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

MIE MOULTON, an individual, on behalf of
herself and others similarly situated,

PLAINTIFF,

v.

BET INFORMATION SYSTEMS, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 21STCV38602

[Case Assigned for All Purposes to Hon. David
S. Cunningham in Dept. 11]

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed concurrently with Declaration of Liane
Katzenstein Ly and Proposed Order]*

Date: February 23, 2023

Time: 9:00a.m.

Dept.: 11

Complaint Filed: October 20, 2021

FAC Filed: December 27, 2021

Trial Date: None

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 23, 2023 at 9:00a.m. in Department 11 of the
3 above-entitled court, Plaintiff MIE MOULTON will move the Court for an Order of Preliminary
4 Approval of the Class Action and PAGA Settlement Agreement (“Agreement”), a copy of which
5 is filed concurrently herewith.

6 The Motion will be made on the grounds that the proposed Agreement is fair, adequate,
7 reasonable, and in the best interest of the Class and the Parties.

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declaration of Liane Katzenstein Ly, the Agreement and Release, all other
10 papers and records on file in this action, and on such oral and documentary evidence as may be
11 presented at the hearing on this Motion.

12 DATED: November 22, 2022

KINGSLEY & KINGSLEY, APC

13
14 By: 

15 Liane Katzenstein Ly
16 Attorneys for Plaintiff MIE MOULTON and the
17 proposed classes
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff MIE MOULTON (“Plaintiff”) submits this Memorandum of Points and
4 Authorities in support of Plaintiff’s Motion for Preliminary Approval of the Class Action and
5 PAGA Settlement Agreement reached between Plaintiff and Defendant BET INFORMATION
6 SYSTEMS, INC. (“Defendant” or “BET”) (Plaintiff and Defendant together, the “Parties”).

7 By this Motion, Plaintiff requests that the Court:

8 (1) Grant preliminary approval of the fully-executed Class Action and PAGA
9 Settlement Agreement (“Settlement” or “Agreement”)¹. A true and correct copy of the Agreement
10 is attached hereto as Exhibit “1”;

11 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
12 Agreement as Exhibit “A,” and direct that the Notice be sent to Class Members in the manner set
13 forth in the Agreement;

14 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
15 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
16 may be heard (“Final Approval Hearing”).

17 **II. FACTUAL BACKGROUND**

18 **A. Litigation Overview and Procedural History**

19 On October 20, 2021, Plaintiff filed a Class Action Complaint against Defendant in the
20 Superior Court for the State of California, County of Los Angeles, Case No. 21STCV38602,
21 seeking recovery for: (1) failure to pay wage and/or overtime under Cal. Labor Code §§ 510, 1194,
22 and 1199; (2) failure to provide meal breaks pursuant to Cal. Labor Code §§ 226.7 and 512; (3)
23 failure to provide rest breaks pursuant to Cal. Labor Code § 226.7; (4) failure to reimburse
24 business-related expenses under Cal. Labor Code § 2802; (5) failure to provide accurate itemized
25 wage statements pursuant to Cal. Labor Code § 226(a); (6) waiting time penalties pursuant to Cal.
26 Labor Code § 203; and, (7) violation of Cal. Business & Professions Code § 17200. (Declaration
27

28 ¹ The Parties utilized this Court’s model Settlement Agreement. A redlined version of
the Agreement is attached to the Declaration of Liane Katzenstein Ly as Exhibit “2.”

1 of Liane Katzenstein Ly (“Ly Decl.”) ¶4.)

2 Also on October 20, 2021, Plaintiff sent a notice letter, pursuant to California Labor Code
3 § 2699, *et seq.*, the Private Attorneys General Act (hereafter, “PAGA”), to the California Labor
4 Workforce Development Agency (hereafter, “LWDA”) regarding her intent to seek civil penalties
5 based on Defendant’s alleged violations of the California Labor Codes enumerated in the
6 Complaint in addition to claims pursuant to Cal. Labor Code §§ 204, 210, 226.8, 432.5, and Cal.
7 IWC Wage Order 7. (Ly Decl. ¶5.)

8 On December 27, 2021, Plaintiff filed a First Amended Class and Representative Action
9 Complaint adding an additional cause of action for penalties pursuant to PAGA based upon the
10 same alleged Cal. Labor Code violations enumerated in the Complaint and additional violations
11 for: (1) failing to keep accurate meal period records under Cal. IWC Wage Order 7-2001; (2)
12 failing to properly classify Plaintiff and other employees as employees under Cal. Labor Code §
13 226.8; (3) failing to pay timely wages under Cal. Labor Code §§ 204(d) and 210; and, (4) requiring
14 Plaintiff and other employees to agree to, as a condition of employment, an independent contractor
15 agreement that contains illegal indemnity in violation of Cal. Labor Code § 432.5. (Ly Decl. ¶6.)

16 The FAC defines two proposed classes as follows:

- 17 a) “All persons who are employed or have been employed as an independent
18 contractor by BET INFORMATION SYSTEMS, INC., in the State of
19 California since four (4) years prior to the filing of this action to the
20 present.” (“Independent Contractor Class”).
- 21 b) “All persons who are employed or have been employed as a detailer by BET
22 INFORMATION SYSTEMS, INC., in the State of California since four (4)
23 years prior to the filing of this action to the present.” (“Detailer Class”).
(Collectively referred to herein as the “Classes”).

24 (Ly Decl. ¶7.)

25 On March 23, 2022, Defendant removed this Action to the Central District of California
26 and the case was assigned to Judge Dale S. Fischer. (Ly Decl. ¶8.) After a joint request from both
27 Parties, the district court stayed the entire action, including Plaintiff’s right to file a motion for
28 remand, on March 31, 2022. (Ly Decl. ¶9.) The stay was based on the Parties agreement to
mediate the case on June 27, 2022. (Ly Decl. ¶10.)

1 The Parties attended mediation with Tripper Ortman on June 13, 2022, and the case settled.
2 (Ly Decl. ¶11.) The Parties stipulated to remand the case back to state court on June 21, 2022, and
3 the district court signed the order remanding on June 22, 2022. (Ly Decl. ¶12.)

4 B. The Discovery Process and Mediation

5 Plaintiff and Defendant have yet to engage in formal discovery, instead focusing their
6 efforts on resolving this case through early mediation. Defendant informally produced a sampling
7 of time and pay data for members of the Classes on or around June 1, 2022 for mediation purposes
8 only. Plaintiff worked with an expert to review and analyze these records for mediation. (Ly Decl.
9 ¶13.)

10 Defendant denies any liability or wrongdoing of any kind associated with the claims
11 alleged in the Action, disputes the damages and penalties claimed by Plaintiff, and further contends
12 that, for any purpose other than settlement, Plaintiff's claims are not appropriate for class or
13 representative action treatment. (Ly Decl. ¶14.) Defendant contends, among other things, that, at
14 all times, it has complied with the California Labor Code, and the Industrial Wage Commission
15 Orders. (*Id.*)

16 Based on their own independent investigation and evaluation, Class Counsel is of the
17 opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest
18 of the settlement classes in light of all known facts and circumstances, including the risk of
19 significant delay, defenses asserted by Defendant, uncertainties regarding a class and
20 representative action trial on the merits, and numerous potential appellate issues. (Ly Decl. ¶15.)
21 Although Defendant denies any liability, Defendant is agreeing to this Agreement solely to avoid
22 the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and
23 forever settle, compromise and discharge all disputes and claims arising from or relating to the
24 Action on the terms set forth here. (*Id.*)

25 **III. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR**
26 **SETTLEMENT PURPOSES**

27 Originally creatures of equity, class actions have been statutorily embraced by the
28 Legislature whenever “the question [in a case] is one of a common or general interest, of many

1 persons, or when the parties are numerous, and it is impracticable to bring them all before the
2 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
3 1078.) They serve an important function by “establishing a technique whereby the claims of many
4 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
5 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
6 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
7 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
8 *Court* (2004) 34 Cal.4th 319, 340.)

9 The certification question is “essentially a procedural one that does not ask whether an
10 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–
11 440.) A court ruling on a certification motion must determine “whether . . . the issues which may
12 be jointly tried, when compared with those requiring separate adjudication, are so numerous or
13 substantial that the maintenance of a class action would be advantageous to the judicial process
14 and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

15 The California Supreme Court has identified three certification requirements: (1) “the
16 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
17 interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior
18 to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)
19 The “community of interest” requirement includes three additional requirements: (1) common
20 questions of law or fact predominant over individual questions; (2) the class representatives have
21 claims or defenses typical of the class; and (3) the class representatives can adequately represent
22 the class. (*Ibid, citing Fireside Bank, supra*, 40 Cal.4th at 1089.)

23 Class certification for settlement purposes is proper in this case as the proposed Settlement
24 Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this
25 Court should certify the putative settlement class.

