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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LINKEE FAIR LOBYOC, individually, and on behalf of other members of the general public similarly situated; Plaintiff, v. HEADWAY TECHNOLOGIES, INC. D/B/A TDK HEADWAY TECHNOLOGIES, INC., a California corporation; and DOES 1 through 100, inclusive; Defendants.	Case No.: 23CV421632 Assigned for All Purposes to: Honorable Charles F. Adams Department 7 **CLASS ACTION** **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** *[Declaration of Proposed Class Counsel (Douglas Han); Declaration of Sean Hartranft; and [Proposed] Order filed concurrently herewith]* Hearing Date: September 4, 2025 Hearing Time: 1:30 p.m. Hearing Place: Department 7 Complaint Filed: August 22, 2023 FAC Filed: February 6, 2025 Trial Date: None Set

PLEASE TAKE NOTICE that on September 4, 2025 at 1:30 p.m., or as soon as the matter may be heard, before the Honorable Charles F. Adams in Department 7 of the Santa Clara Superior Court located at 191 North First Street, San Jose, California 95113, Plaintiff Linkee Fair Lobyoc ("Plaintiff") moves for an order:

- Granting Preliminary Approval of the proposed class action settlement described herein and as set forth in the Class Action and PAGA Settlement Agreement ("Settlement Agreement," "Settlement," or "Agreement"), attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited to, the means of allocation and distribution of funds, the allocations for payments under the Private Attorneys General Act of 2004 ("PAGA"), Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, and Settlement Administration Expenses;
- Conditionally certifying the proposed Class for settlement purposes only;
- Appointing Plaintiff as the class representative;
- Appointing Justice Law Corporation as Class Counsel;
- Approving the proposed Notice of Proposed Settlement of Class Action and Hearing Date ("Class Notice") attached as **Exhibit A** to the Settlement Agreement and [Proposed] Order Preliminarily Approving Class Action Settlement;
- Directing the mailing of the proposed Class Notice with a postage-paid return envelope to the proposed Class;
- Approving the proposed deadlines for the notice and settlement administration process;
- Approving Apex Class Action Administration as the Administrator;
- Approving the settlement of the PAGA claims; and

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- Scheduling a hearing to consider whether to grant Final Approval of the Settlement Agreement, at which time the Court will also consider whether to grant Final Approval of the request for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, Settlement Administration Expenses, and allocation of the PAGA Penalties.

This motion is based upon the following memorandum of points and authorities; Declaration of Proposed Class Counsel (Douglas Han); Declaration of the Proposed Administrator Sean Hartranft; [Proposed] Order filed concurrently with this motion; pleadings and other records on file with the Court in this matter; and such documentary evidence and oral argument as may be presented at the hearing on this motion.

Dated: March 21, 2025

JUSTICE LAW CORPORATION

By: ______________________
Douglas Han
Attorneys for Plaintiff

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I. INTRODUCTION

This motion seeks preliminary approval of a non-reversionary wage-and-hour class and representative action settlement by Plaintiff on behalf of herself and all current and former hourly-paid or non-exempt employees of Defendant Headway Technologies, Inc. ("Defendant") within the State of California at any time from August 22, 2019, through March 24, 2025 or the date of preliminary approval, whichever date is earlier, and who did not sign an arbitration agreement ("Class," "Class Members," and "Class Period"). At the time of this filing, the number of Class Members confirmed by Defendant is estimated to be three hundred eighty-two (382). (Declaration of Douglas Han In Support of Motion For Preliminary Approval of Class Action Settlement ("Han Decl."), ¶¶ 8, 9.)

II. BACKGROUND

On August 22, 2023, Plaintiff filed a wage-and-hour class action lawsuit in the Superior Court of California, County of Santa Clara, alleging eight (8) causes of action. (Han Decl., *supra*, at ¶ 10.)

After engaging in discovery, investigations, and negotiation, on January 21, 2025, the Parties remotely attended mediation with the mediator Brandon McKelvey, ultimately resulting in the Parties reaching a settlement via a mediator's proposal, subject to the Court's approval. (Han Decl., *supra*, at ¶ 11.)

In line with the settlement, on January 28, 2025, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of the Labor Code she contends were violated and the theories supporting her contentions. (Han Decl., *supra*, at ¶ 12, Exhibit 3.)

On February 6, 2025, Plaintiff filed a First Amended Complaint that amended the "class" definition and added a cause of action for violation of Labor Code section 2698 (PAGA) ("Operative Complaint"). (Han Decl., *supra*, at ¶ 13; Exhibit 4.)

