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on behalf of himself and of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE

SARAH SHEMAE KIM, on behalf of himself and of all others similarly situated,

Plaintiff,

v.

BAREFOOT DREAMS, INC., a California corporation; THE WORKSHOP LA, LLC., a California limited liability company and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 23STCV03111

[Assigned to the Hon. Hon. Stuart M. Rice in Dept. 1]

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT AND PROVISIONAL CLASS CERTIFICATION FOR SETTLEMENT PURPOSES ONLY; DECLARATIONS OF VEDANG J. PATEL, DAVID D. BIBIYAN, PLAINTIFF, AND ANTHONY ROGERS IN SUPPORT THEREOF

HEARING INFORMATION:

DATE: May 30, 2025
TIME: 9:00 a.m.
DEPT: 6

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 30, 2025 at 9:00 a.m., or as soon thereafter as they may be heard in Department 1 of the Superior Court of the State of California for the County of Los Angeles, plaintiff Sarah Shemae Kim ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, will and hereby do move for this Court for entry of an Order:

1. Preliminarily certifying the following settlement class ("Class," "Settlement Class Members" or "Class Members") for the purpose of settlement only: all current and former employees of defendant Barefoot Dreams, Inc. ("Barefoot") who worked for Barefoot in a non-exempt position in California at any time during period between February 14, 2019 through the date on which the Court grants preliminary approval of the settlement ("Class Period") and all current and former employees of defendant The Workshop LA, LLC ("WLA" and with Barefoot, "Defendants") who were assigned by WLA to perform work for Barefoot in a non-exempt position in California at any time during the Class Period.

2. Preliminarily approving Plaintiff as Class Representative.

3. Preliminarily approving David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., as Class Counsel.

4. Preliminarily approving the settlement claims under the terms set forth in the Settlement Agreement.

5. Preliminarily approving payment of the Gross Settlement Amount of $300,000.00, which is subject to escalation pursuant to the Settlement Agreement.

6. Approving the form and content of the Class Notice submitted herewith.

7. Appointing ILYM Group, Inc. ("ILYM"), to administer the Settlement, including distribution of the Class Notice, as set forth in the Settlement Agreement.

8. Preliminarily approving the payment of not to exceed $5,850.00 for settlement administration to ILYM from the Gross Settlement Amount.

9. Preliminarily approving a service award of up to $7,500.00 to Plaintiff, in consideration for Plaintiff's extensive efforts in prosecuting this case.

10. Preliminarily approving payment of reasonable attorneys' fees to Class Counsel in the

amount of up to one-third (1/3) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $100,000.00.

11. Preliminarily approving reimbursement of Class Counsel's costs in an amount, according to proof, not to exceed $30,000.00.

12. Preliminarily approving PAGA penalties in the amount of $15,000.00, seventy-five percent (75%) or $11,200.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $3,750.00 of which will be distributed to "Aggrieved Employees," defined as all current and former employees of Barefoot who worked for Barefoot in a non-exempt position in California at any time during the period from February 10, 2022 through the end of the Class Period ("PAGA Period") and all current and former employees of WLA who were assigned by WLA to perform work for Barefoot in a non-exempt position in California at any time during the PAGA Period.

13. Entering an Order preliminarily approving the Settlement consistent with the terms of the Settlement Agreement.

Good cause exists for granting this Motion in that the proposed settlement is fair, reasonable and adequate.

This Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities filed herewith, the Declarations of Vedang J. Patel, David D. Bibiyan, Plaintiff, and Anthony Rogers, and exhibits attached thereto, arguments of counsel and upon such other materials contained in the file and pleadings of this action.

Dated: March 27, 2025

BIBIYAN LAW GROUP, P.C.

/s/ Vedang J. Patel

VEDANG J. PATEL
Attorneys for Plaintiff, on behalf of herself and all others similarly situated and aggrieved

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Sarah Shemae Kim ("Plaintiff"), on behalf of herself and all others similarly situated and aggrieved, hereby applies for preliminary approval of the proposed Class and PAGA Settlement Agreement ("Settlement," "Agreement" or "Settlement Agreement") upon the terms and conditions set forth in the Settlement Agreement, attached to the Declaration of Vedang J. Patel as Exhibit "1."

