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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**
12

13 CHRISTINA PERKINS, on behalf of herself
14 and all others similarly situated,

15 *Plaintiff,*

16 vs.

17 TOUCHSTONE CLIMBING INC., a
18 California Corporation; and DOES 1 through
19 50, inclusive,

Defendants.

Case No. 23CV029864

*Assigned for all purposes to the Honorable
Judge Patrick McKinney*

**DECLARATION OF SHAUN SETAREH IN
SUPPORT OF PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT AND
CERTIFICATION OF SETTLEMENT CLASS**

Date: September 3, 2026
Time: 1:30 p.m.
Place: Department 18

Complaint Filed: March 23, 2023

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1. I am an attorney in good standing duly admitted to the State Bar of California, and my name is on the California State Bar's roll of members in good standing and in full payment of record for Plaintiff Christina Perkins in this action against Defendant Touchstone Energy Inc. ("Defendant" or "Touchstone"). This declaration is made in support of Plaintiff's motion for Preliminary Approval of the Class Action and PAGA Settlement. A true and correct copy of the Class Action and PAGA Settlement Agreement ("Settlement Agreement" or "Agreement") is attached hereto as **Exhibit 1**. A true and correct copy of the Class Notice is attached to the Settlement as Exhibit A.

Experience of Class Counsel

graduate degree from UCLA in 1996 and my law degree from the University of California, San Diego in 1998. Since being admitted to the State Bar of California in 1999, I have practiced law in San Diego, California, for the entirety of that time period.

State Appellate Decisions

a. *Troester v. Starbucks Corporation, et al.*, 5 Cal.5th 829 (2018) (reversed summary judgment in favor of Defendants, issuing a landmark published decision that clarified and rejected the application of the widely adopted federal *de minimis* doctrine to California’s wage-and-hour laws). Due to the significance and importance of this seminal victory before the California Supreme Court, I received the California Lawyer

- 1 of the Year or “CLAY” award from the Daily Journal for my work on the case.
- 2 b. *Allen v. Labor Ready Southwest, Inc.* (Cal. App. 2 Dist., 2013) 2013 WL 1910293
- 3 (reversing an Order from the Superior Court of Los Angeles County compelling
- 4 Plaintiff’s claims to arbitration, finding that Defendant waived the right to compel
- 5 arbitration by litigating the merits of Plaintiff’s arbitrable federal and state claims).
- 6 c. *Lacour v. Marshalls of CA, LLC, et al.* (Cal. App. 1 Dist., 2023) 2023 WL 5543622
- 7 (reversing an Order from the Superior Court of Alameda County granting judgment on
- 8 the pleadings, holding that the trial court erred in giving claim preclusive effect to a
- 9 federal court judgment in a prior PAGA case against the same defendant.)

10 Below is a sampling of recent Ninth Circuit appeals in which Setareh Law Group prevailed:

11 *Ninth Circuit Decisions*

- 12 d. *Allen v. Bedolla*, 787 F.3d 1218 (9th Cir. 2015) (affirming the district court’s Order
- 13 denying objector’s motion to intervene and remanding to the district court where
- 14 settlement was granted final approval. Final approval was upheld on a subsequent appeal
- 15 in the 9th Cir. [see *Bedolla v. Allen*, 736 Fed.Appx. 614 (9th Cir. 2018)]).
- 16 e. *Troester v. Starbucks Corp.*, 738 Fed. Appx. 562 (9th Cir. 2018) (Ninth Circuit opinion
- 17 following the California Supreme Court answering the Ninth Circuit’s certified
- 18 question).
- 19 f. *Gilberg v. California Check Cashing Stores, LLC*, 913 F.3d 1169 (9th Cir. 2019)
- 20 (vacated district court’s summary judgment in favor of Defendants and remanded for
- 21 further proceedings, holding that Defendants’ Fair Credit Reporting Act disclosure form
- 22 lacked sufficient clarity in a published opinion).
- 23 g. *Rodriguez v. U.S. Healthworks*, 813 Fed.Appx. 315 (9th Cir. 2020) (reversed district
- 24 court’s summary judgement in favor of Defendants with instructions to remand the
- 25 action to state court).
- 26 h. *Harris v. KM Industrial, Inc.*, 980 F.3d 694 (9th Cir. November 13, 2020) (affirmed the
- 27 district court’s granting of Plaintiff’s motion to remand, holding in a published opinion
- 28 that Defendants had failed to establish by a preponderance of the evidence that the

amount in controversy exceeded \$5 million as required under the Class Action Fairness Act for removal).