Defendant denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint, and denies any and all liability for the causes of action alleged in the Operative Complaint. (Han Decl., *supra*, at ¶ 14.)

III. INVESTIGATION/ LITIGATION HISTORY

a. Discovery, Investigation, and the Parties' Staunchly Conflicting Positions

After initiating this lawsuit, the Parties engaged in discovery. (Han Decl., *supra*, at ¶ 15.) The Parties met and conferred and agreed to engage in an informal exchange of information and then eventually remotely attended mediation. (*Ibid.*)

Prior to mediation, the Parties conducted significant investigation and discovery of the facts and law. (Han Decl., *supra*, at ¶ 16.) Defendant produced documents relating to their policies, practices, and procedures regarding reimbursement of business expenses, paying non-exempt employees for all hours worked, and meal and rest breaks along with payroll, timekeeping, and operational policies. (*Ibid.*) As part of Defendant's production, Plaintiff reviewed time records, wage statements, and information relating to the size and scope of the Class, as well as data permitting Plaintiff to understand the number of workweeks and pay periods. Plaintiff also located and interviewed putative class members who worked for Defendant throughout the Class Period. (*Ibid*.)

Based upon the information provided by Defendant and interviews with putative class members, Plaintiff contends – and Defendant denies – Defendant: (1) failed to provide employees with legally mandated meal and rest breaks; (2) failed to pay employees for all hours worked; (3) failed to reimburse employees for necessary business expenses; (4) issued non-compliant wage statements; and (5) is liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 18-24.)

b. The Parties Were Able to Reach an Agreement on Settlement of the Action

i. The Parties Attended Mediation Which Led to the Settlement

The Parties remotely attended mediation with an experienced mediator. (Han Decl., *supra*, at ¶ 25.) During the mediation, the Parties discussed the risks of continued litigation, the likelihood of certification, and the merits of the claims and defenses versus the benefits of settlement. (*Ibid.*) With the assistance of the mediator, the Parties reached a settlement via a mediator's proposal, the terms of which were memorialized in the Settlement Agreement. (*Id.* at ¶ 25, Exhibits 2, 5.)

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ii. The Settlement Was Reached as a Result of Arm's-length Negotiations

The Settlement was reached because of arm's-length negotiations. (Han Decl., *supra*, at ¶ 28.) Though cordial and professional, the settlement negotiations have always been adversarial and non-collusive in nature. (*Ibid.*) At the mediation, the Parties' counsel conducted extensive arm's-length settlement negotiations until an agreement was reached after mediation. (*Ibid.*)

Plaintiff and Class Counsel believe in the merits of the case but recognize the expense and length of additional proceedings necessary to continue the litigation. (Han Decl., *supra*, at ¶ 29.) Plaintiff and Class Counsel considered the uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in such litigation. (*Ibid.*) Plaintiff and Class Counsel believe that the settlement set forth in the Settlement Agreement is fair, adequate, and reasonable and is in the best interests of the Class Members. (Han Decl., *supra*, at ¶ 29.)

iii. The Settlement Is the Result of Thorough Investigation

The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of the claims and defenses and engaged in sufficient investigation, research, and discovery. (Han Decl., *supra*, at ¶ 30.) The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures. (*Ibid.*) This information permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (*Ibid.*) This case has reached the stage where the Parties understand "the strength of the case; the reasonableness of the settlement in light of the attendant risks of litigation, and in light of the best possible recovery" sufficient to support the Settlement's reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 30; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

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c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (subject to the Court's approval) this matter be settled for the total sum of $989,000 which includes the: (1) Class Counsel Fees Payment of up to $346,150 (35% of the Gross Settlement Amount); (2) Class Counsel Litigation Expenses Payment of up to $25,000; (3) Class Representative Service Payment of up to $10,000; (4) Settlement Administration Expenses of up to $15,000; and (5) PAGA Penalties of $75,000, sixty-five percent (65%) of which ($48,750) shall be paid to the LWDA as its share of the settlement of civil penalties pursuant to PAGA and thirty-five percent (35%) of which ($26,250) will be distributed to the Aggrieved Employees as their Individual PAGA Payments. (Han Decl., *supra*, at ¶ 26.)

ii. Calculation of the Individual Class Payments

If the Court approves the proposed deductions from the Gross Settlement Amount, it is estimated that $517,850 will be distributed to Participating Class Members, resulting in a gross *average* Individual Class Payment of $1,355.63. (Han Decl., *supra*, at ¶ 27.)

