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on behalf of themselves and others similarly situated

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA**

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|---|---|
| ARLEN F. ALCANTAR and DAVID CHIANG, individuals, on behalf of themselves and others similarly situated,<br><br>Plaintiffs,<br><br>v.<br><br>KIDANGO, INC., a California corporation and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No.: 23CV424964<br><br><u>CLASS ACTION</u><br><br><u>Assigned for All Purposes</u><br>To: Hon. Charles F. Adams<br>Dept.: 7<br><br>**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARILY APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT**<br><br>*[filed concurrently with Plaintiffs' Notice of Motion and Motion; Declaration of Enoch J. Kim; Declaration of Kyle Nordrehaug; Declaration of Arlen F. Alcantar; Declaration of David Chiang; Declaration of Mike Sutherland; Declaration of Bennett Berger; and [Proposed] Order]*<br><br>Date: September 4, 2025<br>Time: 1:30 p.m.<br>Dept.: 7<br><br>Original Complaint Filed: October 30, 2023<br>First Amended Complaint Filed: January 4, 2024<br>Second Amended Complaint: March 21, 2025<br>Trial Date: None Set |

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

Plaintiffs Arlen F. Alcantar and David Chiang (hereinafter, "Plaintiffs") seek preliminary approval of a putative class and representative action settlement with Defendant Kidango, Inc. ("Defendant") on behalf of themselves and a proposed class of all individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of California during the Class Period, commencing on October 30, 2019 and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option ("Class Period"). After participating in mediation, the Parties reached a settlement in the gross amount of $1,990,000.00 to resolve the foregoing action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiffs respectfully requests that this Court grant preliminary approval of the proposed settlement agreement between the Parties, the terms of which are set forth in the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Settlement")[1]. (*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 proposed Settlement Agreement satisfies all criteria for preliminary approval under California law and falls well within the range of reasonableness. Indeed, the Settlement was the product of hard-fought negotiations with the assistance of an experienced mediator. The proposed settlement reflected in the Settlement Agreement is fair, reasonable, and adequate, and in the best interests of the Class. Accordingly, Plaintiffs respectfully request that the Court: (1) grant preliminary approval of the settlement; (2) conditionally grant certification of the proposed Class solely for the purposes of settlement, (3) approve the appointment of Apex Class Action LLC ("Apex") as Administrator, (4) authorize the Administrator to send the Notice of Class and PAGA Action Settlement ("Class Notice") to the Class Members, (5) appoint Plaintiffs as Class

[1] Defendant has not yet executed the Settlement Agreement. Plaintiffs will submit the fully executed Settlement Agreement upon receipt of Defendant's signed Settlement Agreement.

Representatives and Plaintiffs' Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

## II. STATUS OF THE LITIGATION

### A. Procedural History

On October 30, 2023, Plaintiff Arlen F. Alcantar commenced a Class Action by filing a Complaint alleging causes of action against Defendant 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) Violation of Labor Code § 226; (6) Violation of Labor Code § 221; (7) Violation of Labor Code § 204; (8) Violation of Labor Code § 203; (9) Failure to Maintain Records Required under Labor Code §§ 1174, 1174.5; (10) Failure to Produce Requested Records under §§ 226 and 1198; (11) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802; and (12) Violation of Business & Professions Code 17200 *et seq*. (the "Action" or "Alcantar Action"). (Kim Decl., ¶ 3.)

Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff Arlen F. Alcantar gave timely written notice to Defendant and California's Labor and Workforce Development Agency ("LWDA") by sending her PAGA Notice on October 30, 2023 (LWDA-CM-990689-23). (*Id*. at ¶ 4.) On January 4, 2024, Plaintiff Arlen F. Alcantar filed a First Amended Complaint adding a cause of action for civil penalties under the PAGA, Labor Code § 2698 *et seq*. (*Id*.)