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1 A. The Proposed Classes Are Ascertainable and Sufficiently Numerous

2 1. Ascertainability

3 Putative class members are deemed “ascertainable” when they may be “readily identified
4 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
5 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
6 scrutinizes the class definition, the size of the class and the means of identifying class members.
7 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

8 Here, Plaintiff maintains that the proposed settlement class is ascertainable for several
9 reasons: First, Defendant has agreed in the Agreement to provide a class list to the Administrator
10 containing the name, last known mailing address, last known telephone number, Social Security
11 number, and number of Class Period Workweeks and PAGA Pay Periods for all putative class
12 members after issuance of the preliminary approval order. (Ly Decl. ¶16; Ex. 1 at ¶1.8.) Second,
13 Settlement Class Member consist of Defendant’s employees, and Defendant is required to keep
14 records of its employees’ names, home addresses, and social security numbers. (See Wage Order
15 7-2001, subsection 7(c); Ly Decl. ¶17.) Third and finally, Defendant informally produced
16 Plaintiff’s personnel file and pay statements, relevant policies, sampling time data, pay data, and
17 wage statements for Settlement Class Members, which confirms that all Settlement Class Member
18 may be readily identified based on Defendant’s records. (Ly Decl. ¶18.)

19 2. Numerosity

20 There is no set number that is required as a matter of law to maintain a class action. (See,
21 e.g., *Rose v. City of Hayward, supra*, 126 Cal.App.3d at p. 934.) Here, the proposed settlement
22 class contains, based upon information and belief, approximately 6,577 employees in the State of
23 California. (Ly Decl. ¶19; Ex. 1 at ¶3.1.) Therefore, Plaintiff is confident her will be able to
24 establish that the proposed settlement class is ascertainable and sufficiently numerous. (Ly Decl.
25 ¶20.)

26 ///

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

2 1. There Are Predominant Questions of Law and Fact

3 In deciding whether questions of common or general interest predominate, a court must
4 determine whether “the issues which may be jointly tried, when compared with those requiring
5 separate adjudication, are so numerous or substantial that the maintenance of a class action would
6 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
7 232, 238; accord, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
8 general matter, if the defendant’s liability can be determined by facts common to all members of
9 the class, a class will be certified even if the members must individually prove their damages.”
10 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; accord, *Knapp v.*
11 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

12 Here, Plaintiff argues that there are questions of law and fact common to the proposed
13 settlement class that predominate over any questions affecting only individual Class Members. (Ly
14 Decl. ¶21.) These common questions include:

- 15 1) Whether Defendant failed to pay all wages and/or overtime compensation;
- 16 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
17 to compensate employees one (1) hour’s wages in lieu thereof;
- 18 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to
19 compensate employees one (1) hour’s wages in lieu thereof;
- 20 4) Whether Defendant failed to reimburse business-related expenses;
- 21 5) Whether Defendant failed to provide accurate itemized wage statements;
- 22 6) Whether Defendant failed to pay compensation due and owing upon termination
23 of employment;
- 24 7) Whether Defendant engaged in unfair competition; and,
- 25 8) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
26 acts previously alleged, including Defendant’s misclassification of Plaintiff as an
27 independent contractor; Defendant’s failure to pay all wages for a biweekly payroll
28 period within seven (7) calendar days following the close of the payroll period; and
Defendant’s illegal indemnity in the Independent Contractor agreement.

(Ly Decl. ¶22.)

1 Plaintiff's challenge to Defendant's uniform policies and practices involves common
2 factual and legal issues that are amenable to class treatment. (Ly Decl. ¶23.) As the California
3 Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a
4 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
5 found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
6 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
7 similarly situated employees may be certified based on common questions of fact or law, even if
8 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
9 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
10 at 340.)

11 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
12 injuries, in the same manner: Based on Defendant's alleged misclassification of the Settlement
13 Class Members as independent contractors, (1) Settlement Class Members were not paid all
14 wages/overtime; (2) Settlement Class Members did not receive their meal and rest periods as
15 required; (3) Settlement Class Members were not provided accurate itemized wage statements; (4)
16 Settlement Class Members were not reimbursed for business-related expenses; (5) Settlement
17 Class Members did not receive timely wages; and (6) Settlement Class Members were not paid all
18 wages owed upon termination/resignation. (Ly Decl. ¶24.) Plaintiff alleges that Settlement Class
19 Members worked in the same capacity for the same employer and were subject to the same
20 employment policies and practices, the questions of fact and claims regarding the status of these
21 employees are the same for each member of the settlement class. (Ly Decl. ¶25.) Accordingly, for
22 purposes of settlement, certification for settlement purposes is appropriate. (*Id.*)

23 2. The Class Representative Has Claims Typical of the Proposed Class

24 A putative class representative's claim must be "typical," but not necessarily identical, to
25 the claims of other class members. The test of typicality "is whether other members have the same
26 or similar injury, whether the action is based on conduct which is not unique to the Class
27 Representatives, and whether other class members have been injured by the same course of
28 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient

1 that the representative is similarly situated so that he or she will have the motive to litigate on
2 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
3 it is sufficient that the representative is similarly situated so that he or she will have the motive to
4 litigate on behalf of all class members. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27,
5 45.) It is not necessary that the class representative have personally incurred all of the damages
6 suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91
7 Cal.App.4th 224, 238.)

8 Plaintiff worked performed work as a “detailer” for Defendant from approximately January
9 2020 through August 2021. (Ly Decl. ¶26.) Plaintiff alleges that she: (1) worked without being
10 paid all wages and/or overtime; (2) worked without being provided compliant meal/rest periods as
11 required by law; (3) worked without being reimbursed for costs associated with personal cell-
12 phone usage and incurred mileage from driving personal vehicle; (4) worked without being
13 provided accurate itemized wage statements; and (5) worked without being paid all wages due
14 upon separation. She also alleges that she experienced derivative claims for unfair business
15 competition (B&P Code §17200) and Labor Code §2699, *et seq.* (Ly Decl. ¶27.) Plaintiff also
16 contends that her claims are typical of those of the settlement classes. (Ly Decl. ¶28.)

17 3. Plaintiff Contends That As The Class Representative She Has and Will
18 Fairly Represent the Interests of the Settlement Class Members

19 A putative class representative must show that she can adequately represent the class.
20 (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
21 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests
22 of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

23 Plaintiff believes that she is capable of fairly representing and adequately protecting the
24 interests of the proposed Settlement Class Members. (Ly Decl. ¶29.) Plaintiff’s interests in this
25 litigation are coextensive with the interests of the proposed Settlement Class Members. The
26 members of the proposed settlement class all worked for Defendant during the relevant time period
27 and incurred the same type of alleged damages with regard to Defendant’s alleged violations of
28 the law. (Ly Decl. ¶30.) Moreover, Plaintiff has agreed to serve as Class Representative and has

1 retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Ly
2 Decl. ¶31.) This demonstrates her commitment to bringing about the best possible results for the
3 benefit of the proposed settlement class. (Ly Decl. ¶32.) Plaintiff has provided her Counsel with
4 all necessary and pertinent information. (Ly Decl. ¶33.) She has been a very active participant in
5 the litigation including having frequent contact with Settlement Class Members and working
6 closely with Class Counsel to develop the theories of liability. (Ly Decl. ¶34.) Plaintiff has
7 provided her Counsel with all necessary and pertinent information. (Ly Decl. ¶35.) She also
8 attended the full-day mediation in this matter and was informed of and involved in all of the
9 Settlement negotiations. Therefore, Plaintiff believes that she has and will continue to adequately
10 represent the proposed Settlement Class Members. (Ly Decl. ¶36.) Plaintiff has provided her
11 Counsel with all necessary and pertinent information. (Ly Decl. ¶37.)

12 C. The Class Action Vehicle Is Superior to the Alternatives

13 “The ultimate question in every case of this type is whether . . . the issues which may be
14 jointly tried, when compared with those requiring separate adjudication, are so numerous or
15 substantial that the maintenance of a class action would be advantageous to the judicial process
16 and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California
17 Supreme Court has directed the courts to utilize the class action device to fashion “an effective
18 and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.)
19 Normally, in making its class certification decision, the Court must determine that a class action
20 would be superior to alternate means for a fair and efficient adjudication. If the causes of action
21 may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting
22 duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v.*
23 *Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal
24 and now seek Court approval of that Settlement, Plaintiff submits that there is not as much need
25 as there would be in an ordinary motion for class certification for the Court to determine that the
26 case can be manageably tried.

27 Plaintiff maintains that class treatment would be the superior method of managing this case.
28 A class action is superior to individual litigation “when numerous parties suffer injury of

insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members’ claims may not be economically viable. (Ly Decl. ¶38.) The only alternative to certification would be to force over 6,577 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Ly Decl. ¶39.) Plaintiff maintains that this economic reality would result in a windfall for Defendant if this case were not certified. (Ly Decl. ¶40.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Classes

For purposes of the Agreement, there are two proposed settlement classes:

Independent Contractor Class: All persons who are employed or have been employed as an independent contractor by BET Information Systems, Inc., in the State of California during the Release Period. (“Independent Contractor Class”.)