On February 14, 2023, Plaintiff commenced this action by filing a complaint against defendants Barefoot Dreams, Inc. ("Barefoot") and The Workshop LA, LLC ("WLA" and, with Barefoot, "Defendants"), in the Superior Court of the State of California, County of Los Angeles. In the complaint, Plaintiff asserted putative class claims against Defendants for failure to pay overtime and minimum wages; failure to provide meal and rest periods; failure to pay all wages timely during employment and upon separation; failure to provide accurate itemized wage statements; violation of California Labor Code section 227.3; and unfair competition in violation of California Business and Professions Code section 17200 *et seq*. (the "Class Action").

On February 10, 2023, Plaintiff submitted to the LWDA the PAGA Notice, in which she gave notice of her intent to seek civil penalties pursuant to PAGA for various alleged violations of the California Labor Code. Pursuant to Labor Code section 2699.3, subd. (a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice. A true and correct copy of the PAGA Notice is attached to the Declaration of Vedang J. Patel as Exhibit "2." On May 2, 2023, Plaintiff commenced filed a separate representative complaint against Defendants in the Superior Court of the State of California, County of Los Angeles, asserting a representative claim under PAGA for the alleged violations set forth in the PAGA Notice. ("PAGA Action").

On October 25, 2023, the Parties participated in an all-day mediation presided over by Jason Marsili, Esq., of Marsili Mediation. The mediation was unsuccessful. In the months ensuing afterwards, the Parties negotiated through the mediator to come to the Settlement. Prior to mediation, Plaintiff obtained, through informal discovery, relevant documents and data, including relevant policies and employee communications; data reflecting Class Members' dates of employment, hours worked, and wages during the Class Period; and all documents concerning Plaintiff which were available to Defendants. As part of the Settlement, the Parties have agreed to the filing of an amended complaint in this Action to include all claims rom the PAGA action, and dismiss the PAGA Action without prejudice, effectively consolidating the two (2) actions.

Class Counsel have conducted significant investigation of the law and facts relating to the claims asserted in the Action and the PAGA Notice, and have concluded that the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, taking into account the sharply contested issues involved, the expense and time necessary to litigate the Actions through trial and any appeals, the risks and costs of further litigation of the Actions, the risk of an adverse outcome, the uncertainties of complex litigation, the information learned through formal and informal discovery regarding Plaintiff's allegations, and the substantial benefits to be received by Settlement Class Members.

II. THE SETTLEMENT

Subject to Court approval pursuant to Code of Civil Procedure section 382 and California Rules of Court, rule 3.679, *et seq*., the Parties have agreed to settle the Action by agreement upon the terms and conditions and for the consideration set forth in the Settlement Agreement, a copy of which is attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto. A summary of the terms of the settlement are as follows:

Defendant will stipulate, for purpose of this settlement only, as follows:

- Certification of a class ("Class," "Settlement Class Members" or "Class Members") defined as: all current and former employees of defendant Barefoot Dreams, Inc. ("Barefoot") who worked for Barefoot in a non-exempt position in California at any time during period between February 14, 2019 through the date on which the Court grants preliminary approval of the settlement ("Class Period") and all current and former employees of defendant The Workshop LA, LLC ("WLA" and with Barefoot, "Defendants") who were assigned by WLA to perform work for Barefoot in a non-exempt position in California at any time during the Class Period.
- Defendant will pay $300,000.00, ("Gross Settlement Amount") to resolve the matter.