- i. *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631 (9th Cir. 2021) (reversed the district court's ruling compelling claims to arbitration, holding that parties cannot delegate issues of formation of an arbitration agreement to the arbitrator for determination).
- j. *Ortiz v. Randstad Inhouse Services, LLC et al.*, 2024 WL 1070823 (9th Cir. March 12, 2024), (affirmed the District Court's order denying Defendants' Motion to Compel Arbitration in a wage and hour class action, holding that warehouse workers are covered by the Federal Arbitration Act's transportation worker exception).

Class Counsel Appointments. The following is a sampling of class actions in which the Setareh Law Group and I have been appointed as class counsel:

Federal Cases

- k. *Cerdenia v. USA Truck, Inc.*, U.S. District Court, Central District of California, Case No. 10-CV-1489-JVS (granted final approval in an action on behalf of truck drivers for meal and rest period violations, off-the-clock pre- and post-shift work, and unauthorized wage deductions).
- l. *Fronza v. Staffmark*, U.S. District Court, Northern District of California, Case No. 15-CV-02315-MEJ (granted final approval in a case involving alleged uncompensated security checks for warehouse workers).
- m. *Garcia v. Am. Gen. Fin. Mgmt. Corp.*, U.S. District Court, Central District of California, Case No. 09-CV-1916 (granted final approval in a case filed on behalf of account managers in case involving, among other things, alleged overtime miscalculations and meal and rest period violations).
- n. *Jones v. Shred-It USA, Inc.*, U.S. District Court, Central District of California, Case No. 11-CV-00526 (granted final approval in a case brought on behalf of customer service representatives and balers for alleged off-the-clock work and meal and rest period violations).

- 1 o. *O'Neill v. Genesis Logistics, Inc.*, U.S. District Court, Northern District of California,
2 Case No. 08-CV-4707 (granted final approval in a case involving claims for failure to
3 provide meal periods to employees who worked as drivers delivering goods to 7-11
4 stores throughout California and failure to pay final wages in a timely manner to
5 terminated employees).
- 6 p. *Padilla v. UPS*, U.S. District Court, Central District of California, Case No. 08-CV-1590
7 (granted final approval in a case involving claims for failure to provide meal periods to
8 part time employees engaged in sort operations and failure to pay final wages in a timely
9 manner to terminated employees).
- 10 q. *Pitre v. Wal-Mart Stores, Inc.*, U.S. District Court, Central District of California, Case
11 No. 17-cv-01281-DOC (granting class certification in a highly contested Action against
12 Wal-Mart for a class of almost 5,000,000 in a Fair Credit Reporting Act action).
- 13 r. *Utne v. Home Depot U.S.A., Inc.*, U.S. District Court, Northern District of California,
14 Case No. 16-cv-01854-RS (granting class certification in a highly contested Action
15 against Home Depot in connection with uncompensated off-the-clock work occurring at
16 the start of all employee shifts and at the end of closing shifts).
- 17 s. *Vang v. Burlington Coat Factory Warehouse Corp.*, U.S. District Court, Central District
18 of California Case No. 09-CV-8061 (granted final approval in a case involving, among
19 other things, vacation pay forfeitures, failures to provide meal and rest periods, and
20 failures to pay overtime wages based on employee misclassification).
- 21 t. *Wilson v. TE Connectivity*, Northern District of California Case No. 3:14-cv-04872-EDL
22 (granted class certification through contested motion in case on behalf of manufacturing
23 facility employees subject to auto-deduction of meal breaks).

