D.LAW, INC.
Roman Shkodnik (SBN 285152)
Mason Doidge (SBN 352604)
Enoch J. Kim (SBN 261146)
Arianna N. Razi (SBN 356930)
250 North Madison Avenue, 2nd Floor
Pasadena, CA 91101
Tel.: (818) 962-6465 / Fax: (818) 962-6469
Emails: r.shkodnik@d.law, m.doidge@d.law, e.kim@d.law, a.razi@d.law

Attorneys for Plaintiff DAVID MICHAEL BEASON,
on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF STANISLAUS

DAVID MICHAEL BEASON, on behalf of himself and others similarly situated, Plaintiff, vs. GALAXY PATTERSON ROAD LLC, a California limited liability company; GALAXY THEATRES, an entity of unknown form; GALAXY RIVERBANK, an entity of unknown form; GALAXY THEATRES, LLC, a California limited liability company; GALAXY SEQUOIA LLC, a California limited liability company; GALAXY TULARE LP, a California limited partnership; GALAXY MISSION GROVE LLC, a Delaware limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No. CV-24-010344 CLASS ACTION Assigned For All Purposes To: Hon. Stacy P. Speiller Dept.: 22 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT** *[filed concurrently with Plaintiff's Notice of Motion and Motion; Declarations of Enoch J. Kim, Kimberly Sutherland, and David Michael Beason; and [Proposed] Order]* Date: December 10, 2026 Time: 8:30 a.m. Dept.: 22 Original Complaint Filed: December 19, 2024 First Amended Complaint Filed: February 24, 2025 Second Amended Complaint Filed: July 31, 2026 Trial Date: None Set

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5 Newberg on Class Actions § 17:1 (5th ed.) 14

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff David Michael Beason ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with Defendants Galaxy Patterson Road LLC, Galaxy Theatres, Galaxy Riverbank, Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC ("Defendants") (Plaintiff and Defendants collectively referred to herein as "the Parties") on behalf of himself and a proposed class of all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the Class Period, which is the period from March 1, 2022, through August 1, 2026 ("Class" or "Class Members"). After participating in mediation, the Parties reached a settlement in the gross amount of $500,000.00 to resolve the action, subject to this Court's final approval.

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

As discussed below, the Settlement satisfies all criteria for preliminary approval, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court grant preliminary approval of the Settlement.

II. STATUS OF THE LITIGATION

A. Procedural History

On December 19, 2024, former plaintiff Steven Ojeda (now deceased) commenced a Class Action by filing a Complaint alleging eleven causes of action against Defendants for (1) Failure to Pay Minimum Wages; (2) Failure to Pay Wages and Overtime Under Labor Code § 510; (3) Meal-Period Liability Under Labor Code § 226.7; (4) Rest-Break Liability Under Labor Code § 226.7; (5) Failure to Pay Vacation Wages; (6) Failure to Comply with Labor Code §§ 245 *et seq.* and 246; (7) Reimbursement of Necessary Expenditures Under Labor Code § 2802; (8) Violation of Labor Code

§ 226(a); (9) Failure to Keep Required Payroll Records Under Labor Code §§ 1174 and 1174.5; (10) Penalties Pursuant to Labor Code § 203; and (11) Violation of Business & Professions Code § 17200 *et seq.* ("the Action"). (Kim Decl., ¶ 3.)

Pursuant to Labor Code section 2699.3, subd.(a), former plaintiff Steven Ojeda gave timely written notice to Defendants and California's Labor and Workforce Development Agency ("LWDA") by sending his PAGA Notice on December 19, 2024 (LWDA-CM-1068528-24). (Kim Decl., ¶ 4.) On February 24, 2025, former plaintiff Steven Ojeda filed a First Amended Complaint adding a cause of action for Penalties Pursuant to Labor Code § 2699, *et seq*. (*Id.*)

Pursuant to Labor Code section 2699.3, subd.(a), former plaintiff Steven Ojeda gave timely written notice to Defendants and the LWDA by sending his amended PAGA Notice on December 18, 2025 (LWDA-CM-1068528-24), which added Defendants Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC. (Kim Decl., ¶ 5.)

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending his amended PAGA Notice on April 28, 2026 (LWDA-CM-1068528-24), which added Plaintiff David Michael Beason. (Kim Decl., ¶ 6.)