On January 5, 2024, Plaintiff David Chiang filed a Class Action complaint entitled *David Chiang v. Kidango, Inc.* in the Alameda County Superior Court of California (Case No. 24CV058779) ("Chiang Class Action") and alleged the same wage and hour violations as in the Alcantar Action. (*Id*.) Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff David Chiang gave timely written notice to Defendant and the LWDA by sending his PAGA Notice on January 5, 2024. (*Id*.) On March 21, 2024, Plaintiff Chiang filed a separate representative action complaint entitled *David Chiang v. Kidango, Inc.* in the Santa Clara County Superior Court of California (Case No. 24CV433628) ("Chiang PAGA Action") and alleged one cause of action for civil penalties under PAGA for various wage and hour violations. (*Id*.)

In May 2024, Plaintiffs and their counsel engaged in a Joint Prosecution and Fee and Cost

Sharing Agreement ("JPA") to collectively represent the Plaintiffs in the prosecution and litigation. (*Id*. at ¶ 5.) All Parties subsequently agreed to mediate the Plaintiffs' Class and PAGA claims. (*Id*.) On March 21, 2025, Plaintiffs filed a Second Amended Class Action Complaint in the Alcantar Action adding the parties and claims that were pending in the Chiang Class Action and Chiang PAGA Action ("Operative Complaint"). (*Id*.) Subsequently, on April 1, 2025, the Santa Clara County Superior Court of California subsequently granted Plaintiff Chiang's request to dismiss the separate Chiang PAGA Action without prejudice. (*Id*.) On April 8, 2025, the Alameda County Superior Court of California granted Plaintiff Chiang's request to dismiss the separate Chiang Class Action without prejudice. (*Id*.)

Shortly after the execution of the JPA, the Parties agreed to explore early resolution via mediation and engage in informal discovery prior to mediation. (Kim Decl., ¶ 6.)

**B. Plaintiffs' Claims and Defendant's Denials**

Plaintiffs' claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to provide sick pay, failure to reimburse business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (*Id*. at ¶ 7.)

Specifically, Plaintiffs allege Defendant's policy and practice of requiring systematic off-the-clock work flowed in part from their unlawful timekeeping procedures. (*Id*. at ¶ 8.) Plaintiffs allege that Defendant required timekeeping entries to be manually input into an application on the Class Members' cell phones rather than having Class Members clock in through a time clock or some other method of contemporaneously recording all hours worked. (*Id*.) Plaintiffs also allege that Defendant instructed Plaintiffs and Class Members to record their scheduled hours rather than their actual hours worked, which led to Plaintiffs and Class Members not being compensated for all hours worked, including overtime. (*Id*.) Plaintiffs further allege that Defendant would modify Plaintiffs' and Class Members' timekeeping entries to reduce their hours worked, or ask Plaintiffs and Class Members to clock out but continue working so they would only be paid based on their scheduled shift hours rather than their actual hours worked. (*Id*.) Plaintiffs maintain that Defendant required Plaintiffs and Class Members to work prior to the start of their scheduled shifts and after the end of their scheduled shifts, including supervising students, undergoing COVID-19 screenings before clocking in, answering work-related phone calls and messages, and responding to work emails. (*Id*. at ¶ 8.) Plaintiffs further allege that Defendant implemented an unlawful time-rounding policy and practice, which rounded down and reduced the actual working hours recorded by Plaintiffs and Class Members, resulting in unpaid wages (*Id*.)

Defendant contends that these claims are not suitable for class treatment given the individualized issues they raise and the manageability difficulties. (*Id*. at ¶ 36.) Defendant also argues it did not require off-the-clock work, any uncompensated overtime work was not authorized, suffered, or permitted by Defendant and was performed without Defendant's knowledge and/or control, and that Plaintiffs were exempt from the overtime wage requirements and other wage and hour requirements under the provisions of the applicable Wage Order of the California Industrial Welfare Commission of the Division of Labor Standards Enforcement and/or the applicable Wage Order was otherwise inapplicable. (*Id*.)

