Complaint, adding a tenth cause of action for Civil Penalties under PAGA (Lab. Code § 2698 et seq.). (Kim Decl., ¶ 5.)

On April 24, 2025, Plaintiff Morin provided written notice to the LWDA and Defendant of the specific Labor Code provisions he alleged to have been violated ("Morin PAGA Notice"). Plaintiff Morin did not receive notice within 65 days of submission that the LWDA intended to investigate. (Declaration of Nicol E. Hajjar ("Hajjar Decl.") ¶ 3, Ex. A.)

On April 25, 2025, Plaintiff Morin filed a putative class action against Defendant in the above-captioned court, Case No. CV-25-003941 ("*Morin* Class Action"). The complaint alleges the following causes of action: (1) Failure to Pay Minimum and Straight Time Wages (Lab. Code §§ 204, 1194, 1194.2, 1197, and 1197.1); (2) Failure to Pay Overtime Wages (Lab. Code §§ 1194 and 1198); (3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512); (4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7); (5) Failure to Timely Pay Final Wages at Termination (Lab. Code §§ 201–203); (6) Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226); (7) Failure to Indemnify Employees for Expenditures (Lab. Code § 2802); and (8) Unfair Business Practices (Bus. & Prof. Code §§ 17200 et seq.) ("Morin Action"). (Kim Decl., ¶ 6; Hajjar Decl. ¶4)

On June 18, 2025, Defendant filed an Answer to the Morin Class Action denying all allegations in the Morin Action, and on June 19, 2025, removed the matter to the Eastern District of California, where it is currently pending before the Hon. Daniel J. Calabretta. (Kim Decl., ¶ 7; Hajjar Decl. ¶5)

On July 2, 2025, Plaintiff Morin filed a standalone representative action in the above-captioned court, Case No. CV-25-006362 ("*Morin* PAGA Action"). The complaint alleges a PAGA cause of action seeking civil penalties for the violations alleged in the Morin PAGA Notice. (Kim Decl. ¶ 8; Hajjar Decl. ¶ 6.)

On August 14, 2025, the Parties' stipulation and request to stay the *Morin* Class and PAGA Actions was granted. Subsequently, on July 16, 2026, as part of this Settlement and to effectuate the Agreement, Plaintiff Morin filed a First Amended Complaint in the instant matter ("Operative Complaint"). The Operative Complaint consolidates this *Morin* PAGA Action, the *Morin* Class Action, and the Rodriguez Action by adding Rafael Rodriguez, Zoei Hutcherson and Daniel Coloma as named plaintiffs and including all Plaintiffs' class claims. (Kim Decl. ¶¶ 9, 10; Hajjar Decl. ¶¶ 7, 8.)

On November 9, 2026, Plaintiffs submitted a copy of the Settlement Agreement to the LWDA. (Kim Decl. ¶ 11, Hajjar Decl. ¶ 10)

B. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (*Id*. at ¶ 12.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the cases' various legal issues involved in the case. (*Id*.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting 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 Plaintiffs' personnel file and other documentation; (4) interviewing Plaintiffs regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. (Kim Decl. ¶ 13; Hajjar Decl. ¶¶ 11, 12.)

C. Settlement Efforts

On March 5, 2026, the Parties attended an all-day mediation with Lonnie Giamela, Esq.,

an experienced litigator and mediator in the field of wage and hour class actions. (Kim Decl., ¶ 15.) During mediation, counsel for the Parties discussed all aspects of the case, including the risks to all parties of continued litigation, including with respect to class certification and the merits of the primary claims in this case. (*Id.*; Hajjar Decl. ¶ 12.) Following mediation, the Parties accepted a mediator's proposal outlining general settlement terms. (Kim Decl. ¶ 15.) The Parties continued to work together on a long-form settlement agreement, which resulted in the Settlement Agreement now before the Court for approval. (*Id.*)

The Parties spent the next several months negotiating the terms of the Settlement, which was finalized in August of 2026. (*Id*. at ¶ 16.) The negotiations were adversarial, conducted at arm's length and tempered by the efforts of both sides to serve the interests of their clients. (*Id.*) From Class Counsel's review of the strengths and weaknesses of the case and the risks and delays posed by further litigation, Class Counsel believes that the Settlement is fair and reasonable. (*Id*. at ¶ 17; Hajjar Decl. ¶ 15.)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

The Settlement Class/Class Period: The Settlement Agreement defines the "Class" as all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees during the Class Period (i.e. September 13, 2022, through December 31, 2025, subject to the Escalator Clause set forth in Paragraph 4.5 of the Settlement Agreement and Defendant's rights thereunder) in the State of California. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 2.02, 2.45.)