24 State Cases

- 25 u. *Alvarez v. Gary Grace Enterprises, LP*, Marin Superior Court, Case No. CIV 1002553
26 (granted final approval in a case on behalf of hair salon employees for overtime
27 miscalculation and related claims).
- 28 v. *Butler v. Lexxiom, Inc.*, San Bernardino Superior Court, Case No. CIVRS 1001579

- (granted final approval in an action on behalf of debt resolution center employees alleging, among other things, meal and rest period violations and overtime calculation errors).
- w. *Calderon v. GreatCall, Inc.*, San Diego Superior Court, Case No. 37-2010- 00093743-CU-OE-CTL (granted final approval in a case on behalf of customer service employees for, among other things, alleged meal and rest period violations and overtime calculation errors).
- x. *Douglas v. California Credit Union*, Los Angeles Superior Court, Case No. BC445050 (granted final approval in a case on behalf of customer service representatives alleging overtime miscalculation claims).
- y. *Green v. Staples Contract and Commercial, Inc.*, Los Angeles Superior Court, Case No. BC389789 (granted final approval in a case involving claims for unprovided meal and rest periods, inaccurate wage statements, waiting time penalties, and unfair business practices on behalf of truck drivers delivering Staples office supplies in California).
- z. *Green v. Universal Music Group*, Los Angeles Superior Court, Case No. BC374253 (granted final approval in a case involving misclassification claims of current or former IT Support employees, including engineers, server analysts, desktop support, and technical leads).
- aa. *Sandoval v. Rite Aid Corp.*, Los Angeles County Superior Court, Case No. BC431249 (granted class certification through contested motion in case on behalf of former pharmacy employees based on late final wage payments in violation of Labor Code §§ 201–203; subsequently granted final approval of class action settlement).
- bb. *Spokes v. Lush Cosmetics, LLC*, Los Angeles Superior Court, Case No. BC391397 (granted final approval in a case alleging failures to provide meal and rest periods and failure to timely pay all final wages to California sales associates and key holders).
- cc. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case No. BC421485 (granted class certification through contested motion in case on behalf of former

1 security workers based on late final wage payments in violation of Labor Code §§ 201–
2 203; subsequently granted preliminary approval of proposed class action settlement).

3 5. I am the owner and managing attorney of Setareh Law Group. All strategic decisions
4 regarding the selection of clients to represent and the major strategic decisions for each client fall to me
5 to make or approve. I bear all of the risk associated with the operation of a law firm. As a result, my
6 scope of responsibility is substantially greater than an attorney of equal years of experience who does
7 not bear these additional obligations.

8 6. As the above shows, the Setareh Law Group and I have substantial experience in wage-
9 and-hour class action litigation, including actions alleging failure to provide meal and/or rest periods,
10 failure to pay wages, failure to provide accurate wage statements, failure to provide timely final wage
11 payments, and other related claims. We are knowledgeable about the applicable law and have worked
12 diligently to investigate and identify the potential claims in this action. I will continue to commit my
13 firm’s resources to further the interests of the Class. Setareh Law Group and I have no known conflicts
14 of interest with Plaintiff or with absent Class Members or aggrieved employees.

15 ***Procedural Background***

16 7. On March 23, 2023, Plaintiff Perkins submitted her Notice Letter to the LWDA and
17 Defendant in connection with the alleged PAGA violations.

18 8. On March 23, 2023, Plaintiff Perkins filed a putative class action complaint against
19 Defendant in Alameda County Superior Court, alleging putative class claims, including: (a) failure
20 to provide meal periods (California Labor Code sections 204, 223, 226.7, 512 and 1198); (b) failure
21 to provide rest periods (California Labor Code sections 204, 223, 226.7 and 1198); (c) failure to pay
22 hourly wages (California Labor Code sections 223, 510, 1194, 1194.2, 1197, 1197.1 and 1198); (d)
23 failure to indemnify (California Labor Code section 2802); (e) failure to provide accurate written
24 wage statements (California Labor Code section 226); and (f) unfair competition (California Business
25 and Professions Code section 17200, et seq.)

26 9. On July 18, 2023, after the LWDA declined to assert jurisdiction over the PAGA
27 claims, Plaintiff filed the operative First Amended Complaint, adding an additional claim for civil
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1 penalties pursuant to the Private Attorneys General Act (“PAGA”) (California Labor Code sections
2 2698, et seq.).

3 10. Defendant denies all of Plaintiff’s allegations and contends they have fully complied
4 with all applicable laws and regulations in connection with their employment of Plaintiff and the
5 employees she seeks to represent. Defendant further contends that Plaintiff cannot establish the
6 requirements to certify a class.