On July 31, 2026, Plaintiff filed a Second Amended Complaint substituting out former plaintiff Steven Ojeda as the proposed class representative in favor of Plaintiff and adding Defendants Galaxy Sequoia LLC, Galaxy Tulare LP, Galaxy Mission Grove LLC, and Galaxy Theatres LLC as Doe Defendants to the Action ("Operative Complaint"). (Kim Decl., ¶ 7.)

B. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 9.) This required thorough discussions and interviews between Class Counsel and Plaintiff. (*Id*.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) meeting and conferring with defense counsel and conducting informal discovery; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel files and other documentation; (4) interviewing Plaintiff regarding Defendants' policies and workplace; (5) researching the applicable law and potential defenses; (6)

constructing damage models based on the facts and numbers provided by Defendants, including consulting experts; and (7) reviewing information provided by Defendants in response to informal discovery and in advance of the mediation. (*Id*.)

C. Settlement Efforts

On May 28, 2025, the Parties participated in an all-day mediation with mediator Lonnie Giamela, Esq., a respected and highly experienced mediator in wage and hour class actions. (Kim Decl., ¶ 11.) During mediation, counsel for Plaintiff and Defendants discussed all aspects of the case, including the risks of litigation and the risks to both Parties of proceeding with a class certification motion, as well as the law on unpaid wages, meal periods, rest periods, reimbursements, wage statements, and final pay. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. (*Id.*) The Parties continued to work together negotiating the long form settlement terms following mediation, as set forth in the Settlement Agreement. (*Id*.)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendants have agreed to pay $500,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 1.22.) The Gross Settlement Amount does not include the employer's share of payroll taxes, which will be paid by Defendants in addition to the Gross Settlement Amount. (*Id*. at ¶ 3.1.)

The "Net Settlement Amount," available for distribution to Participating Class Members, is the Gross Settlement Amount less the following payments in the amounts approved by the Court:

- Class Counsel Fees Payment*:* Up to one-third (1/3) of the Gross Settlement Amount, or **$166,666.66**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Counsel Litigation Expenses Payment: Reimbursement of actual expenses incurred to prosecute the Action, which is currently estimated not to exceed **$30,000.00** (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- Class Representative Service Payment: Up to **$5,000.00** to Plaintiff as an award for his services as the Class Representative (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶

3.2.1);

- Administration Expenses Payment: Up to **$11,990.00** to the Administrator for its fees and costs to administer the Settlement (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 3.2.3); and
- PAGA Penalties: **$50,000.00** for settlement of claims for civil penalties under PAGA, with 35% ($17,500.00) to be paid on a pro-rata basis to the PAGA Employees ("Individual PAGA Payments") and 65% ($32,500.00) to be paid to the LWDA ("LWDA PAGA Payment") (Kim Decl., ¶ 14, Exhibit 1, Settlement Agreement, ¶ 3.2.5.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $**236,343.34** (Kim Decl., ¶ 15.) Each Class Member's share of the Net Settlement Amount ("Individual Class Payment") will be calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Workweeks. (Kim Decl., ¶ 15, Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 874 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **$270.42.** (Kim Decl., ¶ 15.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

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

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

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

A. There Is a Numerous and Ascertainable Class

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

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all persons employed by Defendants in California and classified as a non-exempt hourly employee who worked for Defendants during the Class Period, which is the period from March 1, 2022, through August 1, 2026. (Kim Decl., ¶ 18, Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.12.) Defendants have identified 874 Class Members based on a review of their records. (Kim Decl., ¶ 18.) 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 requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class." (*Id.* at 809.)

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 19.) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental

to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her." *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendants' alleged failure to pay all wages due by requiring Class Members to work off the clock, failure to provide meal and rest breaks and premium wages for non-compliant meal and rest breaks, failure to pay vacation wages, failure to pay all sick pay owed, failure to reimburse necessary business expenses, failure to furnish accurate wage statements, and failure to timely pay wages including final wages. (Kim Decl., ¶ 19.) Plaintiff contends Defendants' 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.*)

C. The Named Plaintiff's Claims Are Typical

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

Plaintiff contends, and Defendants do not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are

based on the same legal theories. (Kim Decl., ¶ 20.) Thus, Plaintiff's claims are typical of the claims of the putative Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representative

As detailed below, Class Counsel are experienced in class actions, have represented Plaintiff and the Class zealously, and have no conflicts of interest. (Kim Decl., ¶ 21.) The Class Representative's interests are aligned with those of the Class Members, as he has suffered the same injuries as the Class Members and has no conflicts of interest. (*Id*.) Plaintiff has devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id*.) Therefore, Class Counsel and the Class Representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the Class. (Kim Decl., ¶ 22.) As explained above, Plaintiff alleges there are common issues of law and fact given that Plaintiff and Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id*.) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees. (*Id*.) Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members. (*Id*.)

Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy, as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (Kim Decl., ¶ 23.) Although the alleged injuries resulting from Defendants' policies and practices are real and significant, the cost of individually litigating each such case against Defendants would easily exceed the value of any relief that could be obtained by any one Class Member individually. (*Id*.) If Class Members are forced to litigate their claims individually, it would potentially result in 874 individual actions against Defendants, each for relatively small amounts. (*Id*.) Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id*.)

V. THE THREE STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action

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

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

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

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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 proposed settlement was reached as a result of arm's-length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 25.) The negotiations have been, at all times, adversarial and non-collusive in nature. (*Id*.) *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that his claims are meritorious, Defendants presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. (*Id*.) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id*.)

B. Extent of Discovery and Stage of Proceedings

As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendants' defenses. (*Id.* at ¶ 26.) This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id*.)

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

Plaintiff alleges that Defendants failed to pay Plaintiff and Class Members at least minimum

wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 28.) Plaintiff alleges that Defendants required Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including by helping customers and co-workers, answering work-related calls and texts, and going through COVID screening and tests. (*Id*.) However, Plaintiff alleges that Class Members were not paid for the time they worked in excess of their scheduled hours. (*Id*.)

Defendants contend that they instructed Class Members to record all hours worked, that they paid Class Members for all reported hours worked, that any off-the-work was performed without Defendants' knowledge and was de minimis, and that they paid wages to Class Members at the proper rates. (Kim Decl., ¶ 29.) Defendants contend that off-the-clock work allegations will be difficult to certify because Defendants have a lawful policy prohibiting off-the-clock work. (*Id.*) Defendants also argue that, given their written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (*Id.*)

Plaintiff alleges that Defendants failed to provide proper meal breaks to Class Members. (Kim Decl., ¶ 30.) Plaintiff alleges that Defendants required Class Members to work through their meal periods due to understaffing and large workload. (*Id*.) Plaintiff further alleges that on occasions when Plaintiff and Class Members worked over ten hours on a shift, Defendants failed to provide them with a second uninterrupted, duty-free, and timely meal period. (*Id*.)

Defendants contend that Class Members were authorized, permitted, and never denied the opportunity to take their meal periods, and that any deviations from their scheduled meal breaks were at the voluntary election of Class Members. (Kim Decl., ¶ 31.) Further, Defendants argue that employees signed valid meal period waivers. (*Id.*) Defendants further contend that the meal break claim requires individualized inquiries, which would preclude class certification. (*Id.*)

Plaintiff also alleges that Defendants did not provide Class Members with paid 10-minute rest breaks for every four hours or a major fraction thereof. (Kim Decl., ¶ 32.) Plaintiff contends that Class Members were not permitted to leave Defendants' premises during rest periods and that rest breaks were often interrupted. (*Id*.)

Defendants maintain that they authorized and permitted Class Members to take duty-free rest

breaks of at least ten minutes for every four hours worked or major fraction thereof, which were reinforced through timekeeping software to record time taken for rest breaks. (Kim Decl., ¶ 33.) Defendants contend that there are no restrictions, in policy or practice, on where employees can go during their rest breaks. (*Id*.) Considering that, unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. (*Id*.)

Plaintiff alleges that Defendants failed to provide Class Members with sick pay and vacation pay at the appropriate rate of pay by failing to include shift differentials into the calculation of the regular rate of pay upon which sick pay and vacation pay were calculated and paid. (Kim Decl., ¶ 34.) Defendants contend that they paid any sick pay and vacation pay wages owed to Class Members at the correct rate of pay. (*Id*.)

Additionally, Plaintiff alleges that Defendants required Class Members to purchase supplies for maintenance projects and use their cellular phones for work but were not reimbursed for those expenses. (Kim Decl., ¶ 35.) Defendants maintain that Class Members did not incur business expenses and/or were properly reimbursed for all business expenses and further contend that any unreimbursed business expenses were not necessary expenditures as required by Labor Code section 2802. (*Id*.) Defendants also maintain that individualized issues relating to this claim would preclude class certification. (*Id*.)