Key Financial Terms: Under the terms of the Settlement Agreement, Defendant has agreed to pay $850,000.00 ("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. (*Id.*, Settlement Agreement, ¶ 2.15.) 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:

- Class Counsel's Fees and Litigation Expenses Payment: Up to one-third of the Gross Settlement Amount, or **$283,333.33**, to Class Counsel as attorneys' fees for the litigation

and resolution of this Action and actual costs incurred in this Action of not more than **$25,000.00**. (*Id.*, Settlement Agreement, ¶ 4.8.);

- Class Representative Service Payments to Named Plaintiffs: Up to **$10,000.00** to Plaintiff Morin, **$10,000.00** to Plaintiff Rodriguez, **$10,000.00** to Plaintiff Hutcherson, and **$5,000.00** to Plaintiff Coloma as an award for their service as the class representatives (*Id.*, Settlement Agreement, ¶ 4.9.);
- Administration Expenses Payment: A not-to-exceed amount of **$13,390.00** to the Settlement Administrator for its costs of administration of the Settlement (*Id.*, Settlement Agreement, ¶ 4.10.);
- PAGA Penalties: **$50,000.00** ($32,500.00 to the LWDA; $17,500.00 to Aggrieved Employees) (*Id.*, Settlement Agreement, ¶ 4.7.);

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount ("NSA") is estimated to be **$443,276.67.** (Kim Decl., at ¶ 17; Exhibit 1, Settlement Agreement, ¶ 2.19.) The "Individual Class Payment" means the amount which is ultimately distributed to each Settlement Class Member from the Net Settlement Amount, net of any Employee's Taxes and Required Withholdings, and separate and distinct from the Settlement Class Member's share of the PAGA Payment. (*Id.*, Settlement Agreement, ¶ 2.16.) 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 individual Participating Class Member's Workweeks. (*Id.*, Settlement Agreement, ¶ 2.46.)

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.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only[1], that the numerosity and ascertainability elements are satisfied here. Class Members are all persons currently or formerly employed by Defendant as non-exempt, hourly-paid employees during the Class Period in the State of California. Defendant has identified 1,350 Class Members based on a review of its payroll and personnel records. (Kim Decl. ¶ 20.) 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 fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest "does 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

[1] Defendant's agreement to conditional certification is solely for purposes of effectuating the Settlement. Defendant does not concede that certification would be appropriate for litigation purposes and expressly preserves its rights and defenses concerning class certification and representative treatment in the event the Settlement does not receive final approval or otherwise become effective.

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's favor whatever questions were common to the class." *Id.* at 809.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiffs, and the Class is united in its proof. (Kim Decl., ¶ 21. Hajjar Decl. ¶ 14) Because Plaintiffs have alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing *In Re NASDAQ Market-Makers Antitrust Litigation*, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen* (1987) 191 Cal.App.3d 1341, 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]). Defendant disputes that such an inference would be appropriate in a contested certification proceeding and maintains that adjudication of Plaintiffs' claims would require individualized inquiries, but does not oppose conditional certification solely for purposes of the Settlement.

This action involves a determination about Defendant's alleged failure to pay minimum wage, failure to pay overtime wages, failure to provide compliant rest breaks or rest break premium pay, failure to provide compliant meal periods or meal break premium pay, failure to timely pay wages during employment or upon separation, failure to indemnify reasonable and necessary business expenses, failure to provide accurate, itemized wage statements, failure to pay proper sick pay, and failure to pay proper vacation wages. (Kim Decl. ¶ 21.) Plaintiffs contend Defendant's practices affected Class Members in the same way, which presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter thus

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

C. The Named Plaintiffs' Claims Are Typical

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

Plaintiffs contend, and Defendant does not dispute for purposes of settlement, that Plaintiffs' claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. Thus, Plaintiffs' claims are typical of the claims of the putative Class. (Kim Decl., ¶ 22.)