7 11. Defendant is a California-based operator of climbing gyms that, at all relevant times,
8 employed hourly non-exempt workers throughout California.

9 ***Investigation Into the Claims; Settlement***

10 12. The Parties have conducted a thorough investigation into the facts of the Action. The
11 Parties engaged in formal discovery prior to resolving the Action. Specifically, Plaintiff Perkins
12 propounded requests for production of documents and special interrogatories, to which Defendant
13 responded. Defendant propounded requests for production of documents, form interrogatories, and
14 special interrogatories, to which Plaintiff responded.

15 13. The Parties’ investigation also included conducting an extensive exchange of
16 informal discovery, including all payroll and timekeeping records for Class Members from the
17 beginning of the Class Period until a date immediately preceding the mediation. Class Counsel is
18 both knowledgeable about and has done extensive research with respect to the applicable law and
19 potential defenses to the claims of the Class. Class Counsel has diligently pursued an investigation
20 of the Class Members’ claims against Defendant. Based on the foregoing data and on their own
21 independent investigation and evaluation, Class Counsel is of the opinion that the settlement with
22 Defendant for the consideration and on the terms set forth in this Settlement Agreement is fair,
23 reasonable, and adequate and is in the best interest of the Class Members in light of all known facts
24 and circumstances, including the risk of significant delay and uncertainty associated with litigation,
25 various defenses asserted by Defendant, and numerous potential appellate issues.

26 14. During the pendency of Plaintiff’s case and after the Parties had engaged in Law and
27 Motion practice, the Parties agreed to attend mediation to attempt to resolve the action entirely and
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1 further agreed to exchange extensive information in informal discovery concerning Plaintiff's claims in
2 advance and in preparation thereof.

3 15. Defendant provided, among other information, personnel files, a sampling of time and
4 payroll data, Defendant's handbook and written policies, practices, and procedures regarding paying
5 non-exempt employees for all hours worked, meal period and overtime policies, payroll, timekeeping,
6 and operational policies. Defendant also produced demographics relating to putative class members
7 and the PAGA Group. Plaintiff hired an expert to review and analyze the produced data with respect to
8 potential damages and penalties in preparation for the mediation and prepared a confidential mediation
9 brief.

10 16. Defendant provided data regarding the estimated number of putative class members,
11 allegedly aggrieved employees, total workweeks, and pay periods worked during the Class and
12 PAGA periods.

13 17. The Parties also analyzed sample timekeeping data regarding meal period timing,
14 allegedly missed or short meal periods, and potential derivative claims. Plaintiff's counsel prepared
15 a damages and exposure analysis based upon the available records and alleged Labor Code
16 violations.

17 18. The Parties therefore possessed sufficient information to evaluate the strengths and
18 weaknesses of the claims and defenses and to engage in informed settlement negotiations.

19 19. Plaintiff's counsel additionally analyzed representative timekeeping data reflecting
20 allegedly late, short, and missed meal periods during the relevant period, and potential derivative claims.
21 Plaintiff's counsel reviewed data concerning shifts exceeding three and a half hours, shifts exceeding
22 five hours, shifts exceeding six hours, shifts exceeding eight hours, shifts exceeding ten hours, and shifts
23 exceeding twelve hours, as well as allegedly noncompliant meal periods and premium payments
24 reflected in Defendant's records.

25 20. Plaintiff's counsel also evaluated the strengths and weaknesses of Plaintiff's
26 derivative claims for wage statement penalties. Plaintiff's analysis considered potential defenses
27 concerning individualized issues, timekeeping accuracy, and the availability of representative proof.

28 21. The investigation and analysis conducted by Plaintiff and Class Counsel provided a

1 meaningful basis upon which to evaluate the fairness and adequacy of the proposed settlement.

2 22. From the data and other documents obtained from Defendant pertaining to the Class and
3 Defendant's policies, Plaintiff Perkins' expert was able to analyze the produced data with respect to
4 potential damages and penalties in preparation for the mediation, and Class Counsel was able to
5 thoroughly assess the merits of each claim.

6 23. On December 3, 2025, the Parties participated in an all-day mediation presided over by
7 before experienced wage-and-hour mediator Michael Young.