The Administrator will calculate and pay Individual Class Payments for Participating Class Members using the formula set forth in the Agreement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(5)(a).) The Administrator shall also calculate and pay Individual PAGA Payments to Aggrieved Employees using the formula set forth in the Agreement. (*Ibid.*)

iii. The Allocation of 15% to Wages and 85% to Interests and Penalties Is Justified Under the Claims of this Action

Individual Class Payments will be apportioned fifteen percent (15%) in the settlement of wage claims and eighty-five percent (85%) in the settlement of claims for interest and penalties. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(5)(b).)

The allocation of wages and penalties was based on the approximate realistic exposure that Plaintiff could expect to receive for meal and rest break premiums and unpaid and underpaid wages. (Han Decl., *supra*, at ¶ 48.) Plaintiff added the realistic exposure for rest break premiums and meal break premiums ($43,934.52 + $137,869.26 = $181,803.78). (*Ibid.*) Plaintiff then added the $181,803.78 to the low end realistic exposure for unpaid wages due to off-the-clock work

($181,803.78 + $202,235.28 = $384,039.06). (*Ibid.*) The realistic exposure of $384,039.06 that Plaintiff can expect to receive if she was to prevail at trial for meal and rest break premiums and low end unpaid wages due to off-the-clock work represents about 17.53% of the low end total realistic exposure and PAGA penalties ($384,039.06 ÷ $2,190,682.61 = 0.17531 x 100 = 17.53%). (*Ibid.*) Because this represents nearly fifteen percent (15%) of wages, it is appropriate to allocate fifteen percent (15%) as wages and eighty-five percent (85%) as interest and penalties as set forth in the Settlement Agreement. (*Ibid.*)

iv. Notice to the Class

No later than fourteen (14) calendar days after the Court enters the Order Granting Preliminary Approval of the Settlement, Defendant will deliver the Class Data to the Administrator. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(7)(b)(i).) No later than fourteen (14) calendar days after receiving the Class Data, the Administrator will mail the Class Notices to all the Class Members via first-class regular U.S. Mail. (*Id.* at § III(7)(b)(ii).)

v. Timing of Distribution of Funds

The Gross Settlement Amount will be funded and distributed pursuant to the timeline and manner set forth in the Settlement. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(3).) Uncashed settlement checks will be paid to the California Controller's Unclaimed Property Fund. (*Id.* at § III(5)(d).)

vi. Release of Claims

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Participating Class Members will waive and release the Released Parties from the Released Class Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §§ I(29), III(8)(a).)

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, State of California, and Aggrieved Employees will waive and release the Released Parties from the Released PAGA Claims. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at §§ I(30), III(8)(b).)

Effective on the date when Defendant fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, in addition to the above releases applicable to Participating Class Members and Aggrieved Employees, Plaintiff and her former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally release and discharge the Released Parties from any and all claims, transactions, or occurrences during the Class Period. (Han Decl., *supra*, at ¶ 25; Exhibit 2, *supra*, at § III(8)(c).) Plaintiff also expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the Civil Code. (*Ibid.*)

With regards to class action releases, "[A] court may release not only those claims alleged in the complaint and before the court, but also claims which 'could have been alleged by reason of or in connection with any matter or fact set forth or referred to in' the complaint." (*Amaro v. Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in this case are acceptable because they are limited to the scope of the allegations in the operative complaints. The released claims are "based on the identical factual predicate as that underlying the claims in the settled class action." (*Ibid.*) In other words, the released claims do not "go beyond the scope of the allegations in the operative complaint ... ." (*Ibid.*)

d. Counsel for Both Parties Are Experienced in Similar Litigation

Counsel for the Parties are experienced in wage-and-hour employment law and class actions. (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf of employees for Labor Code violations. (*Ibid.*) Thus, Class Counsel are experienced and qualified to evaluate the class claims, advantages, and disadvantages of settlement versus trial, and viability of the defenses. (*Ibid.*) Class Counsel's experience guided their determination to endorse the Settlement.[1] (*Ibid.*)

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[1] The final factor mentioned in *Dunk* – the number of objectors – is not determinable until the Class Notice has been provided to the Class Members, and they have had an opportunity to respond. This information will be provided to the Court in conjunction with the Motion for Final Approval of Class Action Settlement.