D. Adequacy of Class Counsel and Class Representative

As detailed below, Class Counsel are experienced in class actions, have represented Plaintiffs and the Class zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 23, 73-81; Hajjar Decl. ¶¶ 17-21.) The Class Representatives' interests are aligned with those of Class Members, as they have suffered the same injuries as the Class Members. The Class Representatives and Class Members have no conflicts of interest. (Kim Decl. ¶ 23.) Therefore, Class Counsel and the Class Representatives are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. As explained, *supra*, Plaintiffs allege there are common issues of law and fact given that Plaintiffs and all Class Members were subjected to the same policies and practices during the Class Period. (Kim Decl., ¶ 24.) Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime,

reimbursement for business expenses, and penalties for work performed as non-exempt, hourly-paid employees for Defendant. Plaintiffs allege that these issues are suitable for common adjudication as all Class Members were allegedly subject to the same employment policies, and Plaintiffs contend the practices applied uniformly to all Class Members. (*Id*.)

Plaintiffs contend that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (*Id.* at ¶ 25.; Hajjar Decl. ¶ 13) Although the alleged injury resulting from Defendant's policies and practices are real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. If Class Members are forced to litigate their claims individually, it would potentially result in over 1,350 individual actions against Defendant, each for relatively small amounts. Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id*.)

Accordingly, the Settlement reflects a compromise of disputed claims and does not constitute an admission by Defendant or any Released Party of liability, wrongdoing, damages, the propriety of class or representative treatment, or any violation of law. Defendant continues to deny the material allegations asserted in the Action.

VI. THE THREE-STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits. Preliminary approval is 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 dissemination of notice of the settlement to all Class Members. 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 (1993), at 229.

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

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Court's decision to preliminarily approve a settlement is granted great deference as an exercise within its broad discretion. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-235. As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle*

(1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned.").

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

The Settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 27.) The negotiations have been, at all times, adversarial and non-collusive in nature at all times. (*Id.*) *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. (Kim Decl. ¶ 27.) As discussed below, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from guaranteed. Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id.*)

B. Extent of Discovery and Stage of Proceedings.

As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id.* at ¶ 28.)

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

Plaintiffs allege that Defendant failed to pay Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 30.) For example, Plaintiffs allege that Class Members were required to work after they had clocked out for the day in order to complete their job duties. Additionally, Plaintiffs allege that Class Members were required to put on uniforms and

protective gear as well as pass through a security check without being paid for that time. (*Id.*) Plaintiffs also allege that Defendant disproportionately rounded Class Members' time and was not neutral, resulting in unpaid time. (*Id.*)

Defendant contends that it did not require any off the clock work, paid for all reported hours worked, that Class Members were instructed and required to record all hours worked, that any alleged off the clock work was performed without Defendant's knowledge, and that they paid wages at the proper rates. Defendant also argued that, given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (Kim Decl. ¶ 31.)

Plaintiffs also alleged that Defendant failed to provide Class Members with lawful first and second meal periods. Specifically, Plaintiffs allege that Class Members were not provided meal periods or had their meal periods late or cut short due to understaffing and heavy workloads. Additionally, Plaintiffs contend that Class Members were required to carry walkie-talkies, including during meal and rest periods. (Kim Decl., ¶ 32.)

Defendant contends that Class Members were given a reasonable opportunity to take their meal periods and that any deviations were at the voluntary election of Class Members. (Kim Decl. ¶ 33.) Defendant further contends that Class Members signed meal period waivers and attestation forms, verifying that they did not perform off-the-clock work and received their breaks in a timely manner. (*Id.*) As such, Defendant alleges that the meal break claim requires individualized inquiries which would preclude class certification. (*Id.*) If Defendant's contentions are proven at trial, the likely outcome would be no recovery for the Class Members on the meal break claim. (*Id*.)

Plaintiffs also contend that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. Specifically, Plaintiffs contend that Class Members were not provided rest periods since they were not relieved of their duties and were required to work through their rest breaks due to the excessive workloads and work assignments. (Kim Decl., ¶ 34.)

Defendant maintains that it did provide a reasonable opportunity for Class Members to

take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not provided. Considering that unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim. (Kim Decl. ¶ 35.)

Plaintiffs contend that Class Members worked for Defendant for more than 30 days but were not paid at least one hour of sick pay for every 30 hours of work, or at least three days of sick time for every 12-month period of work. Defendant maintains that it paid Class Members all required and requisite sick pay at the regular rate of pay. (Kim Decl. ¶ 37.)