Detailer Class: All persons who are employed or have been employed as a detailer by BET Information Systems, Inc., in the State of California during the Release Period. (“Detailer Class”) (collectively “Independent Contractor Class” and “Detailer Class” referred to as the “Classes” or “Class Members”.)

(Ly Decl. ¶41; Ex. 1 at ¶1.5.)

The Class Period is October 20, 2017 through July 28, 2022. (Ly Decl. ¶42; Ex. 1 at 1.12.) This Agreement is based on an estimated total of 6,577 Class Members and 53,273 Total Workweeks, which are numbers Defendant has confirmed based on its records. (Ly Decl. ¶43; Ex. 1 at ¶9.)

B. Aggrieved Employees

For purposes of the Agreement, the Aggrieved Employees are defined as: “all persons who are a member of either the Independent Contractor Class or the Detailer Class from October 20, 2020 to July 28, 2022. (“Aggrieved Employees” “PAGA Group” or “PAGA Members”.) (Ly Decl. ¶44; Settlement, Ex. 1 at ¶1.4.)

The PAGA Period is October 20, 2020 through July 28, 2022. (Ly Decl. ¶45; Ex. 1 at

¶1.32.) Based on documents and other information produced by Defendant, there are approximately 3,019 Aggrieved Employees. (Ly Decl. ¶46, Ex. 1 at ¶9)

C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of \$2,250,000.00, which includes the sum of the Individual Class Payments, the Class Representative service award, the Class Counsel Award, PAGA Payment, and the Settlement Administration Costs. (Ly Decl. ¶47; Ex. 1 at ¶2.1.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Counsel Award, Class Representative Enhancement, PAGA Payment, and Settlement Administration Costs. (Ly Decl. ¶48; Ex. 1 at ¶1.29.)

The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount:	\$	2,250,000.00
Less Class Representative Enhancement:	\$	10,000.00
Less Class Counsel's Fees:	\$	750,000.00
Less Class Counsel's Costs:	\$	25,000.00
Less PAGA Payment:	\$	25,000.00
		<i>(\$18,750.00 to the LWDA and \$6,250.00 to remain in the Net Settlement Amount)</i>
<u>Less Administrator Costs:</u>	<u>\$</u>	<u>53,000.00</u>
Anticipated Net Settlement Amount	\$	1,392,950.00

(Ex. 1 at ¶2.)

D. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member is an individualized amount that is based on the number of Workweeks worked by the Participating Class Member during the Class Period. (Ex. 1 at ¶1.23; *see also* Ex. A to the Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Amount and shall be paid pursuant to the settlement formula as follows: (1) First, dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period and; (2) Second, multiplying the result by each Participating Class Member's Workweeks. The Administrator will calculate the number of workweeks worked by the Class Members in an hourly-paid or non-exempt position in California during the Class Period

1 (“Compensable Workweeks”) based upon the records in Defendant’s possession, custody or
2 control, the amount to be paid per workweek, and the individual settlement awards to eligible Class
3 Members. The Compensable Workweeks will be calculated by the Administrator for each Class
4 Member. Defendant’s workweek data will be presumed to be correct, unless a particular Class
5 Member proves otherwise to the Administrator by credible evidence. The individual settlement
6 awards will be determined by dividing the Net Settlement Fund by the total number of
7 Compensable Workweeks for the entire Settlement Class resulting in the Workweek Value; and
8 then multiplying the Workweek Value by the number of Compensable Workweeks worked by
9 each Class Member. (Ex. 1 at ¶2.2.4; *Id.* at Ex. A to the Settlement [Class Notice].)

10 Twenty-five percent (25%) of the Gross Settlement Amount to each Participating Class
11 Member shall be deemed payment for settlement of claims for wages and expenses and will be
12 subject to appropriate deductions and withholdings calculated and made by the Administrator. (Ex.
13 1 at ¶2.2.5.) Seventy-five percent (75%) of the Gross Settlement Amount to each Participating
14 Class Member shall be deemed payment for settlement of claims for penalties and interest and
15 other non-wage payments not subject to withholdings. (*Id.*)

16 The Agreement provides for a specific and detailed dispute process regarding Individual
17 Class Payments. (*See* Ex. 1 at ¶8.6.)

18 The Individual PAGA Payment will be an equal payment to all Aggrieved Employees
19 calculated as follows: twenty-five percent (25%) of the PAGA Payment (or \$6,250) divided by the
20 number of Aggrieved Employees. (*See* Ex. 1 at ¶1.25.)

21 E. Process for Administering Settlement after Preliminary Approval

22 The detailed Notice Procedure established by the Agreement will efficiently and accurately
23 ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶8.4.) The Parties have
24 agreed to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the
25 Agreement. (Ex. 1 at ¶1.2.)

26 F. Process for Settlement Class Members to Respond to Class Notice

27 Settlement Class Members will have an opportunity to request exclusion from the
28 Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex.

1 at ¶8.5; 8.7.)

Settlement Class Members who do not opt out of the Settlement Class may object to the Agreement by mailing written objections to the Administrator no later than sixty (60) calendar days after the mailing of the Notice Packet. (Ex. 1 at ¶8.7.) This deadline applies notwithstanding any argument regarding alleged late receipt or non-receipt of the Notice Packet. (*Ibid.*) Any Settlement Class Member who fails to timely mail written objections in this manner shall be deemed to have waived any objections and shall be foreclosed from making any objection to the Agreement and from filing any appeal from any order granting final approval issued by the Court. (*Ibid.*)

Settlement Class Member who timely and validly return a Request for Exclusion from the Agreement shall have no right to object and shall be foreclosed from making any objection to the Agreement. (*Ibid.*) The Administrator shall promptly provide any such objections to Class Counsel and Defendant's Counsel, who in turn shall file them with the Court in connection with the final approval motion. (*Ibid.*)

Any Settlement Class Member wishing to appear at the final approval hearing to object to the Agreement shall expressly indicate this in his or her written objections. (*Ibid.*) The making of an objection to this Agreement does not affect the Settlement Class Members' ability to return a valid Claim Form and become a Qualified Claimant if the Agreement is finally approved. (*Ibid.*)

PAGA Members will not be provided with the opportunity to opt out of the PAGA Settlement. If the Court approves the PAGA Payment, the Claims Administrator will mail out checks and the PAGA Letter, which shall explain the PAGA Payment, to the PAGA Members at the same time the Settlement Class Members are mailed their Individual Settlement Payments.

G. The Release

The Release by Participating Class Members is defined as: "all claims that were alleged, or reasonably could have been alleged under state, federal or local law, whether statutory, common law, or administrative law, based on the facts alleged in the Action, during the periods of employment as detailers or independent contractors in California during the Class Period, including allegations of alleged, failure to pay timely wages; failure to pay overtime wage; meal

period violations; rest period violations; failure to pay meal or rest period premiums; failure to reimburse expenses; wage statement violations; waiting time penalties; misclassification of independent contractors; civil penalties, including penalties under PAGA, based on the allegations set forth above; violations of Business and Professions Code section 17200 based on the allegations set forth above; including, but not limited to, claims for injunctive relief; penalties of any nature; interest; fees; and costs (“Released Claims”). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.” (Ex. 1 at ¶6.2)

The Release by Aggrieved Employees and by Non-Participating Class Members Who Are Aggrieved Employees is defined as: “all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice and ascertained in the course of the Action including but not limited to violations of Labor Code sections 201-204, 226(a), 226.7, 226.8, 432.5, 510, 512, 1194, 1194.2, 1199, and 2802.” (Ex. 1 at ¶6.3.)

II. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, set forth several factors that the Court should analyze in determining whether to approve a class action settlement. These factors include: (1) the strength of plaintiff’s case; (2) the risk, expense, complexity and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement.

In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification,

1 decertification, dispositive motions, and trial, so long as there is a record which allows “an
2 understanding of the amount that is in controversy and the realistic range of outcomes of the
3 litigation.” *Munoz, 186 Cal. App. 4th at 409.*

4 The proposed settlement satisfies each of these factors. Ly Decl. (Ly Decl. ¶49.) Class
5 Counsel conducted extensive informal discovery before entering into meaningful settlement
6 negotiations in this matter. (Ly Decl. ¶¶13-15.) This discovery permitted Class Counsel to fairly
7 evaluate the strength of the case and the risks associated with ongoing litigation. (Ly Decl. ¶50.)
8 Class Counsel is experienced in handling wage and hour class actions and, after weighing all of
9 the following factors, supports this Agreement. (Ly Decl. ¶51.)