- The Parties agree that there are 5,314 Workweeks at issue during the Class Period. If, as of the close of the Class Period, the actual number of Workweeks worked increases by more than 9.5%, or 505 Workweeks, then, at Defendant's election: (1) the Gross Settlement Amount shall be increased by the Workweeks in excess of 5,819 (5,314 Workweeks + 505 Workweeks) multiplied by the Workweek Value; or (2) the Class Period shall end on the date the number of Workweeks reaches 5,819. The Workweek Value shall be calculated by dividing the Gross Settlement Amount by 5,314 Workweeks. The Parties agree that the Workweek Value amounts to $56.45 per Workweek ($300,000 / 5,314 Workweeks). Thus, for example, should there be 6,000 Workweeks during the Class Period, and Defendant elect's option (1) above, then the Gross Settlement Amount shall be increased by $10,217.45 [(6,000 Workweeks – 5,819 Workweeks) x $56.45].
- Defendant will pay the employer's share of taxes separate and apart from the Gross Settlement Amount.
- This is a non-reversionary settlement.
- Class Members will be paid their *pro rata* share of the class action settlement based on the total number of Workweeks[1] worked during the Class Period.
- The Settlement Administration costs, estimated not to exceed $5,850.00, will be paid out of the Gross Settlement Amount.
- Class Counsel, comprised of David D. Bibiyan and Vedang J. Patel of Bibiyan Law Group, P.C., may apply for, and Defendant will not oppose, attorneys' fees of *up to* one-third (1/3) of the Gross Settlement Amount which, unless escalated pursuant to the Settlement Agreement, amounts to $100,000.00, and actual costs, not to exceed $3-,000.00, all of which will be paid out of the Gross Settlement Amount.
- Class Counsel hereby apply for, and Defendant will not oppose, a service award of up to $7,500.00 to Plaintiff, which will be paid out of the Gross Settlement Amount.

[1] "Workweek" y workweek falling within the Class Period during which a Class Member performed work for Defendants in an hourly paid, non-exempt position in California for at least one day.

- "Aggrieved Employees" means all current and former employees of Barefoot who worked for Barefoot in a non-exempt position in California at any time during the period from February 10, 2022 through the end of the Class Period ("PAGA Period") and all current and former employees of WLA who were assigned by WLA to perform work for Barefoot in a non-exempt position in California at any time during the PAGA Period.
- Defendants have agreed to pay $15,000.00 as PAGA penalties, seventy-five percent (75%) or $11,200.00 of which will be paid to the Labor and Workforce Development Agency ("LWDA") out of the Gross Settlement Amount, and twenty-five percent (25%) or $3,750.00 of which will be distributed to Aggrieved Employees.
- Class Member whose payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California State Controller's Office, Unclaimed Property Division, in the name of the Class Member, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure section 384, subd. (b).

III. THE TWO-STEP APPROVAL PROCESS AND THE PRESUMPTION OF FAIRNESS

Any settlement of class litigation must be reviewed and approved by the Court. (*See* Cal. Rules of Court, rule 3.769). This is done in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice has been distributed to the class members for their comment or objections. (*See id.*). Courts presume the absence of fraud or collusion in the negotiation of a settlement unless evidence to the contrary is offered. In short, there is a presumption that the negotiations were conducted in good faith. (Newberg on Class Actions, § 11.51; *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation* (N.D. Cal. May 17, 2017) No. 16-cv-00295, 2017 WL 2214655, quoting *United States v. Oregon* (9th Cir. 1990) 913 F.2d 576, 580.)

IV. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

A notice of settlement of a class action "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." (Cal. Rules of Court, rule 3.769, subd. (f).)

Attached to the Declaration of Vedang J. Patel as Exhibit "1" thereto is the Settlement Agreement between the Parties. Attached to the Settlement Agreement as internal Exhibit "A" is the proposed Class Notice to be distributed to Class Members in English and Spanish. The proposed Class Notice satisfies these requirements.

The Parties respectfully request that this Court approve the above-referenced Class Notice and dissemination of the Class Notice to the Class Members, consistent with the manner and timing as set forth in the Settlement Agreement. The Parties have agreed to use ILYM Group, Inc. ("ILYM"), an experienced Settlement Administrator, to administer the settlement.

V. THE SETTLEMENT IS FAIR AND REASONABLE BASED UPON OBJECTIVE EVIDENCE

A. The Settlement was Negotiated at Arm's-Length and is not Collusive

The Settlement that has been reached, subject to this Court's approval, is a product of substantial efforts by the Parties and their counsel. The Settlement was reached after extensive factual and legal investigation and research; the exchange of formal and informal discovery; substantial negotiation regarding the scope of informal discovery; exchange of documents and information that included review of time and pay records and analysis thereof with the aid of Plaintiff and expert consultant; analysis of shifts and Workweeks worked by Class Members in the Class Period, analysis of the number of pay periods and number of Aggrieved Employees in the PAGA Period for calculating PAGA penalties, number of Class Members eligible for wage statement penalties and waiting time penalties; an analysis of Plaintiff's employment records; extensive correspondence and communication between counsel; a review of pleadings, evidence and rulings in similar actions litigated elsewhere in the state; a review of similar cases in the same industry elsewhere in the country; and preparation for and attendance at a full-day mediation, followed by more than 1 year of further discussions and coordination to finalize the terms and conditions of the general settlement parameters agreed to by the Parties.