IV. ARGUMENT

a. Class Action Settlements Are Subject to Court Review

Rules of Court, rule 3.769 requires court approval for class action settlements.[2] "Before final approval, the court must conduct an inquiry into the fairness of the proposed settlement." (Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for preliminary approval of class settlements:

> (a) A settlement or compromise of an entire class action, or a cause of action in a class action, or as to a party, requires the approval of the court after hearing.
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> (c) Any party to a settlement agreement may serve and file a written notice of motion for preliminary approval of the settlement. The settlement agreement and proposed notice to class members must be filed with the motion, and the proposed order must be lodged with the motion.

Courts have discretion to approve settlements that are fair, not collusive, and consider "'all the normal perils of litigation as well as the additional uncertainties inherent in complex class actions.'" (*In re Beef Industry Antitrust Litigation* (5th Cir. 1979) 607 F.2d 167, 179, cert. den. *sub nom. Iowa Beef Processors, Inc. v. Meat Price Investigators Ass'n* (1981) 452 U.S. 905.)

b. The Proposed Settlement Is a Reasonable Compromise of Claims

An understanding of the amount in controversy is an important factor in whether the settlement "of the class members' claims is reasonable in light of the strengths and weaknesses of the claims and the risks of the particular litigation." (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129; see also *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 409.) The most important factor in this regard is "the strength of the case for Plaintiff on the merits, balanced against the amount offered in settlement." (*Kullar*, at p. 130; see also *Munoz*, at p. 409.)

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2 The California Supreme Court has also authorized California's trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. (*Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146.) Where appropriate, the Parties cite Federal Rule 23 and federal case law in addition to California law.

Kullar instructs the court is not to "decide the merits of the case or to substitute its evaluation of the most appropriate settlement for that of the attorneys." (*Kullar v. Foot Locker Retail, Inc., supra,* 168 Cal.App.4th at p. 133.) *Kullar* does not require an explicit statement of the maximum amount the class could recover if the plaintiff prevailed on all her claims, provided there is a record that allows "'an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.'" (*Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles*, *supra*, 186 Cal.App.4th at p. 409.) Put differently, "as the court does when it approves a settlement as in good faith under Code of Civil Procedure § 877.6, the court must at least satisfy itself that the class settlement is within the 'ballpark' of reasonableness." (*Kullar*, at p. 133.)

i. The Gross Settlement Amount of $989,000 Is Fair and Reasonable

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures in place and the data provided for the putative class, as referenced in Section III(b) above, permitting Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 30.)

The claims are predicated on the alleged: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and rest breaks and pay applicable premium wages; (4) failure to timely pay wages; (5) failure to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of PAGA; and (8) violation of Business & Professions Code section 17200. (Han Decl., *supra*, at ¶ 31.) Defendant vehemently denies the theories of liability. (*Id.* at ¶ 32.)

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While Plaintiff believes that the case is suitable for certification, uncertainties with respect to certification are always present. (Han Decl., *supra*, at ¶ 33.) As the California Supreme Court ruled in *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, class certification is a matter of the trial court's sound discretion. (*Ibid.*) Decisions following *Sav-On Drug Stores, Inc.* have reached different conclusions concerning certification of wage-and-hour claims.[3] (*Ibid.*) These factors led to the discounting of the calculations for the potential damages.

ii. The PAGA Penalties of $75,000 Is Reasonable

The provisions of the Labor Code potentially triggering PAGA penalties include Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 229, 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1198, 2800, and 2802. (Han Decl., *supra*, at ¶ 41.) Defendant asserts that PAGA penalties are not mandatory but permissive and discretionary. (*Ibid.*) Defendant maintains that it had a strong argument it would be unjust to award maximum PAGA penalties given the law's unsettled state. (Han Decl., *supra*, at ¶ 41; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing penalties by 30% under this authority].) Defendant argued that without stacking and limited to the initial violation, the PAGA penalties would be limited to **$49,900** (499 employees x $100 initial violation) on the low end and **$349,300** (499 employees x $100 initial violation x 7 theories of recovery) on the high end. (Han Decl., *supra*, at ¶¶ 42-45.)

Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at ¶ 46.) Many of the causes of action brought were duplicative of the statutory claims, such as Labor Code sections 201, 202, 203, 226.7, 510, 512(a), 1194, 1197, 1198, 2800, and 2802. (*Ibid.*) Allocating $75,000 as the PAGA Penalties was reasonable given that Defendant is paying an additional $914,000 in the class settlement. (*Ibid.*) When PAGA penalties are negotiated in good

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[3] (See e.g. *Harris v. Superior Court* (2007) 154 Cal.App.4th 164 [reversing decertification of class claiming misclassification and ordering summary adjudication in favor of employees], review granted Nov. 28, 2007, (2007) 171 P.3d 545 [not cited as precedent, but rather for illustrative purposes only]; *Walsh v. IKON Office Solutions, Inc.* (2007) 148 Cal.App.4th 1440 [affirming decertification of class claiming misclassification]; *Aguiar v. Cintas Corp. No. 2* (2006) 144 Cal.App.4th 121 [reversing denial of certification]; *Dunbar v. Albertson's Inc.* (2006) 141 Cal.App.4th 1422 [affirming denial of certification].)

faith and "there is no indication that [the] amount was the result of self-interest at the expense of other Class Members," such amounts are considered reasonable.[4] (*Ibid.*)

Considering the defenses, supporting evidence, and position that the case is not suitable for class treatment, the settlement is reasonable, adequate, and fair.

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be completely discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be about **$9,290,976.48** on the low end and **$10,414,876.27** on the high end. (Han Decl., *supra*, at ¶ 47.)

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	$1,098,363.04	80%	80%	$43,934.52
Meal Break Premiums	$3,446,731.53	80%	80%	$137,869.26
Overtime/Minimum Wage: Off-the-Clock Work	$2,247,058.71 to $3,370,958.50	70%	70%	$202,235.28 to $303,386.27
Unreimbursed Business Expenses	$512,910	30%	60%	$143,614.80
Wage Statement Penalty	$923,150	40%	40%	$332,334
Waiting Time Penalty	$1,062,763.20	40%	40%	$382,594.75
MAXIMUM TOTAL EXPOSURE	**$9,290,976.48** to **$10,414,876.27**[5]			**$1,242,582.61** to **$1,343,733.60**[6]

Based on this analysis, the realistic recovery is **$1,242,582.61** on the low end and **$1,343,733.60** on the high end. (Han Decl., *supra*, at ¶ 55.) The Gross Settlement Amount is about nine percent (9.50%) of the maximum potential exposure and seventy-three percent (73.60%) of the maximum realistic exposure at trial, which is a reasonable settlement. (*Ibid.*)

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4 (*Hopson v. Hanesbrands Inc*. (N.D.Cal. Apr. 3, 2009) No. 08-00844, 2009 U.S. Dist. LEXIS 33900 at *24; see e.g. *Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, "[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims".)

5 (Han Decl., *supra*, at ¶¶ 35-40.)

6 (*Id.* at ¶¶ 49-54.)

The only question at preliminary approval is whether the settlement is within the range of possible approval. (*In re General Motors Corp. Engine Interchange Litigation* (7th Cir. 1979) 594 F.2d 1106, 1124; *Acosta v. TransUnion, LLC* (C.D.Cal. 2007) 240 F.R.D. 564, 575.) "The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved." (*Detroit v. Grinnell Corp.* (2d Cir. 1974) 495 F.2d 448, 455; see also *Linney v. Cellular Alaska Partnership* (9th Cir. 1998) 151 F.3d 1234, 1242, "[I]t is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements. The proposed settlement is not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators".) The Settlement is in line with the realistic exposure if Plaintiff prevailed at trial and provides significant recovery for the Class.

d. Conditional Certification of the Class Is Appropriate

Code of Civil Procedure section 382 "authorizes class actions 'when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court.'" (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) California courts certify class actions if the plaintiff can identify "both [1] an ascertainable class and [2] a well-defined community of interest among class members." (*Ibid.*)

The Class is ascertainable and numerous as to make it impracticable to join all the Class Members, and there are common questions of law and fact amongst the Class. (Han Decl., *supra*, at ¶ 56.) Plaintiff contends that, as a former hourly-paid, non-exempt employee of Defendant that did not sign an arbitration agreement, her claims are typical of the claims of the Class, and Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff asserts that the prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications. (*Ibid.*)

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i. The Proposed Class Is Ascertainable and Sufficiently Numerous

"Ascertainability is required in order to give notice to putative class members as to whom the judgment in the action will be res judicata." (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 914.) "A class is ascertainable if it identifies a group of unnamed Plaintiff by describing a set of common characteristics sufficient to allow a member of that group to identify himself or herself as having a right to recover based on the description." (*Bartold v. Glendale Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

This case involves about three hundred eighty-two (382) Class Members, meaning that the Class is sufficiently numerous. (Han Decl., *supra*, at ¶ 57; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, n.5 [finding a proposed class of "as many as 190 current and former employees" is sufficiently numerous].)