10 1. The Strength of Plaintiff’s Case

11 a) Defendant Misclassified Plaintiff and Members of the Independent
12 Contractor Class as Independent Contractors

13 Although any person rendering service for another is generally presumed to be an employee
14 (see California Labor Code section 3357), Plaintiff alleges that Defendant knowingly and willfully
15 misclassified Plaintiff and members of the Independent Contractor Class as “independent
16 contractors” in violation of California Labor Code § 226.8, until approximately 2020 when
17 Plaintiff and members of the Independent Contractor Class were reclassified as employees. (Ly
18 Decl. ¶52.) Specifically, Plaintiff was initially classified as an independent contractor for
19 Defendant earning compensation on a piece-rate basis and provided with a 1099. (*Id.*) However,
20 in 2020, Plaintiff and the other members of the Independent Contractor Class were reclassified as
21 “employees” and were thereafter provided W2s. (*Id.*) After being reclassified as employees in
22 2020, Plaintiffs were paid at a flat-rate, that operated as a sort of “piece-rate”, per store visited.
23 (*Id.*)

24 However, Plaintiff contends that at all times while working for BET, Plaintiff was actually
25 an employee of Defendant rather than an independent contractor because, inter alia: BET had
26 control or the right to control Plaintiff’s and the Independent Contractor Class’s work by
27 overseeing and instructing Plaintiff and Class Members how to complete assignments and
28 assigning which stores they were sent to. (Ly Decl. ¶53.) For example, BET would assign

1 approximately 15 store assignments at a time, and Plaintiff and Class Members had no discretion
2 over which stores comprised the 15. (*Id.*) Moreover, when a BET company scheduler would assign
3 a job to Plaintiff and she declined that assignment, Plaintiff would have difficulty obtaining other
4 jobs thereafter or not be assigned any jobs at all. (*Id.*)

5 California Labor Code § 226.8 makes it unlawful for any person or employer to willfully
6 misclassify an individual as an independent contractor. California presumes that workers are
7 employees “and places the burden on the hirer to establish that the worker is an independent
8 contractor.” (*Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 913, 951, n.
9 23; Cal. Lab. Code, § 2775(b)(1).) To be considered an independent contractor, the hiring entity
10 must demonstrate each prong of the “ABC” test:

11 (A) The person is free from the control and direction of the hiring entity in
12 connection with the performance of the work, both under the contract for the performance of the
13 work and in fact.

14 (B) The person performs work that is outside the usual course of the hiring
15 entity’s business.

16 (C) The person is customarily engaged in an independently established trade,
17 occupation, or business of the same nature as that involved in the work performed.

18 (Cal. Lab. Code, § 2775(b)(1)(A)-(C).) This was the test established in *Dynamex*, which presumes
19 that workers are employees. (*Dynamex*, 4 Cal.5th at p. 955, 957.)² Defendant can only defeat this
20 presumption by establishing each of the three “ABC” prongs. (*Ibid.*; see also Cal. Lab. Code, §
21 2775.) “[E]ach part of the ABC test may be independently determinative of the employee or
22 independent contractor question.” (*Dynamex*, 4 Cal.5th at p. 955.)

23 The definition of “employee” under the California Wage Orders is “intended to be broader
24 and more inclusive” than the common law test, and than the federal “economic reality” standard.
25 (*Id.* at pp. 953, 956.) In contrast to the common law, which provides the narrowest definition of an
26

27 ² “[T]he Legislature made clear that it was broadly adopting the *Dynamex* holding for
28 purposes of all benefits to which employees are entitled under the . . . Labor Code[] and all
applicable wage orders. (*People v. Uber Technologies, Inc.* (2020) 56 Cal.App.5th 266, 277, as
modified on denial of reh’g (Nov. 20, 2020), review denied (Feb. 10, 2021).), at *3.)

1 employee in order “to limit one’s vicarious liability for the misconduct of a person rendering
2 service to him,” *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d
3 341, 350 (“*Borello*”), California “adopt[s] a distinct standard that provides broader coverage of
4 workers with regard to the very fundamental protections afforded by wage and hour laws and wage
5 orders.” (*Dynamex*, 4 Cal.5th at p. 949.)

6 (1) Plaintiff and Members of the Independent Contractor Class
7 are Employees as They Were Hired, Trained, and Required
8 to Perform Traveling Arrangement and Reservation
9 Services Which Defendant is in the Business of Providing

10 If an employer is unable to show “that the worker performs work that is outside the usual
11 course of the hiring entity’s business,” then that worker is an employee pursuant to the ABC test.
12 (*Dynamex*, 4 Cal.5th at p. 964.) The California Supreme Court provided two examples of the
13 application of this element:

14 [W]hen a retail store hires an outside plumber to repair a leak in a bathroom on its
15 premises or hires an outside electrician to install a new electrical line, the services of the
16 plumber or electrician are not part of the store’s usual course of business and the store
17 would not reasonably be seen as having suffered or permitted the plumber or electrician to
18 provide services to it as an employee.[Citation.] On the other hand, when a clothing
19 manufacturing company hires work-at-home seamstresses to make dresses from cloth and
20 patterns supplied by the company that will thereafter be sold by the company [Citation], or
when a bakery hires cake decorators to work on a regular basis on its custom-designed
cakes [Citation], the workers are part of the hiring entity’s usual business operation and the
hiring business can reasonably be viewed as having suffered or permitted the workers to
provide services as employees.

21 (*Id.* at p. 959-60.)

22 Here, Defendant is in the business of providing traveling arrangement and reservation
23 services, among other services, which it advertises to its customers as such. These services include,
24 but are not limited to, visiting local stores, supporting brands by taking photos, merchandising
25 products, and setting up promotional displays.³ Plaintiff and other members of the Independent
26 Contractor Class were hired and trained by Defendant to perform these very tasks.

27 Defendant will be unable to carry its burden under part B of the ABC test, and Plaintiff and
28

³ <https://merchandise.survey.com/retailgigs>

1 the Independent Contractor Class will show that they have suffered wage and hour violations due
2 to misclassification for a period of time. Even though employee status can be established without
3 examining parts A and C of the test, Plaintiff will briefly address each in turn.

4 (2) Plaintiff and Members of the Independent Contractor Class
5 are Employees Since Defendant Controlled the Details of
6 Their Work

7 If an employer is unable to show “that the worker is free from the control and direction of
8 the hiring entity in connection with the performance of the work, both under the contract for the
9 performance of the work and in fact,” then the worker is an employee pursuant to part A of the
10 ABC test. (*Dynamex*, 4 Cal.5th at p. 964.) Thus, if the employer has either the right to control or
11 actual control over how the worker accomplishes the desired result, then the worker is an employee
12 under part A. (*Id.* at p. 958; see *Angelotti v. Walt Disney Co.* (2011) 192 Cal.App.4th 1394, 1405
13 [holding “[i]n light of the nature of the work and the evidence of his actual experience on the job,
14 [hiring entity] clearly had the right to control the manner and method of [plaintiff’s] work.”].)

15 Here, Defendant had the right to control the manner of Plaintiff’s and the Independent
16 Contractor Class’s work. Defendant provided Plaintiff and members of the Independent Contractor
17 Class with specific instructions pertaining to the job performance, practices and policies Plaintiff
18 and members of the Independent Contractor Class must follow, and provided training materials to
19 Plaintiff and the Independent Contractor Class. (*See Caso v. Nimrod Productions, Inc.* (2008) 163
20 Cal.App.4th 881, 890 [applying *Borello*, finding that three stunt choreographers satisfied their
21 burden on summary judgment to demonstrate they were employees of Touchstone when
22 Touchstone “retained control over the entire production, including the ability to create, edit and
23 even transform the production as it saw fit,” and “reported to Touchstone producers.”].)

24 BET is the entity that arranges jobs with their clients that Plaintiff and members of the
25 Independent Contractor Class then completes. BET directs Plaintiff and members of the
26 Independent Contractor Class where to go, when to show up, what to do, and when to leave, and
27 then pays them for their work. BET also required Plaintiff and Class Members to communicate
28 with its company scheduler and project managers to discuss issues pertaining to assignments and

1 direct employees to their next job site. Most notably, there were **no changes in responsibilities or**
2 **job duties** from the time Plaintiff was classified as an Independent Contractor to when she was
3 later classified as an employee in 2020. BET also determined how Plaintiff and Class Members
4 were paid, either hourly or by piece rate. When Plaintiff asked BET for a copy of an employment
5 contract, BET notified her that there was no written employment contract; however, BET did issue
6 approximately 51 wage statements to Plaintiff, as an *employer* would.

7 All meaningful aspects of the business relationship are controlled by Defendant. Thus,
8 Defendant is unable to carry its burden to show a lack of control over Plaintiff and the Independent
9 Contractor Class under part A of the ABC test.