Plaintiffs also allege that Defendant recorded Plaintiffs' and Class Members' time into the timekeeping system to reflect that they took a 30-minute meal period before the fifth hour of work without regard as to whether their meal periods were taken on time, for the full duration, or were interrupted by work requirements. (Kim Decl., ¶ 9.) In fact, Plaintiffs allege that Defendant required Plaintiffs and Class Members to routinely work through their meal periods, resulting in them cutting their meal periods short or taking their meal periods late due to their work responsibilities. (*Id*.) Plaintiffs further allege that Defendant failed to pay the legally required premium at their regular rate of pay whenever meal periods were missed, interrupted, or late. Plaintiffs similarly allege that Plaintiffs and Class Members were unable to take two or three duty-free rest periods during their work shifts because they were required to respond to work demands throughout the day, and/or Defendant prevented Plaintiffs' and Class Members from leaving the premises. (*Id*.) Plaintiffs allege that Defendant failed to pay the legally required premium at their regular rate of pay whenever rest periods were missed, interrupted, or late. (*Id*.)

Defendant contends that Class Members were given a reasonable opportunity to take their meal periods. (Kim Decl., ¶ 40.) Defendant further contends that Plaintiffs and Class Members qualified for and agreed to on duty meal breaks, six-hour shifts without meal breaks, and agreed to waive the second meal break where shifts did not exceed twelve hours. (*Id.*) Defendant also contends that Plaintiffs' claims for missed and late meal breaks are barred to the extent they elected not to take them for personal reasons. (*Id.*) Defendant also maintains that the meal break claim requires individualized inquiries, which would preclude class certification. (*Id.*) Defendant similarly maintains that it provided the reasonable opportunity for Class Members to take duty-free rest breaks. (Kim Decl., ¶ 43.) Defendant also contends that Plaintiffs' claims for missed and late rest breaks are barred to the extent they elected not to take them for personal reasons. (*Id.*)

Additionally, Plaintiffs alleges that Defendant required Plaintiffs and Class Members to use their cellular phones for work for which they were not reimbursed. (Kim Decl., ¶ 10.) Defendant maintains that Plaintiffs and 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. (Kim Decl., ¶ 52.) Finally, Plaintiffs allege that Defendant failed to provide all required paid sick days and COVID-19 supplemental sick leave to Plaintiffs and Class Members. (Kim Decl., ¶ 10.) Defendant contends that it paid any sick pay wages owed to Plaintiffs and Class Members at the correct rate of pay. (Kim Decl., ¶ 51.)

Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (*Id.* at ¶ 11.) However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

### C. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (Kim Decl., ¶ 12.) This required thorough discussions and interviews between Class Counsel and Plaintiffs, in addition to the above-described research into the 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. (*Id.*) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (Kim Decl., ¶ 13.) After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiffs' claims and explore the possibility of settlement. (*Id.*)

**D. Settlement Efforts**

On October 21, 2024, the Parties participated in an all-day mediation with Judge Howard R. Broadman (Ret.), a respected and highly experienced mediator in wage and hour class actions. (*Id*. at ¶ 14.) During mediation, counsel for Plaintiffs and Defendant discussed all aspects of the case, including the risks of litigation, the risks to both Parties, and the law and how it applied to the facts of this case. (*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.*)

Based on their own independent investigations and evaluations, Class Counsel is of the opinion that the Settlement with Defendant for the consideration and terms set forth herein, considering the representative and class claims and the risk of loss, is fair, reasonable, and adequate in light of all known facts and circumstances, and is in the best interests of the Class. (Kim Decl., ¶ 15.) Class Counsel is also of the opinion that the total consideration and payment set forth in this Settlement Agreement is adequate in light of the uncertainties surrounding the risk of further litigation, the possibility of losing class certification, that the PAGA claim could be deemed unmanageable, and the defenses that Defendant has asserted and/or could assert as to the substantive merit of the claims. (*Id.*) Based on the settlement negotiations, which were extensive and conducted in good faith and at arm's length between attorneys with substantial experience litigating wage and hour class action cases, the Settlement was the product of a non-collusive settlement process and compromises in the interest of reaching a full and complete settlement. (*Id.*) As a result, Class Counsel has determined that the Settlement set forth in this Settlement Agreement is in the best interests of the Class. (*Id.*)