As for the wage statement and waiting time penalties claims, Plaintiffs allege that Defendant consistently failed to provide Class Members with accurate and itemized wage statements and all wages due to Class Members upon termination of their employment with Defendant. Defendant contends that these claims are derivative of the underlying claims and Plaintiffs and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. Defendant further contended that Plaintiffs and Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes. Thus, Defendant contends that the wage statement and waiting time penalties claims to have little to no value. (Kim Decl. ¶ 38.)

As stated above, while Plaintiffs contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. Although the Parties engaged in significant discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. At a minimum, it would have required substantial additional expenditures of time and resources by both Parties and materially delayed any potential recovery. Even if this Court certified 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. (Kim Decl. ¶ 40.)

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

Plaintiffs acknowledge that certification is contested and that Defendant has identified individualized issues that it contends would preclude or materially limit certification if the Action proceeded through litigation. Plaintiffs therefore recognize a material risk that a litigation class might not be certified or, if certified, could later be narrowed or decertified. (Kim Decl. ¶ 43.) 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. (Kim Decl. ¶ 43.)

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. Finally, given the complexity and unsettled nature of the issues, it is somewhat likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. 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. (Kim Decl. ¶ 44.)

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.

Based on an analysis of Plaintiffs' time and pay records and a sampling of time and pay records for the Class, Plaintiffs estimated the potential realistic exposure for the main claims as

follows: **$247,158.60** for unpaid wages claims, including overtime, due to off the clock work and rounding; **$240,625.60** for meal period violations; **$451,202.30** for rest period violations; **$34,852.60** for unreimbursed business expenses; **$255,876.50** in waiting time penalties; **$179,220.00** for wage statement penalties. (*Id*. at ¶¶ 47-60) Accordingly, the total estimated realistic exposure Defendant could face is **$1,408,935.60**. (*Id*. at ¶ 63.)

The Gross Settlement Amount of $850,000.00 represents a recovery for the Class of approximately 60% of the total realistic exposure Plaintiffs estimated Defendant could face on the primary claims in this case. (*Id*.) Plaintiffs submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and in light of all of the factors described above. (*Id*.)

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

H. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 71-79; Hajjar Decl. ¶¶ 17-21.) Class Counsel submits the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (Kim Decl., ¶ 79; Hajjar 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 affords Class Members the opportunity to present their objections. *Id.* Class Members are entitled to the best practical notice under the circumstances. *Kass v. Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings & Loan Assn.,* 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members "that they may be excluded from the class if they so request and that they will be bound by the judgment, whether favorable or not, if they do not request exclusion." *Kass*, 67 Cal. App. 3d at 106. In a case such as this involving a significant number of class members, California authorities generally require service of the class notice by mail or similar reliable means. *Chance v. Super. Ct.,* 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct*., 50 Cal. App. 3d 960, 972 (1975). [2]

The proposed Class Notice provides all the information a reasonable person needs to make an informed decision about the settlement. It will notify Class Members of the Settlement terms, its effect on their rights, their options as Class Members (i.e., participate, object, opt-out, and dispute work weeks), and procedures for exercising those options. (Kim Decl. ¶ 18.) The Class Notice also explains that Class Members who do not timely and validly request exclusion will be bound by the Settlement and applicable release, while PAGA Releasors may not opt out of the PAGA Settlement and will remain bound by the applicable PAGA release as provided in the Settlement Agreement. Any dispute concerning a Class Member's Workweeks at Issue will be resolved pursuant to the procedures set forth in the Settlement Agreement, under which Defendant's records and the determination based thereon are presumed determinative absent evidence rebutting those records.

The standard for determining the adequacy of notice is whether it has "a reasonable

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[2] Due process does not require that each Class Member actually receive a notice, but rather a procedure reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987).

chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 18, Ex. 1, Settlement Agreement ¶ 5.1.1.) Not later than thirty (30) calendar 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. (*Id.* Ex. 1, Settlement Agreement, ¶ 5.2.) Using best efforts to perform as soon as possible, and in no event later than fourteen (14) calendar days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data the Class Notice via first-class United States Postal Service ("USPS") mail. (*Id.,* Ex. 1, Settlement Agreement ¶ 5.3.1.) Not later than five (5) business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. (*Id.,* Ex. 1, Settlement Agreement ¶ 5.3.1.) Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice. (Kim Decl. ¶ 69-70.)