10 (3) Plaintiff and Members of the Independent Contractor Class
11 are Employees Since They Did Not Operate Independent
12 Businesses While They Worked for Defendant

13 If an employer is unable to show “that the worker is customarily engaged in an
14 independently established trade, occupation, or business of the same nature as the work performed
15 for the hiring entity” then that worker is an employee pursuant to part C of the ABC test. (*Dynamex*,
16 4 Cal.5th at p. 964.) The appropriate inquiry under part C is “whether the person ... actually has
17 such an independent business, occupation, or profession, not whether he or she could have one.”
18 (*Id.* at p. 962, n.30.) An independent contractor “generally takes the usual steps to establish and
19 promote his or her independent business—for example, through incorporation, licensure,
20 advertisements, routine offerings to provide the services of the independent business to the public
21 or to a number of potential customers, and the like.” (*Ibid.*)

22 Plaintiff and the Independent Contractor Class did not operate independent traveling
23 arrangement or reservation businesses while they worked for Defendant. Defendant hires its
24 employees in order to provide the full list of services to its clients, as advertised on Defendant’s
25 website. Plaintiff’s and other workers’ services are a critical component of Defendant’s business.
26 Even if Defendant could prove they were engaged in an independently established trade under this
27 prong, Plaintiff and members of the Independent Contractor Class would still be employees
28 because Defendant cannot satisfy prongs A and B. (*See James v. Uber Technologies Inc.* (N.D.

1 Cal. 2021) 338 F.R.D. 123, 139.)

2 In conclusion, if part A, B, or C of the ABC test is not met, then a worker is an employee.
3 (*Dynamex, supra*, 4 Cal.5th 964.) Defendant cannot carry its burden on any part of the test, let
4 alone all three. Therefore, during a portion of the relevant time period that Defendant misclassified
5 Plaintiff and members of the Independent Contractor Class, Plaintiff and the Independent
6 Contractor Class were and continue to be employees under the California Wage Orders and are
7 entitled to wage protections, business expense reimbursement, meal and rest breaks, and waiting
8 time penalties.

9 Plaintiff alleges that Defendant knowingly and willfully misclassified Plaintiff and
10 members of the Independent Contractor Class as “independent contractors” during the relevant
11 time period in order to avoid the costs associated with the rights afforded to employees under
12 federal and California law- all to Defendant’s benefit. (Ly Decl. ¶54.) Plaintiff believes that she
13 has a strong argument for misclassification. (Ly Decl. ¶55.) However, if the Court determined
14 that the Independent Contractor Class was classified correctly, most of the other claims in this
15 action would fail. (Ly Decl. ¶56.) Plaintiff took these risks into account when settling. (Ly Decl.
16 ¶57.)

17 b) Defendant Failed to Pay All Wages And/or Overtime Owed

18 (1) Defendant Failed to Separately Pay Minimum Wages for
19 Paid Rest Breaks Under Their “Piece-Rate”/Flat-Rate
20 System

21 “Under California’s minimum wage law, employees must be compensated for each hour
22 worked at either the legal minimum for the contractual hourly rate, and compliance cannot be
23 determined by averaging hourly compensation.” *Bluford*, 216 Cal. App. 4th at 872; *Armenta v.*
24 *Osmose, Inc.*, 135 Cal.App.4th 314, 324 (2005 (“While the averaging method utilized by the
25 federal courts to assess whether a minimum wage violation has occurred may be appropriate when
26 considered in light of federal public policy, it does not advance the policies underlying California’s
27 minimum wage law and regulations.”) (emphasis added); see also *Cardenas v. McLane*
28 *FoodServices, Inc.*, 796 F. Supp. 2d 1246, 1252 (C.D. Cal. 2011) (finding that the federal averaging

1 method did not apply to the payment of piece-rate wages under California law). This was reiterated
2 again recently in *Gonzalez v. Downtown LA Motors, LP*, 215 Cal.App.4th 36 (2013) where the
3 Court concluded that “[a]veraging piece-rate wages over total hours worked results in
4 underpayment of employee wages” *Id.* at 50.

5 Compensation on a “‘Piece rate basis’ is a method of payment based on units of production
6 or a fraction thereof.” 8 CA ADC § 11140, para. 2.(L). Under California law, workers are entitled
7 to receive paid rest breaks. Wage Order 14 provides in pertinent part the following with regards to
8 California’s rest period requirement: “Every employer shall authorize and permit all employees to
9 take rest periods . . . Authorized *rest period time shall be counted, as hours worked for which there*
10 *shall be no deduction from wages.*” 8 CA ADC § 11140, para. 12 (emphasis added). This same
11 Wage Order defines “Hours Worked” as “the time during which an employee is subject to the
12 control of an employer, and includes all the time the employee is suffered or permitted to work,
13 whether or not required to do so.” *Id.*, para. 2.(G). “Hours Worked,” in turn, must be compensated
14 at the employees’ regular rate and in no case less than the minimum wage. 8 CA ADC § 11000
15 (Order Regulating the Minimum Wage), para. 2.

16 Plaintiff argues that under a piece-rate system, since employees are paid for units produced,
17 unless they are separately compensated at an hourly rate of no less than the minimum wage for the
18 time they spend taking rest breaks, any rest break they take is unpaid or underpaid. *See Bluford*,
19 216 Cal. App. 4th at 872 (Under California law, “rest periods must be separately compensated in
20 a piece-rate system. Rest periods are considered hours worked and must be compensated.”);
21 *Armenta*, 135 Cal.App.4th at 316-18 (holding that where a piece-rate method of compensation is
22 used, the employer is required to pay at least the minimum wage for each hour worked); *Ontiveros*
23 *v. Zamora*, 2009 WL 425962, 3-5 (E.D.Cal., 2009) (plaintiffs properly alleged that strict piece rate
24 failed to properly compensate for state-mandated rest breaks).

25 In other words, unless the employer provides hourly compensation of no less than the
26 minimum wage for every 10-minute rest period taken by the employee, the employer is providing
27 no compensation whatsoever during rest periods. *Id.*⁴

28 ⁴ *Bluford* suggests that rest periods must be paid at the average hourly rate, not just at minimum wage. *See Bluford*,
supra, 216 Cal. App. 4th at 872 (“Under the California minimum wage law, employees must be compensated for

1 In 2016, the California legislature codified the *Bluford* holding under Labor Code § 226.2,
2 which provides:

3 This section shall apply for employees who are compensated on a piece-rate basis
4 for any work performed during a pay period. This section shall not be construed to
5 limit or alter minimum wage or overtime compensation requirements, or the
6 obligation to compensate employees for all hours worked under any other statute
or local ordinance . . .

7 (a) For employees compensated on a piece-rate basis during a pay period, the
8 following shall apply for that pay period:

9 (1) Employees shall be compensated for rest and recovery periods and other
10 nonproductive time separate from any piece-rate compensation.
Lab. Code § 226.2.

11 Furthermore, an employer that fails to provide a rest period “in accordance with an
12 applicable order of the Industrial Welfare Commission . . . shall pay the employee one additional
13 hour of pay” Cal. Labor Code § 226.7. This Court has held that grape workers may seek
14 recovery of additional wages for missed rest periods in a private suit such as this one. *Valenzuela*
15 *v. Giumarra Vineyards Corp.*, 614 F.Supp.2d 1089, 1101 (E.D.Cal. Feb. 20, 2009).

16 Here, Plaintiff and members of the Classes earned compensation on a piece-rate basis (per
17 each visited store where work was performed). However, Defendant did not provide any separate
18 hourly compensation to Plaintiff and members of the Classes for rest breaks to which they were
19 entitled (100% of wages earned by the Classes were earned for “piece” work performed). As such,
20 Defendant’s policies and practices resulted in members of the Classes taking their breaks “unpaid”
21 and in violation of the law.

22 Again, Plaintiff factored in the possibility that the misclassification claim would fail, and
23 the rest period claim would fail with it. (Ly Decl. ¶58.) Additionally, Defendant argued that Class
24 Members had ample time to take rest breaks. (Ly Decl. ¶59.) This was an additional risk factor

25 each hour worked at either the legal minimum wage or the contractual hourly rate . . .”). On November 1, 2013,
26 the California Labor Commissioner, Julie Su, issued to DLSE staff a Memorandum entitled *The Minimum Wage*
27 *and Rest Period Obligations of Employers in the Context of Piece Rate Employment* in which she stated the state’s
28 interpretation of Section 12 (Rest Periods) of all IWC wage orders to be that “the hourly rate payable to piece-
rate employees during rest periods is the hourly piece-rate wage calculated by dividing the total weekly piece-
rate earnings by the total hours of piece-rate work performed in the week.” New state law through AB 513,
discussed *infra*, confirms the labor commissioner’s interpretation; Cal. Dept. Industrial Relations, DLSE, Julie A.
Su, Memorandum, *The Minimum Wage and Rest Period Obligations of Employers in the Context of Piece Rate*
Employment (Nov. 1, 2013).

1 for this claim. (Ly Decl. ¶60.)