While Class Counsel believe in the chance of success of certifying the claims, Class Counsel recognized the potential risk, expense and complexity posed by further litigation. Moreover, litigating Plaintiff's claims in this litigation—claims that involve approximately 88 Class Members during the Class Period—would require substantial preparation and discovery, and ultimately would involve the deposition and presentation of numerous more witnesses (including Class Members and expert witnesses), as well as the consideration, preparation and analysis of expert reports. Therefore, should litigation have progressed any further, there would have been significant expense incurred by each side (above and beyond the expense already incurred).

B. The Settlement Amount is Well Within Range of Reasonableness

The settlement amount reached in this case provides significant recovery to Class Members and Aggrieved Employees and easily falls within the range of reasonableness. Based on documents and information provided by Defendant, Class Counsel understand there are approximately 5,314 Workweeks during the Class Period.

1. Unpaid Wages for Failure to Pay Off-the-Clock Work

Class Counsel theorized, based on Plaintiff's narrative evidence and documents produced by Defendants, that Defendants failed to pay all wages due to Class Members because Defendants required Class Members to work off-the-clock or Class Members spent time off-the-clock under Defendant's control, including, without limitation, answering messages off-the-clock, personal visits to Plaintiff's home, and last minute assignments with unrealistic deadlines. Moreover, Class Counsel theorized on the same basis, that Defendant practiced recording synthetic time entries for the start and end of shifts, e.g., rounding time entries for the start and end of shifts nearly all exactly a quarter to the hour, instead of actual time worked, giving rise to a reasonable presumption that Defendants failed to pay Class Members for all wages due.

One theory advanced by Class Counsel based on Plaintiff's narrative evidence, was that Class Members worked off-the-clock for approximately ten (10) minutes each shift throughout the Class Period, without pay. Class Counsel understand, based on time and payroll records produced by Defendant and analysis thereof by expert data consultants retained by Class Counsel, that there were approximately 19,642 shifts during the Class Period, approximately 18.8% of shifts were greater than eight (8) hours in length, and and that Class Members had an average regular hourly rate of pay of $22.24. Thus, one calculation performed by Class Counsel resulted in **Defendants' exposure for unpaid off-the-clock work in an amount of approximately $124,858** ([19,642 shifts x 0.188 shifts over eight hours x 0.167 hour per shift x $22.24/hour x 1.5 overtime rate] + [19,642 shifts x 0.812 shifts under eight hours x 0.167 hour per shift x $22.24/hour x 2 in liquidated damages]).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants contend that its policies specifically prohibit off-the-clock work. Defendants contend that they did not require Class Members to work off-the-clock and, rather, they were paid for all time required to work. Defendants contend that any allegations that Class Members were required to be under Defendants' control off-the-clock would necessitate an individualized inquiry into when and why, making this claim not subject to class treatment and any trial in this litigation unmanageable. Furthermore, Defendants contend that the rounding policy benefitted Class Members rather than harmed them. Thus, Defendant contends that no damages can be recovered here, and, even if, *arguendo*, they could, an estimate of ten (10) minutes of unpaid time worked for *every single* shift worked by Class Members during the Class Period is a wild exaggeration of time spent working off-the-clock if *any* such time was spent.

2. Recovery of Damages for Non-Compliant Meal Periods

Class Counsel theorized, based on Plaintiff's narrative evidence and documents produced by Defendants, that Defendants' meal period policies and practices throughout the Class Period were non-compliant, as they were either late, short, or missed entirely. Class Counsel theorized that Defendants' policies were non-compliant because they did not inform Class Members when they are entitled to meal periods, that they are entitled to a second meal period, and due to Defendants' rounding policy. Class Counsel also theorized, based on Plaintiff's narrative evidence, that meal periods were oftentimes late, missed, or short. However, Class Counsel note that some meal period premiums were paid.