## III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, the Defendant has agreed to pay $1,990,000.00 ("Gross Settlement Amount" or "GSA") on a non-reversionary basis to settle and release all claims asserted by Plaintiffs in the Operative Complaint on behalf of the proposed Class. (Kim Decl. ¶ 16, Exhibit 1, Settlement Agreement, ¶ 1.22.) The Settlement Agreement defines "Class" as "all individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of California during the Class Period." (*Id.* at ¶ 1.5.) The Class Period is the period commencing on October 30, 2019, and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option. (*Id.* at ¶ 1.12.) The "Net Settlement Amount," means the funds available for payments to the Class members on a pro-rata basis, which shall be the amount remaining after the following amounts are deducted from the Gross Settlement Amount: (1) Class Counsel Fees Payment, (2) Class Counsel Litigation Expenses Payment, (3) Administration Expenses Payment, (4) Class Representative Service Payments; and (5) PAGA Penalties to be paid to the LWDA and Aggrieved Employees. (*Id.* at ¶ 1.28.) These amounts are detailed as follows:

- <u>Class Counsel Fees Payment:</u> Up to one-third (1/3) of the Gross Settlement Amount, or **$663,333.33**, allocated 70% to D.Law Inc. and 30% to Blumenthal Nordrehaug Bhowmik De Blouw LLP ("BNBD") (Kim Decl. ¶ 16, Exhibit 1, Settlement Agreement, ¶ 3.2.2.);
- <u>Class Counsel Litigation Expenses Payment:</u> Up to **$45,000.00** to Class Counsel for reimbursement of reasonable expenses incurred to prosecute the Action (*Id.*);

- Class Representative Service Payments: Up to **$10,000.00** to each Plaintiff **($20,000.00** total) as an award for their services as the Class Representatives (*Id.* at ¶ 3.2.1.);
- Administration Expenses Payment: Up to **$14,500.00** to the Administrator for its fees and costs to administer the Settlement[2] (*Id.* at ¶ 3.2.3.);
- PAGA Penalties: **$70,000.00** for settlement of claims for civil penalties under PAGA, with 25% allocated to the Individual PAGA Payments ($17,500.00) and 75% allocated to the LWDA ($52,500.00) to be paid to the LWDA ("LWDA PAGA Payment") (*Id.* at ¶ 3.2.5.)

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be **$1,177,166.67**. (Kim Decl. ¶ 17.) 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 Members' Workweeks. (Kim Decl. ¶ 17, Exhibit 1, Settlement Agreement, ¶ 3.2.4.) For the approximately 882 Class Members (if no exclusions), the average Individual Class Payment, using a straight average, is **$1,334.66**. (Kim Decl. ¶ 17.) If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, none of the Gross Settlement Amount would revert to Defendant. (Kim Decl. ¶ 17, Exhibit 1, Settlement Agreement, ¶ 3.1.) Instead, the remainder will be added to the Net Settlement Amount to be distributed to Participating Class Members. (*Id.*)

Not later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Kim Decl. ¶ 18, Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen (14) days after receiving the Class Data, the Administrator will send the Class Notice, attached to the Settlement Agreement as Exhibit A, to all Class Members identified in the Class Data via first-class United States Postal Service ("USPS") mail. (*Id.* at ¶ 7.4.2.) The Class Notice includes

[2] The Administrator's bid, attached as Exhibit B to the Declaration of Michael Sutherland in Support of Plaintiffs' Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement, states that the total capped administration cost for management of this Settlement will not exceed $13,250.00. However, the Parties have included a buffer of $1,250.00, for a total of $14,500.00, to account for any unexpected expenses incurred by the Administrator.