2 (2) Defendant Failed to Pay Wages and Overtime

3 Plaintiff alleges that Defendant failed to pay Plaintiff for earned wages, overtime, and
4 doubletime. Cal. Labor Code section 510(a) requires “[a]ny work in excess of eight hours in one
5 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked
6 on the seventh day of work in any one workweek shall be compensated at the rate of no less than
7 one and one-half times the regular rate of pay for an employee.” Further, “[a]ny work in excess of
8 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
9 for an employee” and “any work in excess of eight hours on any seventh day of a workweek shall
10 be compensated at the rate of no less than twice the regular rate of pay of an employee.” (Cal. Lab.
11 Code, § 510(a).)

12 As recounted above, BET failed to pay Plaintiff and members of the Independent
13 Contractor Class for all hours worked at the proper rate. Plaintiff and members of the Independent
14 Contractor Class were required to use their own personal vehicles to travel between stores during
15 their shifts. Defendant failed to compensate Plaintiff and members of the Independent Contractor
16 Class for this travel time. Plaintiff estimates spending approximately 4 to 5 hours daily on drive
17 time but was not paid for this travel time. Plaintiff and the Independent Contractor Class were
18 entitled to be paid for this travel time subject to their employer’s control.(see *Armenta v. Osmose,*
19 *Inc.* (2005) 135 Cal.App.4th 314, 324; see *Gonzalez v. Downtown LA Motors, LP* (2013) 215
20 Cal.App.4th 36.) Plaintiff and Class Members were also unpaid for the time it took for them to
21 prepare for each assignment, the time spent choosing/mapping routes to the next job site, and time
22 spent communicating with BET’s company scheduler or project managers when discussing job
23 assignments or project-specific issues.

24 Further, when BET reclassified Plaintiff and members of the Independent Contractor Class
25 as employees, BET paid Plaintiff and all members of the Classes a flat rate. Defendant failed to
26 adjust the regular rate of pay for calculation of overtime wages. As such, BET is liable for unpaid
27 wages and/or overtime under California law.

28 Defendant disputes that the Class Members were not compensated for travel time. BET

argues that it did include travel time in its compensation. (Ly Decl. ¶61.) Furthermore, BET disputes that the majority of the Class Members actually travelled between locations. (*Id.*)

c) Plaintiff and the Classes Were Denied Lawful Meal Periods

California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Cal. Lab. Code 512; Cal. IWC Wage Order 7-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by California Industrial Welfare Commission ("IWC") Wage Order 7-2001 have an obligation to relieve their employees for at least one meal period for shifts over five hours (see above).

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Cal. Lab. Code §226.7; Cal. IWC Wage Order 7-2001, §11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

Plaintiff maintains that Defendant violated California's meal break laws by not allowing Plaintiff and members of the Classes, to take daily meal breaks. (Ly Decl. ¶62.) Indeed, due to the

1 hectic nature of their job, Plaintiff alleges he and class members were rarely able to ever take a
2 lawful meal break. (*Id.*) Because Plaintiff and members of the Classes were required to complete
3 all of a job assignment's duties and requirements before the next assignment, complete travel time
4 logs, complete vendor logs, and other work-related duties before ending their shifts, they typically
5 had no time to take lawful uninterrupted meal, and rest periods, if they were to complete their
6 required duties. If Plaintiff or members of the Classes ever failed to complete all of the duties
7 required by the job assignment, or they rejected a store assignment, they would be subject to
8 potential discipline up to and including termination and/or unable to receive new job assignments.
9 Thus, Plaintiff and other members of the Classes were routinely discouraged and prevented from
10 taking uninterrupted meal, and rest, periods in order to complete all of an assignment's required
11 duties and avoid the imposition of potential disciplinary measures. (Ly Decl. ¶63.)

12 Plaintiff contends that Defendant also violated California's meal period laws by not paying
13 Plaintiff and members of the Classes an extra hour of wages for each missed or improper meal
14 period. (Ly Decl. ¶64.)

15 Thus, Plaintiff alleges that Defendant failed to maintain a company meal period policy
16 compliant with California law and failed to provide Plaintiff and members of the Classes with
17 proper meal periods. (Ly Decl. ¶65.) Liability for a class of similarly situated employees can be
18 established by evidence that an employer adopted a uniform corporate break policy that failed to
19 give full effect to California law and the applicable California wage orders requirements. The fact
20 that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53
21 Cal.4th 1004.

22 The aforementioned conduct results in violations of Cal. Labor Code sections 226.7 and
23 512, including Cal. Lab. Code sections 1198-1199 and Cal. IWC Wage Order 7-2001, §11(A) and
24 (C). These violations subject Employer to civil penalties under Cal. Labor Code sections 558 and
25 2699, and Cal. Wage Order 7-2001, §20. Each violation of each Cal. Labor Code section and Cal.
26 Wage Order provision results in a separate civil penalty, for each aggrieved employee for each pay
27 period during which the referenced statutes and Wage Order provisions were violated. Employer's
28 failure to provide valid meal periods ultimately resulted/results in further violations such as the

1 violations discussed below.

2 Defendant argues that many of the “Shifts” worked by the Class Members were too short
3 to necessitate a meal break. (Ly Decl. ¶66.) Additionally, Defendant argues that the Class
4 Members had ample time to take breaks and they were informed of their right to take them. (Ly
5 Decl. ¶67.)

6 d) Defendant Failed to Allow Rest Periods

7 California law requires employers to provide employees a paid, duty-free ten (10) minute
8 rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 7-2001,
9 §12(A). Employers must pay employees an additional hour of wages at the employee’s regular
10 rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest
11 period(s) at improper time(s) during shift(s)) rest period. Cal. Lab. Code §226.7; Cal. IWC Wage
12 Order 7-2001, §12(B) (“If an employer fails to provide an employee a rest period in accordance
13 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of
14 pay at the employee’s regular rate of compensation for each work day that the rest period is not
15 provided”).

16 Plaintiff maintains that Defendant violated California’s rest break laws by not allowing
17 Plaintiff and members of the Classes to take regular rest breaks. (Ly Decl. ¶68.) In fact, Plaintiff
18 alleges he and class members were never provided 10-minute rest breaks, and it was never even
19 mentioned that she could or should be allowed to take one. (*Id.*)

20 Thus, Defendant did not maintain a company rest period policy and/or practice compliant
21 with California law, and Employer frequently did not provide Plaintiff and members of the Classes
22 with appropriate rest periods. (Ly Decl. ¶69.) Per Defendant’s policy and/or practice, Plaintiff and
23 the Classes were not adequately informed and instructed about, and thereby were not afforded an
24 adequate opportunity to take, proper rest breaks per California law. Further, Defendant failed to
25 pay Plaintiff and members of the Classes with an additional hour of pay at Plaintiff’s and the
26 Classes’ regular rates of pay for each missed or improper rest period. (*Id.*)

27 The aforementioned conduct results in violations of Cal. Labor Code section 226.7,
28 including Cal. Lab. Code sections 1198-1199 and Cal. IWC Wage Order 7-2001, §12(A). These

violations subject Employer to civil penalties under Cal. Labor Code section 2699, and Cal Wage Order 7-2001, §20. Each violation of each Cal. Labor Code section and Cal. Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.

Defendant argues that the Class Members had ample time to take rest breaks and they were informed of their right to take them. (Ly Decl. ¶70.) Defendant argues that there was extensive down time that permitted rest breaks. (*Id.*)

e) Defendant Failed to Reimburse Employees for Necessary Business Expenditures

Under California Labor Code § 2802(a) an employer “shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” An employee acts in “discharge of his duties,” for purposes of this Section when the employee acts within the “course and scope of employment.” (*See O'Hara v. Teamsters Union Local No. 856*, C.A.9 (Cal.)1998, 151 F.3d 1152.)

Plaintiff argues that BET required Plaintiff and members of the Classes to incur necessary expenses to perform their work duties. (Ly Decl. ¶71.) BET required Plaintiff to use their personal cell phones in executing their duties under Defendant’s employ. (*Id.*) Specifically, Plaintiff and members of the Classes were required to be available by cell phone and download and use an application called “Survey Merchandiser” to find available projects and complete assignments such as, but not limited to, entering inventory, facings and pricing data, adding stickers to products, building displays, and stocking shelves. BET also required Plaintiff and Class Members to use their personal cell phones to regularly communicate with the company scheduler and project managers. BET further required Plaintiff and members of the classes to use their personal cell phones to track their drive time using the app “MileIQ,” which required a subscription fee. BET did not reimburse for employees for this fee.

Additionally, Plaintiff necessarily incurred costs associated with mileage in order to travel between stores. (Ly Decl. ¶72.) During the course of Plaintiff’s employment, she alone incurred

1 approximately 13,745 miles among job locations. The distance between assignments ranged
2 anywhere from less than a mile to over 90 miles. Because BET failed to reimburse Plaintiff and
3 members of the Classes for these business expenses, BET is liable under Cal. Labor Code section
4 2802. (Ly Decl. ¶73.)