As for the wage statement and waiting time penalties claims, Defendants contend that these claims are merely derivative of the underlying claims and that Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶ 36.) Defendants further contend that even if they could first establish liability for the underlying claims, Class Members would be unable to establish that Defendants' conduct was willful and knowing as required by the relevant statutes since Defendants acted in good faith to provide accurate wage statements and pay all wages due to Class Members. (*Id*.)

Similarly, Defendants contend 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., ¶ 37.) Defendants also contend 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 Defendants 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 contends the claims asserted in the Action have merit, he also acknowledges the expense, delay, and risks of continued litigation that would have likely spanned several years at a heavy cost. (Kim Decl., ¶ 39.) (*Id*.) This Settlement avoids those risks and the accompanying expense. (*Id*.)

D. The Risk of Maintaining Class Action Status Through Trial

Plaintiff had not yet filed his motion for class certification, and as such, the extent to which Plaintiff's proposed Class was certifiable is somewhat speculative. (Kim Decl., ¶ 40.) Absent a settlement, there was a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Class, resulting in less overall recovery. (*Id*.)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (Kim Decl., ¶ 41.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 addresses the complexity of using statistical samples in class actions and demonstrates that decertification is a real risk that Class Counsel must consider. (*Id*.) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id*.) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id*.)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). (Kim Decl., ¶ 42.)

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

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

follows: $112,442.25 for the unpaid wages claims, including minimum and overtime wages, due to off the clock work; $35,218.80 for meal period violations; $103,337.55 for rest period violations; $98,130.00 for wage statement penalties; $100,760.60 in waiting time penalties; $807.30 for unpaid sick pay and vacation pay; $26,220.00 for reimbursement for necessary business expenditures; and $98,470.00 for PAGA penalties. (Kim Decl., ¶¶ 45-68.) As such, the total estimated realistic exposure Defendants could face is $575,386.50. (*Id*. at ¶ 71.)

The Gross Settlement Amount of $500,000.00 represents a recovery for the Class of approximately 86% of the total realistic exposure Plaintiff estimated Defendants could face on the primary claims in this case. (*Id*.) Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and in light of all of the factors described above. (*Id*.)

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

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." *Munoz*, at 408. As noted above, the Gross Settlement Amount represents a recovery of approximately 86% of the estimated total realistic exposure facing Defendants. (Kim Decl., ¶ 71.)

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were ultimately denied. 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 submits that the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (Kim Decl., ¶¶ 12, 82.)

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND REASONABLE

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

Plaintiff is entitled to a reasonable service payment for his efforts and initiative in bringing and helping to prosecute this action and obtaining significant benefits from the Settlement for the Class. (Kim Decl., ¶ 73.) Plaintiff spent significant time better apprising himself of his rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel. (*Id*.) Plaintiff provided Class Counsel with information about Defendants, produced and reviewed documents, identified witnesses, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (Kim Decl., ¶ 74.)

In light of the foregoing, Class Counsel believes that the $5,000.00 Class Representative Service Payment is fair and reasonable. (*Id*.)

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

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

The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and challenge the number of Workweeks and/or PAGA Pay Periods attributed to each Class Member per Defendants' records. (Kim Decl., ¶ 75, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.)

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class USPS mail to each of the

Class Members based on Defendants' records. (Kim Decl., ¶ 16, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) For Class Notices returned as undelivered, the Administrator will remail the Class Notice to a forwarding address (if provided) and conduct skip tracing to obtain a current address if no forwarding address is provided. (Kim Decl., ¶ 75, Exhibit 1, Settlement Agreement, ¶ 7.4.3.)

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

Class Counsel respectfully requests, without opposition from Defendants, an award of $166,666.66 for attorneys' fees and up to $30,000.00 for reasonable expenses incurred to prosecute the Action, subject to approval by the Court. (Kim Decl., ¶ 72.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 77-82.) Class Counsel has incurred substantial hours in prosecuting this action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 72.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. (*Id*.) As such, the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

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

The Parties respectfully request this Court: (1) grant preliminary approval of the Settlement, (2) certify the proposed Class for settlement purposes, (3) approve Plaintiff as Class Representative and D.Law, Inc. as Class Counsel, (4) approve Apex as the Administrator, and (5) schedule the Final Approval Hearing.

Dated: November 3, 2026

D.LAW, INC.

By _____

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