Class Counsel theorized that there are approximately 9,607 unique meal period violations (*i.e.* meal periods that were missed, short, or were exactly 30 minutes in length). Thus, one calculation performed by Class Counsel at mediation resulted in **Defendant's exposure for failure**

to provide compliant meal periods in a conservative amount of $242,273 [(9,607 shifts – 3,619 meal period premiums paid) x 22.24/hour).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants argued that they had compliant meal period policies and practices. Defendants argued that Class Members took timely and full meal periods, as they were required to do. Defendant further contends that any instance of a Class Member failing to take a compliant meal period was voluntary, in violation of its meal period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Finally, Defendants point to the numerous meal period premiums paid as evidence of compliance Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

4. Recovery of Damages for Non-Compliant Rest Periods

Class Counsel theorized at mediation, based on documents produced by Defendant and Plaintiff's narrative evidence, that Defendant's rest period policies and practices throughout the Class Period were non-compliant due many of the reasons outlined for meal period violations. Furthermore, there were no rest period premiums ever issued throughout the Class Period. Thus, one calculation performed by Class Counsel at mediation resulted in, assuming a 40% violation rate, **Defendant's exposure for failure to provide compliant rest periods in a conservative amount of $174,735** (19,642 shifts x 0.4 violation rate x $22.24/hour).

Class Counsel understand that Defendants make the following defenses in connection with this claim: Defendants argued that they had compliant rest period policies and practices. Defendants argued that Class Members took timely and full rest periods. Defendants contend that their policies requires the employees to take timely and full rest periods. Defendants further contend that any instance of a Class Member failing to take a compliant rest period was voluntary, in violation of its rest period policy, would necessitate an individualized inquiry and would not lend itself to a manageable trial. Finally, Defendants contend that a 40% violation rate is a wild exaggeration of non-compliant rest periods, if there were any. Thus, Defendant contends that *no* monies are owed for this account but, even if any amounts were due, the amount calculated by Class Counsel is excessive.

5. Wage Statement Violations

Class Counsel theorized that Class Members are entitled to recover penalties for Defendants' alleged failure to issue compliant wage statements under Labor Code section 226, subdivision (e), because their shift involved off-the-clock work that was not included on wage statements. Further, many shifts included meal period and rest period violations for which premiums were not paid. Thus, Plaintiff contends that Defendants are liable for wage statement violations for every period during the wage statement penalty period. Class Counsel understand from the data provided by Defendants that there were 1,230 pay periods in the wage statement liability period. Thus, Plaintiff contends that Defendants' maximum exposure at trial for wage statement violations would be **$123,000** (1,230 pay periods in wage statement period x $100 penalty).

Class Counsel understand that Defendants makes the following defenses in connection with this claim: Defendants contend that the wage statements issued to the employees fully complied with Labor Code section 226. Defendants contend that because they believe no wages are unpaid that, thus, there can be no derivative penalties. However, Class Counsel also understand the risks inherent in this claim if the above claims were not certified. Class Counsel also had to factor in, and did factor in, the risk that the Court would find there was no injury to Class Members even if the wage statements were inaccurate or that Defendants' conduct was not intentional, both of which are requirements of Labor Code section 226 before penalties can issue. Class Counsel also note that the calculation used does not consider the first pay period violation only being $50 and the fact that all Class Members did not work all pay periods.

8. Waiting Time Penalties

Pursuant to Labor Code sections 201, 202 and 203, each employee in the relevant statutory period (*i.e.*, three years before the filing of the initial Complaint) is entitled to 30 days' worth of wages as waiting time penalty for not being paid all wages due upon separation from employment. Class Counsel theorized, based on relevant documents provided by Defendant that, under Labor

Code section 203, Defendant is liable to pay each Class Member, who was terminated during the relevant statutory period, a full 30-day worth of wages as waiting time penalty for failure to pay compensation in lieu of compliant meal and rest periods, and failure to timely pay all wages due at the time of termination or resignation. Based on relevant documents provided by Defendant, there were approximately 40 Class Members who were terminated or resigned during the relevant statutory period. Thus, one calculation performed by Class Counsel resulted in **Defendant's exposure for waiting time penalties to be approximately $213,504** (40 separated Class Members x $22.24/hour x 8 hours x 30 days).

Class Counsel understand that Defendant contends there is no credence to Plaintiff's off-the-clock theory and that, thus, no waiting time penalties are owed based on that theory. Finally, Defendants contend that their actions were not "willful" and that, thus, waiting time penalties cannot be awarded. Thus, Defendants argued that no waiting time penalties should be issued.