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 Pay Periods attributed to each Class Member per Defendant's records. (Kim Decl. ¶ 18, Exhibit 1, Settlement Agreement, Exhibit A, Class Notice.) Class Members will have sixty (60) days from the mailing of the Class Notice (plus an additional fourteen (14) days for Class Members whose Class Notice is re-mailed) to opt out of the Settlement, object to the Settlement, or challenge the number of Workweeks and/or Pay Periods ("Response Deadline")[3]. (Kim Decl. ¶ 18, Exhibit 1, Settlement Agreement, ¶¶ 1.44, 7.4.4., 7.4.5.)

## 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, 439-441.

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, 805-809; *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, 127. Class members are "ascertainable" where they may be readily identified without unreasonable

[3] Counsel for the Parties have agreed to extend the Response Deadline to 60 days from the mailing of the Class Notice.

expense or time.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all individuals employed as non-exempt, hourly employees by Kidango, Inc. within the State of California during the Class Period, which is the period commencing on October 30, 2019 and continuing through the date of preliminary approval of the Settlement, or an earlier date that Kidango selects pursuant to the escalation option. (Kim Decl., ¶ 20, Exhibit 1, Settlement Agreement, ¶¶ 1.5 and 1.12.) Defendant has identified approximately 882 Class Members based on review of its payroll and personnel records. (Kim Decl. ¶ 20.)

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

**B. There Is a Well-Defined Community of Interest**

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

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

*Id.* at 809.

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.) 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]).

This action involves, *inter alia*, a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work and time rounding policies, failure to provide sick pay, failure to reimburse business expenses; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 21.) Plaintiffs contend Defendant's practices affected Class Members in the same way and present questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter 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.* (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.

Plaintiffs contend, and Defendant does not dispute for settlement purposes only, 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. (Kim Decl., ¶ 22.) Thus, Plaintiffs' claims are typical of the claims of the putative Class. (*Id.*)

**D. Adequacy of Class Counsel and Class Representatives**

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously and have no conflicts of interest. (Kim Decl., ¶¶ 23, 66-71.) The Class Representatives' interests are aligned with those of the Class Members, as they have suffered the same injuries as the Class Members and has no conflicts of interest. (*Id.* at ¶ 23.) Plaintiffs have not shrunk from this responsibility. (*Id.*) Indeed, Plaintiffs have devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id*.) Therefore, Class Counsel and the Class Representatives are adequate.

**E. Predominance and Superiority**

Individual issues do not predominate over those common to the Class. (Kim Decl., ¶ 24.) 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 pay practices during the relevant time period. (*Id*.) Plaintiffs and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id*.) Plaintiffs allege that these issues are suitable for common adjudication because 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. (Kim Decl., ¶ 25.) 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. (*Id.*) If Class Members are forced to litigate their claims individually, this would potentially result in 882 individual actions against Defendant, 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 1801-1802. The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The Settlement satisfies all of these requirements.

## VI. THE SETTLEMENT IS FAIR, ADEQUATE AND REASONABLE

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

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

The proposed settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 27.) 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 Plaintiffs steadfastly maintain that their claims are meritorious, Plaintiffs acknowledge that there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed below, Defendant presented multiple defenses to Plaintiffs' claims, both on the merits and with respect to class certification. (*Id.*) Thus, while Plaintiffs were prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. (*Id.*) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id.*)

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

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

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

As stated above, while Plaintiffs and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense and delay of continued litigation. (Kim Decl. ¶ 29.) Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required expenditure of substantial time and resources by both Parties that would have very likely spanned several years. (*Id.*) Even if Plaintiffs were to certify the classes, the Parties would incur considerably more attorneys' 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.**

Plaintiffs have not yet filed their motion for class certification, and as such, the extent to which Plaintiffs' proposed class is certifiable is somewhat speculative. (*Id.* at ¶ 30.) 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. ¶ 31.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (*Id.*) An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.*)

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

Class Counsel will be submitting the Settlement Agreement to the LWDA concurrently with the filing of this motion pursuant to Labor Code § 2699(l)(2). (*Id.* at ¶ 32).