IX. THE STIPULATED CLASS COUNSEL ATTORNEYS' FEES AND COSTS AWARDS ARE REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel Fees Payment of **$283,333.33** (up to one-third of the Gross Settlement Amount) and a reasonable Class Counsel Litigation Expenses Payment of actual costs not to exceed **$25,000.00,** subject to approval by the Court. (Kim Decl. ¶ 16.)

Class Counsel submits they have the requisite experience, knowledge, and resources to serve as Class Counsel and to represent the Class zealously. (Kim Decl., ¶¶ 71-79; Hajjar Decl. ¶¶ 17.) Class Counsel have expended significant resources prosecuting this Action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 64; Hajjar Decl. ¶ 17.) In addition, Class Counsel's successful efforts to arrive at the Settlement on behalf of the Class Members will confer a significant benefit to the Class. (Kim Decl. ¶ 64.)

X. THE CLASS REPRESENTATIVE SERVICE PAYMENTS ARE FAIR AND REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.). Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for time, effort, and inconvenience. *Van Vranken v. Atl. Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 297. These payments are intended to recognize the time and efforts that the Class Representatives have spent on behalf of the Class. "Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation." See *lngram v. Coca-Cola Company* (N.D. Ga. 2001) 200 F.R.D. 685, 694 (quoting *In re Southern Ohio Correctional Facility* (S.D. Ohio 1997) 175 F.R.D. 270, 272).

Plaintiffs are entitled to a reasonable service payment for their efforts and initiative in bringing and helping to prosecute this action. (Kim Decl. ¶ 65.) Plaintiffs spent significant time apprising themselves of their rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and communicating with Class Counsel. Plaintiffs were consistently communicative with counsel and were responsive to Class Counsel's requests for information for discovery, documentation, and meetings. (*Id.*; Hajjar Decl. ¶¶ 25, 26.)

In agreeing to be the named Plaintiffs in this litigation, Plaintiffs accepted a number of risks, including the potential risk of being liable for Defendant's costs and potentially defense counsel's fees if the lawsuit were unsuccessful. Further, Plaintiffs risked the potential stigma of being a class representative in a class action labor dispute, which may affect their future employability. (Kim Decl. ¶ 69. *See* Declaration of Gabriel Morin ("Morin Decl.") ¶ 9-11, Declaration of Rafael Rodriguez ("Rodriguez Decl.")¶1-14, Declaration of Daniel Coloma ("Coloma Decl.")¶ 1-13, Declaration of Zoei Hutcherson ("Hutcherson Decl.")¶ 1-14)

Plaintiffs seek enhancements in the amount not to exceed $10,000.00 to Plaintiff Morin, $10,000.00 to Plaintiff Rodriguez, $10,000.00 to Plaintiff Hutcherson, and $5,000.00 to Plaintiff Coloma as the Class Representatives. In light of the foregoing, Class Counsel believes that the

requested service awards to the Class Representatives are fair and reasonable. (Kim Decl., ¶ 68; Hajjar Decl. ¶ 26)

X. ADMINISTRATION COSTS ARE REASONABLE

The Parties selected Apex Class Action, LLC to administer this Settlement. Plaintiffs seek preliminary approval of Administration Costs up to $13,390.00 pursuant to Apex's not-to-exceed bid. (Hajjar Decl. ¶ 27, Ex. C.) The services covered by this payment are extensive and necessary to carry out the Settlement administration. *See, e.g.*, Sec. VII, *supra*.

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

The Parties have negotiated a fair and reasonable Settlement of the class claims in light of the risks present in this case. Plaintiffs have appropriately presented the materials and information necessary for preliminary approval, and therefore, respectfully request that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally certify the proposed Class for settlement purposes only; (3) appoint D.Law, Inc. and Wilshire Law Firm as Class Counsel; (4) appoint Plaintiffs as Class Representatives; (5) appoint Apex as Settlement Administrator;(6) approve the proposed Class Notice and notice procedures; (7) approve the procedures governing requests for exclusion, objections, and workweek disputes; (8) preliminarily approve the PAGA Settlement and allocation; and (9) schedule a Final Approval Hearing.

Dated: November 9, 2026

D.LAW, INC.

By /s/ *Enoch J. Kim*
Enoch J. Kim, Esq.
Matthew Carraher, Esq,
Attorneys for Plaintiffs and Settlement Class