9. PAGA Penalties

Class Counsel understand, as of the date of the mediation, from the time and payroll data provided by Defendant that Aggrieved Employees collectively worked 1,139 pay periods in the PAGA Period. Plaintiff's claims in the Actions under PAGA are substantially similar to those described herein. PAGA penalties include penalties for initial violations and subsequent violations. Defendants contend that only initial violation rates may be used instead of the subsequent violation rates initially used by Class Counsel. With this in mind and because Class Counsel through investigation and discovery did not come to the conclusion that Defendant at any time were notified by any governmental entity that they violated any Labor Code sections presented in the PAGA Notice and PAGA claims, Class Counsel adjusted the exposure model for Defendant to include only initial violation rates.

While Class Counsel are informed and believe that reasonable minds differ with regard to calculation of PAGA penalties, Class Counsel believe it is reasonable to calculate Defendant's maximum exposure in PAGA penalties as follows:

a. <u>Overtime Violations</u>: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations, and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $56,950 (1,139 pay periods x $50).

b. Minimum Wage Violations: Labor Code section 1197.1 prescribes penalties of $100 for an initial violation and $250 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $113,900 (1,139 pay periods x $100).

c. Meal Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $56,950 (1,139 pay periods x $50).

d. Rest Period Violations: Labor Code section 558 prescribes penalties of $50 for an initial violation and $100 for each subsequent violation. Using the initial pay period rate for all violations and a violation every single pay period for every single non-exempt employee in the PAGA Period, this amounts to a maximum exposure of $56,950 (1,139 pay periods x $50).

e. Wage Statement Violations: According to *Gunther v. Alaska Airlines, Inc.* (2021) 287 Cal.Rptr.3d 229, in this instance, Labor Code section 2699 would be the appropriate penalty for wage statement violations that are inaccurate, which prescribes penalties of $100 for an initial violation and $200 for each subsequent violation (*Id.* at 247-248). Using the initial pay period rate for all violations and a violation every single pay period for every single Aggrieved Employee in the PAGA Period, this amounts to a maximum exposure of $113,900 (1,139 pay periods x $100).

g. Waiting Time Penalties: Labor Code section 2699 prescribes penalties of $100 for an initial violation and $200 for each subsequent violation. Because this violation is merited only at separation of employment, a 100% violation rate would likely include just one violation per employee. The data produced by Defendant indicate that there were 24 Aggrieved Employees whose employment was separated during the PAGA Period. This amounts to a maximum exposure of $2,400 (24 Aggrieved Employees x $100).

h. Conclusion: In sum, Class Counsel calculated Defendant's total maximum exposure for PAGA violations if the Court were to find a 100% violation rate for every Aggrieved Employee every pay period and not exercise its discretion to reduce any of those penalties to be **$401,050**. Class Counsel understand that Defendant argued the following in connection with this claim: Defendant contends that no PAGA penalties are likely to be awarded and, even if they were, the maximum exposure calculated by Class Counsel is vastly overstated. First, Defendant defends that PAGA penalties cannot and should not be stacked. Second, Defendant asserts that individualized issues predominate the PAGA claims, making the claims unmanageable for trial. Third, Defendant denies that a violation for each pay period can be established. Fourth, Defendant contends that a Court is unlikely to exercise its discretion to award civil penalties under PAGA where, as here, there is no conduct shown by Plaintiff that would show any Labor Code violation by Defendant is knowing and intentional. Defendant insists that this is especially true in the Actions where class action damages are available to Class Members, rendering an award of PAGA penalties in addition to class action damages to be double recovery.

Class Counsel maintains that it is possible to recover the subsequent violation rate for penalties, that stacking is permissible, and that there is no manageability requirement under PAGA (citing *Estrada v. Royalty Carpet Mills, Inc.*). As such, Class Counsel believe a 90% discount of this claim to be reasonable, resulting in a valuation of **$41,005** as a reasonable estimate of the likelihood of what Plaintiff may recover at trial for PAGA penalties ($401,050 x 0.10).