ii. The Class Members Share a Well-defined Community of Interest

The community of interest requirement "embodies three factors: (1) predominant common questions of law or fact; (2) Class Representative with claims or defenses typical of the class; and (3) Class Representative who can adequately represent the class." (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) "[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims*." (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Instead, courts focus on the defendant's internal policies and "pattern and practice . . . in order to assess whether that common behavior toward similarly situated Plaintiff renders class certification appropriate." (*Ibid.*)

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1. Common Issues Predominate

The "common issues" requirement "involves analysis of whether the proponent's 'theory of recovery' is likely to prove compatible with class treatment." (*Capitol People First v. Department of Developmental Services*, *supra*, 155 Cal.App.4th at p. 690.) Courts determine whether the elements necessary to establish liability are susceptible to common proof, even if the class members must individually prove their damages. (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1024). These types of claims are regularly granted class certification when the plaintiff can present evidence of common policies. (See e.g. *Jones v. JGC Dallas LLC* (N.D.Tex. Nov. 29, 2012, Civil Action No. 3:11-CV-2743-O) 2012 U.S.Dist.LEXIS 185042 [certified collective action involving 190 dancers]; *Espinoza v. Galardi South Enters.* (S.D.Fla. Jan. 11, 2016, No. 14-21244-CIV-GOODMAN) 2016 U.S.Dist.LEXIS 2904 [court certified class of dancers on state law claims].)

Plaintiff asserts that common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends that all Class Members were subject to the same or similar employment practices, policies, and procedures described in detail above. (*Ibid.*)

2. Plaintiff's Claims Are Typical of the Class Claims

Typical claims rely on legal theories and facts that are substantially like those of other class members. (*Classen v. Weller* (1983) 145 Cal.App.3d 27, 46.)

Plaintiff is a former employee of Defendant and alleges that she and the Class Members were employed by the same company and injured by the common policies and practices related to the claims described above. (Han Decl., *supra*, at ¶ 59.) Plaintiff seeks relief for these claims and derivative claims on behalf of the Class. (*Ibid.*) Plaintiff's claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate representative. (Han Decl., *supra*, at ¶ 60.) Plaintiff has conducted herself diligently and responsibly in representing the Class in this litigation, understands the fiduciary obligations, and has actively participated in the prosecution of this case. (*Ibid.*) Plaintiff also has no interest that is adverse to that of the Class Members. (*Ibid.*)

4. Class Action Is Superior for the Fair and Efficient Adjudication of this Controversy

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends that the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense. Because several Class Members are current employees, Plaintiff believes that fear of retaliation further supports the superiority of class-wide relief as this fear deters legal redress.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find a proposed settlement is "fair, adequate and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present here.

f. Notice to Class Members Complies with Rules of Court, Rule 3.769(f)

Rules of Court, rule 3.769(f), provides:

> If the court has certified the action as a class action, notice of the final approval hearing must be given to class members in the manner specified by the court. The notice must contain an explanation of the proposed settlement and procedures for class members to follow in filing written objections to it and in arranging to appear at the settlement hearing and state any objections to the proposed settlement.

The Class Notice meets all these requirements. The proposed Class Notice advises the Class Members of their right to participate in the Settlement; how and when to object to or request exclusion from the Settlement; and date, time, and location of the Final Approval Hearing.

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V. CONCLUSION

Plaintiff submits that the Settlement is in the best interests of the Class, as it is fair, adequate, and reasonable. Under the applicable class action criteria and guidelines, the Settlement should be preliminarily approved by the Court, Class should be conditionally certified for purposes of settlement only, and Class Notice should be approved.

Dated: March 21, 2025

JUSTICE LAW CORPORATION

By: ______________________

Douglas Han
Attorneys for Plaintiff

PROOF OF SERVICE
1013A(3) CCP

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 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is ccastro@justicelawcorp.com

On March 21, 2025, I served the foregoing document described as

NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION, APPROVAL OF CLASS NOTICE, SETTING OF FINAL APPROVAL HEARING DATE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

for the following case:	**Linkee Fair Lobyoc v. Headway Technologies, Inc. d/b/a TDK Headway Technologies, Inc.**
LWDA/Court Case No.:	**LWDA Case No.: CM-1076314-25** **Court Case No.: 23CV421632** **Santa Clara County Superior Court**

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION
Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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

Executed on March 21, 2025, at Pasadena, California.

Christina Castro