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

If the Court approves the requested allocations from the Gross Settlement Amount of $1,990,000.00 as addressed above, the Net Settlement Amount is estimated to be $1,177,166.67. (Kim Decl. ¶ 17.) There are approximately 882 total Class Members. (*Id.*) If there are no exclusions from the Class, the average Individual Class Payment, using a straight average, is $1,334.66. (*Id.*)

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: $666,034.40 for the unpaid wages claims, including minimum and overtime wages, due to off the clock work; $782,285.25 for meal period violations; $658,714.25 for rest period violations; $184,720.00 for wage statement penalties; $187,468.60 in waiting time penalties; $48,686.00 for unpaid sick pay; $5,292.00 for reimbursement for necessary business expenditures; and $93,990.00 for PAGA penalties. (*Id.* at ¶¶ 35-58.) As such, the total estimated realistic exposure Defendant could face is $2,627,190.50. (*Id.* at ¶ 60.)

The Gross Settlement Amount of $1,990,000.00 represents a recovery for the Class of approximately 76% of the total realistic exposure Plaintiffs estimated that Defendant could face on the main claims in this case. (*Id.*) Plaintiffs 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.

### 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. Plaintiffs' counsel used the comprehensive data and documents provided to perform an analysis of the potential liability exposure Defendant faced on Plaintiffs' main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Amount represents a recovery of approximately 76% of the estimated total realistic exposure (Kim Decl., ¶ 60).

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

### 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., ¶¶ 23, 66-71; Yeremian Decl., ¶¶ 3-9). 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., ¶ 70; Yeremian Decl., ¶¶ 10-20).

## VII. 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.).

Plaintiffs are entitled to a reasonable service payment for her efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 62.) Plaintiffs spent significant time better apprising themselves of their rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiffs discussing the case and the law. (*Id.*)

Both before and after the filing of this lawsuit, Plaintiffs conferred with Class Counsel to discuss every aspect of their case. (Kim Decl., ¶ 63.) Plaintiffs provided Class Counsel with information about Defendant and about the industry generally, produced and reviewed documents, identified witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In light of the foregoing, Class Counsel believes that the Class Representative Service Payments in the amount of $10,000.00 to each Class Representative ($20,000.00 total) 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.* 339 U.S. 306 (1950), 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.*)

The proposed Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of Workweeks and/or Pay Periods attributed to each Class

Member per Defendant's records. (Kim Decl., ¶ 64, 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 United States Postal Service ("USPS") mail to each of the Class Members based on Defendant's records. (Kim Decl., ¶ 18, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) Not later than fourteen (14) days after the Court grants Preliminary Approval of the Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. (Kim Decl., ¶ 18, Exhibit 1, Settlement Agreement, ¶ 4.2.) Not later than fourteen (14) days after receiving the Class Data, the Administrator will mail the Class Notice (Kim Decl., ¶ 18, Exhibit 1, Settlement Agreement, ¶ 7.4.2.)

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

Class Counsel respectfully requests, without opposition from Defendant, an award of attorneys' fees of $663,333.33 (up to one-third of the Gross Settlement Amount) allocated 70% to D.Law Inc. and 30% to BNBD, and reasonable litigation costs not to exceed $45,000.00, subject to approval by the Court. (Kim Decl. ¶¶ 16, 61).

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 66-71; Yeremian Decl., ¶¶ 3-9). 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. ¶ 61.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. As such, the requested award of attorneys' fees and costs are reasonable.

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

The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as **Exhibit A**;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint D.Law, Inc. and Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex as the Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose to Apex the Class Member's name, last-known mailing address, email address, Social Security number, start and end dates of active employment as a non-exempt employee of Defendant in the State of California, number of Workweeks and Pay Periods, or sufficient information to calculate the number of such Workweeks and Pay Periods, and any other information required by the Administrator in order to effectuate the terms of the Settlement, as set forth in the Settlement Agreement;

9. Order Apex to mail the Class Notice to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: August 12, 2025 D.LAW, INC.

By ______________________________
David Yeremian
Alvin B. Lindsay
Enoch J. Kim
Arianna Razi
Attorneys for Plaintiffs and Class