5 Defendant argues that it did reimburse for business expenses and that it maintained a
6 system for Class Members to submit their reimbursement requests. (Ly Decl. ¶74.) The records
7 produced by BET did indicate some reimbursements. (Ly Decl. ¶75.) This did create a risk for
8 certification and a merits risk that Plaintiff considered as part of the settlement negotiations. (Ly
9 Decl. ¶76.)

10 f) Defendant's Wage Statement are Facially Defective in Violation of
11 Sections 226.2 and 226(a)

12 Cal. Labor Code § 226(a) requires employers to issue accurate itemized wage statements
13 to employees, including “(2) total hours worked by the employee . . . (3) the number of piece-rate
14 units earned and any applicable piece rate if the employee is paid on a piece-rate basis . . . (9) all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee.” Additionally, in codifying *Bluford* Cal. Labor Code
17 Section 226.2 has extended Section 226(a) to require:

18 The itemized statement required by subdivision (a) of Section 226 shall, in addition
19 to the other items specified in that subdivision, separately state the following, to
20 which the provisions of Section 226 shall also be applicable: (A) The total hours of
21 compensable rest and recovery periods, the rate of compensation, and the gross
22 wages paid for those periods during the pay period.

23 Cal. Lab. Code § 226.2

24 An employee “suffering injury,” like Plaintiff and members of the Classes, can recover
25 penalties for an employer’s “knowing and intentional failure” to comply with Cal. Labor Code
26 §226(a). See Cal. Labor Code § 226(e)(1). Under the statute, an employee is deemed to “suffer
27 injury” if the employer does not provide accurate and complete information required by Labor
28 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
alone the amount of gross wages or net wages paid to the employee or other information specified

1 by Cal. Labor Code § 226(a). See Cal. Labor Code § 226(e)(2)(B).

2 Plaintiff alleges that Defendant’s wage statements violate Cal. Lab. Code sections 226(a)
3 and 226.2 above. As discussed herein, Plaintiff and members of the Classes were paid by the
4 “piece”. (Ly Decl. ¶77.) However, the wage statements issued to members of the Classes, including
5 Plaintiff, failed to include the “the number of piece-rate units earned” and the “applicable piece
6 rate” paid to Plaintiff and the Classes in violation of Cal. Lab. Code section 226(a)(3). (*Id.*)

7 Moreover, the wage statements are further defective in that they fail to state the total hours
8 worked or applicable rate of pay, including the total hours of separate compensation for paid rest
9 breaks owed to piece rate employees, and the rate of such compensation, in violation of Cal. Lab.
10 Code sections 226(a) and 226.2. This information was not easily ascertainable from the wage
11 statement alone, because it was completely missing or inaccurate.

12
13
14 g) The Risks Associated with the PAGA Claim

15 California’s Private Attorneys General Act (“PAGA”), Labor Code § 2698, *et seq.*, permits
16 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
17 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
18 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
19 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

20 As a result of Defendant’s conduct alleged above, Plaintiff seeks PAGA penalties available
21 for violations under Cal. Labor Code sections 201, 202, 203, 226(a), 226.7, 226.8, 510, 512, 1194,
22 1199, and 2802. Cal. Labor Code section 2699(f) provides, in relevant part, “[f]or all provisions
23 of this code except those for which a civil penalty is specifically provided, there is established a
24 civil penalty for a violation of these provisions, as follows: one hundred dollars (\$100) for each
25 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
26 each aggrieved employee per pay period for each subsequent violation.” In addition, the statute
27 provides that “[a]ny employee who prevails in any action shall be entitled to an award of
28 reasonable attorney’s fees and costs.” (Cal. Labor Code § 2699(g)(1).)

1 In addition to the meal period, rest period, wage statement, and wage violations, alleged in
2 detail above, Plaintiff also alleges a PAGA violation for failure to keep accurate meal period
3 records; failure to pay timely wages; failure to maintain an independent contractor agreement
4 containing lawful provisions; and, failure to properly classify individuals as employees as the basis
5 for a PAGA claim on behalf of two groups of aggrieved employees.

6 Plaintiff alleges that Defendant failed to properly classify Plaintiff and other aggrieved
7 employees as employees. California Labor Code section 226.8 provides for a significant civil
8 penalty under PAGA. Section 226.8(a)(1) states: “(a) It is unlawful for any person or employer to
9 engage in any of the following activities: [¶] (1) Willful misclassification of an individual as an
10 independent contractor.” “Willful misclassification” is defined to mean “avoiding employee status
11 for an individual by voluntarily and knowingly misclassifying that individual as an independent
12 contractor.” (Cal. Lab. Code, § 226.8, subd. (i)(4).) Cal. Labor Code § 226.8 provides for a civil
13 penalty of between \$5,000 and \$15,000 for each “violation.” (See *id.*, § 226.8, subd. (b).) These
14 penalties increase to between \$10,000 and \$25,000 per violation if the court determines the
15 employer has “engaged in or is engaging in a pattern or practice of” willfully misclassifying its
16 employees. (See *id.*, § 226.8, subd. (c); *Noe v. Superior Court* (2015) 237 Cal.App.4th 316, 335.)

17 Plaintiff alleges that in addition to the other penalties, Defendant owes between \$10,000
18 and \$25,000 in civil penalties per violation under PAGA. (See § 226.8, subd. (c).)

19 Plaintiff also alleges that Defendant failed to pay Plaintiff and other aggrieved employees
20 timely wages. “Section 204 imposes an obligation of timely payment of wages upon California
21 employers and provides rules for scheduling wage payments. Specifically, for most employees,
22 section 204 requires payment of wages twice during a calendar month, and an employer is subject
23 to penalties for violating section 204.” See *See’s Candy Shops, Inc. v. Superior Court*, 210 Cal.App.4th
24 889, 904 (2012) (citing to Cal. Labor Code §§ 204(a); 210).

25 California Labor Code § 204(a) provides:

26 All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2,
27 earned by any person in any employment are due and payable twice during each
28 calendar month, on days designated in advance by the employer as the regular
paydays. Labor performed between the 1st and 15th days, inclusive, of any

1 calendar month shall be paid for between the 16th and the 26th day of the month
2 during which the labor was performed, and labor performed between the 16th and
3 the last day, inclusive, of any calendar month, shall be paid for between the 1st and
4 10th day of the following month.

5 California Labor Code § 204(a) further provides:

6 The requirements of this section shall be deemed satisfied by the payment of wages
7 for **weekly**, biweekly, or semimonthly payroll if the wages are paid not more than
8 **seven** calendar days following the close of the payroll period (emphasis added).

9 California Labor Code § 204(a) further provides:

10 The requirements of this section shall be deemed satisfied by the payment of wages
11 for **weekly**, biweekly, or semimonthly payroll if the wages are paid not more than
12 **seven** calendar days following the close of the payroll period (emphasis added).

13 Plaintiff and other aggrieved employees were paid on a weekly basis, as stated under Cal.
14 Labor Code section 204(a), making their wages due no later than seven (7) days from the closing
15 of each respective pay period. Plaintiff's and aggrieved employees' wage statements indicate that
16 at least for some of the PAGA liability period, Defendant had a policy and practice of paying
17 Plaintiff and the Class Members on an irregular pay schedule, approximately 2 times per month.
18 (*Ibid.*)

19 Defendant also maintains an independent contractor agreement that must be agreed upon
20 as a condition of employment, containing provisions that explicitly violate several provisions of
21 California law and public policy. California Labor Code §432.5 specifically prohibits employers
22 from requiring "any employee or applicant for employment to agree, in writing, to any term or
23 condition which is known by such employer, or agent, manager, superintendent, or officer thereof
24 to be prohibited by law." Defendant includes illegal indemnity in its independent contractor
25 agreement that Plaintiff and all other aggrieved employees must agree to as a condition of
26 employment.

27 The Parties discounted the PAGA claim for multiple reasons. First, many of the aggrieved
28 employees' PAGA claims are derivative of all the foregoing class claims. Second, a court has
discretion to award less than the maximum penalty. Labor Code § 2699(e)(2) ("a court may award
a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts
and circumstances of the particular case, to do otherwise would result in an award that is unjust,

arbitrary and oppressive, or confiscatory”). See *e.g.*, *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty). Additionally, to establish penalties for the California Labor Code section 226.8 Plaintiff would need to establish that the misclassification claim was “willful.” This is a high hurdle to overcome. As such, the Agreement’s contemplated PAGA payment of \$25,000.00 is appropriate. (Ly Decl. ¶78.) See *Nordstrom Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4 million settlement to PAGA penalties).