10. Conclusion

When including derivative penalties, such as waiting time penalties, wage statement violations, and discretionary PAGA penalties, Class Counsel theorized Defendant's maximum exposure to be approximately **$919,375**. In all, Class Counsel obtained a Gross Settlement Amount of **$300,000**. Particularly in light of the risks involving obstacles to class certification, all issues and risks related to liability, the issues with manageability at trial, the discretionary nature of PAGA penalties, and considering the case law regarding fair, reasonable and adequate settlements, Class Counsel strongly believe that the settlement reached is fair, reasonable and adequate, and in the best interest of Class Members.

Moreover, $15,000.00 of the Gross Settlement Amount was attributed to PAGA penalties. This allocation was decided mutually by the Parties and the mutual decision was based on: (1) the fact that damages are available for the failure to pay wage claims while only penalties are available for the PAGA claims; (2) the risk that the Court may exercise its discretion to decline to stack PAGA penalties; (3) the risk that the Court may exercise its discretion to not award the full amount of PAGA penalties available; and (4) the risk that the Court may decline to award any PAGA penalties at all in light of the fact that damages are available for Class Members and it may find any further liability against Defendant unnecessarily punitive.

VII. THE PROPOSED ATTORNEYS' FEES AND COSTS ARE REASONABLE

Class Counsel seek an attorneys' fees award of one-third (1/3) of the Gross Settlement Amount, which, unless escalated pursuant to this Agreement, would amount to $100,000.00. Class Counsel also seek reimbursement of costs not to exceed $30,000.00. The requested fees fall well within the historical range of attorney's fees awards under the common fund theory, which is generally from 25% to 50%. The requested fee is fair compensation for undertaking complex, risky, expensive and time-consuming litigation on a contingent fee basis. Thus, the Court should preliminarily approve the requested attorneys' fees and costs, which are justified by the results achieved, the complexity of the issues, the difficulty of the case and the great risks undertaken by Class Counsel. The requested attorneys' fees will not be opposed by Defendants and are well within established guidelines.

VIII. THE REQUESTED ENHANCEMENT AWARD TO THE NAMED PLAINTIFF AND CLASS REPRESENTATIVE IS REASONABLE

Plaintiff is entitled to an enhancement award for his service as class representative, for answering extensive questions by Class Counsel, for being available and answering questions during mediation, for the risks in being the named plaintiff and for providing Defendant with a more expansive release of claims, including a waiver based upon California Civil Code section 1542, in exchange for the enhancement award. Defendant does not oppose the requested enhancement to Plaintiff. Plaintiff risked intrusive discovery and the payment of employer costs. In the experience of Class Counsel, the typical enhancement award in wage and hour class actions ranges from approximately $10,000.00 to $25,000.00, although some awards are higher. In contrast, Class Counsel seek an extremely limited enhancement of $7,500.00 to Plaintiff.

IX. CONDITIONAL CERTIFICATION FOR SETTLEMENT PURPOSES

A. The Class should be Preliminarily Certified

In California, there are two certification prerequisites: (1) the existence of an "ascertainable class;" and (2) "a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented." (*Sotelo v. MediaNews Group, Inc.* (2012) 207 Cal.App.4th 639, 647.) To certify a class, the party advocating class treatment must demonstrate: (1) a numerous class; (2) predominant common questions of law or fact; (3) class representatives with claims or defenses typical of the class; and (4) class representatives who can adequately represent the class." (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Each of the criteria for class certification is satisfied in this instance:

1. Ascertainability – "Ascertainability" is a due process requirement that ensures it is possible to decide who will be bound by the judgment (*res judica* effect). The determination is made by examining the class definition and the size of the class. Here, the Class Members definition (*i.e.*, all current and former employees of defendant Barefoot Dreams, Inc. ("Barefoot") who worked for Barefoot in a non-exempt position in California at any time during period between February 14, 2019 through the date on which the Court grants preliminary approval of the settlement ("Class Period") and all current and former employees of defendant The Workshop LA, LLC ("WLA" and with Barefoot, "Defendants") who were assigned by WLA to perform work for Barefoot in a non-exempt position in California at any time during the Class Period) is derived from the operative complaint, which complains of alleged violations of Labor Code sections that are chiefly and, in some instances, solely applicable to non-exempt, hourly paid employees. There is no difficulty ascertaining who is a Class Member based on the above-described definition as it is readily apparent to all involved who is a Class Member.

2. Numerosity – According to the California Supreme Court, a putative class is sufficiently numerous to achieve the numerosity requirement if their joinder is impracticable and thus substantial benefits accrue both to litigants and the courts if the action proceeds as a class action.