2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Agreement now. (Ly Decl. ¶79.) If the Court did eventually certify a class, trial of a case involving approximately 6,577 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties. (Ly Decl. ¶80.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. (Ly Decl. ¶81.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk of Maintaining Class Action Status through Trial

This case has not been certified to be tried as a class action. (Ly Decl. ¶82.) While Plaintiff believes there is strong evidence to support certification of several possible certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties would need to conduct multiple depositions, including of the Class Representative and of several person(s) most knowledgeable regarding Defendant’s policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

4. The Risk of Arbitration

Plaintiff also factored in the risks associated with existence of arbitration agreements. (Ly Decl. ¶83.) Plaintiff and most of the Class Members signed arbitration agreements. (Ly Decl. ¶84.) These agreements included class action and PAGA waivers. (Ly Decl. ¶85.) Plaintiff

believes she has strong defenses to enforcement of the agreement. (Ly Decl. ¶86.) However, Plaintiff acknowledges the risks associated with Defendant's motion to compel arbitration. The Parties agreed to stay this issue pending mediation. (Ly Decl. ¶87.) This was biggest risk to the case and it warranted the largest discount. (Ly Decl. ¶88.)

5. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$2,250,000.00. (Ly Decl. ¶89.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Ly Decl. ¶90.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, Tripper Ortman. (*Id.*)

The bulk of the damages in this case were related to the PAGA penalties. The underlying claims were substantially less than the claims for the PAGA penalties. Given the arbitration issue, Plaintiff substantially reduced the value of the case for settlement.

a) Plaintiff's Assessment of Defendant's Maximum Exposure

Plaintiff assessed full value of the Minimum Wage/Overtime claim, without any discount, at approximately \$169,159.00, Plaintiff valued the unpaid rest period wage claim at \$98,705.00, and Plaintiff valued the failure to account for the piece rate pay at \$60,052 (Total of \$327,916). (Ly Decl. ¶91.) This was based on the minimum wage rate for each year and the hours tracked by Defendant through its own systems (they utilized an application on the Class Members phones for part of the Class Period). (Ly Decl. ¶92.) Plaintiff's expert also extrapolated the data for the portion of the Class Period that was not tracked this way. (Ly Decl. ¶93.) The average shift length was 4.28 hours so the overtime actually worked was relatively low. (Ly Decl. ¶94.)

The full value of the Meal Period claim, without any discount, was approximately \$452,613.00 (Ly Decl. ¶95.) Plaintiff utilized the same hourly rates noted above and determined the shifts that were long enough to necessitate a meal period from Defendant's records. (Ly Decl. ¶96.)

The full value of the Rest Period claim, without any discount, was approximately

1 \$592,228.00. (Ly Decl. ¶97.) Plaintiff utilized the same hourly rates noted above and determined
2 the shifts that were long enough to necessitate a rest period from Defendant's records. (Ly Decl.
3 ¶98.)

4 With regard to the Reimbursement Claim analysis, Plaintiff was able to determine the
5 mileage from Defendant's system and deduct any reimbursements actually paid by cross
6 referencing the pay data. (Ly Decl. ¶99.) Plaintiff also utilized \$35.00 per month for the
7 reimbursement for cell phone usage. This brought the damages for this claim to \$1,150,366.00.
8 (Ly Decl. ¶100.)

9 Plaintiff valued the Wage Statement Claim, without discount, at \$1,183,950.00. (Ly Decl.
10 ¶101.) Plaintiff used \$100 for each wage statement issued (pay period) and utilized a \$4,000 cap
11 on wage statement penalties per employee. (Ly Decl. ¶102.)

12 Plaintiff valued the Waiting Time Claim at \$8,203,427.00 based on approximately 5,198
13 former employees and an average shift length of approximately 4.18 hours. (Ly Decl. ¶103.)

14 Finally, Plaintiff calculated the value of the PAGA claims (stacked for each violation at
15 \$35,731,600.00. This includes penalties for all of the underlying claims. (Ly Decl. ¶104.) If the
16 only penalty awarded was for the misclassification claim, the value of the PAGA claim is
17 \$26,260.00 (at \$10,000 a head). (Ly Decl. ¶105.) If only one penalty is applied for any of the
18 other violations, the value is \$2,367,900.00. (Ly Decl. ¶106.) As such, there is a high fluctuation
19 in the possible penalties awarded at maximum value. (Ly Decl. ¶107.) The court also has
20 discretion to decrease these penalties. (Ly Decl. ¶108.)

21 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
22 Settlement Class Members' claims was without including PAGA is \$11,910,500.00. (Ly Decl.
23 ¶109.) The value of the non-penalty claims is \$2,523,123.00. (Ly Decl. ¶110.) Obviously,
24 factoring PAGA, and stacking penalties, the value of the case is close to \$50,000,000.00. (Ly
25 Decl. ¶111.) Given the risks associated with waiting time penalties and PAGA and the risks
26 associated with the arbitration agreement, Class Counsel believes the Gross Settlement Amount of
27 \$2,250,000.00 is fair and reasonable. (Ly Decl. ¶112.)

28 ///

1 6. The Experience and Views of Counsel

2 Finally, counsel’s experience and success in similar class actions also weigh in favor of
3 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is
4 very experienced in prosecuting complex employment litigation, and the firm has focused its
5 practice since the year 2000 on complex wage, hour, and working condition violations. (Ly Decl.
6 ¶¶121-123.) The firm is well versed in class action litigation and has diligently and aggressively
7 pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens
8 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
9 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
10 declaration of Liane Katzenstein Ly. (*Id.*) After factoring in the risks explained above, Class
11 Counsel believes that the proposed settlement is fair and reasonable. (Ly Decl. ¶124.)

12 7. The Proposed Plan of Allocation Is Fair and Reasonable

13 Plans of allocation are subject to the same standard of review as class action settlements;
14 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
15 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
16 compensates Settlement Class Members pro rata based on the number of Workweeks worked by
17 the Settlement Class Member during the Class Period. The lump sum payment to each Settlement
18 Class Member not excluding him/ herself will be determined by dividing the Net Settlement
19 Amount by the total number of Compensable Workweeks worked by all members of the settlement
20 class during the Class Period and then multiplying the Workweek Value by the number of
21 Compensable Workweeks by the individual class member as determined by the Administrator.
22 This allocation distributes Settlement funds proportionally to each class member’s damages, and
23 should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at ¶2.2.4.)

24 8. The Proposed Notice Fairly Apprises the Settlement Class Members of the
25 Terms of the Settlement and of the Class Members’ Rights under the
26 Settlement

27 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
28 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of

reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Settlement Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶8.4.ii). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Settlement Class Members.

With respect to the contents of the Notice, the “notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.) The purpose of a class 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. (*Ibid.*)

Here, the Notice clearly explains the proposed Agreement and the options to opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶8.5, 8.7-8.8; *see also* Ex. A to the Agreement at pp. 2, 4, 7 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Settlement Class Members to make an informed choice regarding whether to participate.

VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF

The Class Representative is entitled to an enhancement for her valiant effort and time expended in this matter. (Ly Decl. ¶125.) The time spent by MIE MOULTON is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with Settlement Class Members; attending a full-day of mediation; and responding promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in addition to the sums paid to Settlement Class Members, Plaintiff requests a proposed litigation enhancement in the amount of

\$10,000.00, to be paid from the Gross Settlement Amount. (Ex. 1 at ¶2.2.1.) As set forth in the Agreement, Plaintiff will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Ly Decl. ¶126; Ex. 1 at ¶6.)

Class Counsel considers this to be a fair and reasonable enhancement. (Ly Decl. ¶127.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Settlement Class Members. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion detailing her participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiff's Motion for Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Liane Katzenstein Ly as Exhibit "3." (Ly Decl. ¶128.)

VIII. CONCLUSION

Plaintiff respectfully submits that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Settlement Class Members. Therefore, the Parties respectfully request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement Agreement, and all of its terms; (2) approve the proposed form of notice, and direct that the Notice be sent to Settlement Class Members in the manner set forth in the Class Action and PAGA Settlement Agreement; and (3) schedule a hearing on final approval of the Agreement and Class Counsel's application for an award of attorney's fees and litigation costs.

DATED: November 22, 2022

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly
Attorneys for Plaintiff MIE MOULTON and the
proposed classes

(PROOF OF SERVICE)
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On November 22, 2022, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

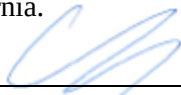
KLINEDINST PC Thomas Daugherty TDaugherty@Klinedinstlaw.com Jessica S. Park jpark@klinedinstlaw.com 501 West Broadway, Suite 600 San Diego, CA 92101 <i>Attorneys for Defendant</i>	DAVTYAN LAW FIRM, INC. Emil Davtyan emil@davtyanlaw.com 880 E. Broadway Glendale, CA 91205 <i>Attorney for Plaintiff and the Proposed Classes</i>
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[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing (“EF”) System (<https://dir.tfaforms.net/308>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] (BY ELECTRONIC MAIL TRANSMISSION) I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 22, 2022, at Woodland Hills, California.



Michelle Tanzer