(*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, 446.) Numerosity is presumed satisfied if there are forty (40) putative class members. (*Miri v. Dillon* (E.D. MI 2013) 292 F.R.D. 454, 461.) However, as few as 10 class members has been found sufficient. (*See, e.g., Bowles v. Sup. Ct.* (1955) 44 Cal.2d 574.) Class Counsel understand from documents provided that Defendants identified at least 88 Class Members. That is sufficiently numerous to establish the numerosity requirement.

3. Commonality – California law also requires that "questions of law or fact common to the class [be] substantially similar and predominate over the questions affecting the individual members." (*In re Steroid Hormone Product Cases* (2010) 181 Cal.App.4th 145, 153.)

This litigation is brought to resolve common issues that include whether Defendant failed to pay for all hours worked; whether Defendants provided full, timely and un-interrupted meal and rest periods; whether Class Members are entitled to premium pay for incomplete, untimely or interrupted meal or rest periods, among other claims as set forth above. While Defendants reserve their rights to object that commonality exists in the Actions if the litigation were to continue, the Parties agree for purposes of this Settlement only that Plaintiff's allegations meet the commonality requirement.

4. Typicality – Typicality requires only that the named plaintiff's interests in the action be significantly similar to those of other class members. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Plaintiff contends that his claims are typical of those of other Class Members as Plaintiff: (1) is a non-exempt, hourly-paid employee like other Class Members; (2) complains of not being paid for all time under Defendant's control or suffered and/or permitted to work for Defendants; (3) did not receive full premium pay for meal periods that were not compliant with the Labor Code; (4) did not receive premium pay for rest periods that were not provided, among others as set forth above. The Parties agree for settlement purposes only that Plaintiff's claims regarding policies and practices that are at the core of the lawsuit are typical of the Class.

5. Adequacy of Representation - To maintain a class action, the representative plaintiff must adequately protect the interests of the class. (*Williams v. Sup. Ct.* (2013) 221 Cal.App.4th 1353, citing *Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.) Adequacy of representation consists of two components. First, there must be no disabling conflicts of interest between the class representative and the class. Second, the class representative must be represented by counsel who are competent and experienced in the kind of litigation to be undertaken. (*See McGhee v. Bank of Am.* (1976) 60 Cal.App.3d 442, 450; *accord In re Juniper Networks, Inc. Securities Litigation* (N.D. Cal. 2009) 264 F.R.D. 584, 590.) Plaintiff contends, and Defendants does not dispute for Settlement only, both criteria are met in this instance:

(i) No Disabling Conflict of Interest Exists Between the Class Representative and the Class

No conflicts, disabling or otherwise, exists between Plaintiff and Class Members because Plaintiff alleges to have been damaged by the same alleged conduct of Defendants (*i.e.*, Plaintiff was classified as a non-exempt, hourly-paid employee, not paid premium pay, etc.) and thus has the incentive to fairly represent all Class Members' claims to achieve the maximum possible recovery.

(ii) Class Counsel are Experienced Class Action Attorneys

As set forth in the Declaration of Class Counsel, Class Counsel in this matter consist of experienced class action attorneys, have been appointed as class counsel in other class actions and have a successful "track record" in litigating class actions.

6. Superiority of Class Action - Also relevant to the Court's certification decision is whether a class action is the superior method of adjudication. (*Brinker Restaurant Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1021.)

It deals with common issues that are most efficiently adjudicated together, as indicated above. Moreover, Plaintiff asserts that, with at least 88 Class Members, presentation of all of them before this Court may be problematic, impractical, and burdensome. On the contrary, a class action allows claims of many individuals to be resolved at the same time, eliminates the possibility of repetitious litigation and affords small claimants with a method of obtaining redress for claims which otherwise would be too insufficient to warrant individual litigation.

7. Conclusion – Thus, because this class action meets all criteria for certification and a lesser standard of scrutiny applies when evaluating these criteria for settlement purposes, it should be certified for purposes of effectuating this settlement.

X. CONCLUSION

Therefore, the Parties request the Court grant preliminary approval of the proposed settlement.

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/s/ Vedang J. Patel

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Attorneys for Plaintiff, on behalf of herself and all others similarly situated and aggrieved