8 24. During the mediation each side, represented by its respective counsel, recognized the
9 substantial risk of an adverse result in the Action. The Parties subsequently agreed to avoid further
10 litigation and to settle and resolve all claims alleged against Defendant to the fullest extent
11 permitted by law and without any admission of liability or wrongdoing by Defendant.

12 25. At the conclusion of mediation, extensive arms-length negotiations, and after
13 issuance of a mediator's proposal, the Parties reached an agreement and entered into this
14 Settlement. The Parties entered into a Memorandum of Understanding on February 10, 2026,
15 memorializing the material terms of the Settlement. Ultimately, on July 15, 2026, the Parties executed
16 the Settlement Agreement.

17 26. The Parties have not engaged in any collusion or improper negotiations. The Parties
18 do not have any agreements regarding the proposed Settlement that is not reflected in the Settlement
19 Agreement.

20 ***The Settlement Meets All the Criteria for Approval***

21 27. Plaintiff and Class Counsel have diligently investigated the claims of the members of the
22 settlement class. Plaintiff and Class Counsel concluded, after taking into account the disputed factual
23 and legal issues involved in this Action, the substantial risks attending further prosecution, including
24 risks related to the outcome of certification and possible summary judgment efforts, and the substantial
25 benefits to be received pursuant to the compromise and settlement of the Action as set forth in the
26 Settlement, that settlement on the terms agreed to are in the best interest of Plaintiff and the putative
27 class and are fair and reasonable. Plaintiff's counsel brought to bear a great deal of experience with
28 class actions in negotiating the settlement of this case.

1 28. One fundamental purpose of the class action device is to promote efficiency. Resolution
2 at this time will forestall the need for additional expensive and time-consuming litigation that could
3 very well result in an outcome less satisfactory than that proposed under this settlement. But, before
4 any other consideration, we have agreed to this Settlement because it is objectively reasonable. The
5 potential for resolution benefits the class members, since they do not have to wait additional years for a
6 similar recovery. The efficiency of this litigation benefits the Court, the Parties and their counsel. A
7 class-wide resolution is the most realistic method for addressing the claims raised in this matter.

8 29. We have engaged in the necessary investigation in this case that made it possible for us
9 to exercise informed judgment in those aspects of the settlement process in which we were involved.
10 The exchange of voluminous timeclock and payroll information and wage and hour policy documents
11 was sufficient to permit Plaintiff's counsel to adequately evaluate the settlement. Plaintiff had more
12 than enough information upon which to evaluate a fair and reasonable settlement amount.

13 30. The Settlement is the product of arm's-length negotiations between the Parties occurring
14 throughout the litigation. In light of the uncertainties of protracted litigation and the state of the law
15 regarding the legal positions of the Parties, the settlement amount reflects the best feasible recovery.
16 Given the strong case that Defendant could bring to bear, this is not an inconsequential settlement.

17 ***Estimated Maximum Potential Recovery***

18 31. At the time of mediation, Defendant provided certain data points that included a
19 sampling of payroll and time records for the putative class and PAGA group during the relevant period.
20 This enabled Plaintiff's damages expert to review the data and to prepare a comprehensive damage
21 analysis for the purposes of mediation. The following chart provides the estimated realistic potential
22 recovery that Plaintiff believes she could reasonably achieve *if she were to prevail on all her causes of*
23 *action:*

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Plaintiff's Estimated Realistic Potential Recovery

Assumptions During Class Period (based on data provided by Defendant for Mediation)

Approximate Number of Shifts: 327,360 % of Shifts > 6 hours: 55.1% % of Shifts > 3.5 hours: 73.0% Average Number of Shifts Per Workweek: 3.2 Total PAGA Pay Periods: 28,500	Class Members: 1,533 Total Workweeks: 102,300 No. of Terminated Class Members: 893
Average Rate of Pay: \$24.42 Meal Break Violation Rate: 32.6% Rest Break Violation Rate: 100% Off-The-Clock Minutes/Shift: 10	Total Aggrieved Employees: 1,091 Current Aggrieved Employees: 536 No. of Former Aggrieved Employees: 555

Cause of Action	Realistic Potential Recovery	Calculations for Estimated Potential Recovery
Meal Period Claim	\$287,190.76	327,360 shifts x 55.1% of shifts > 5 hours x 32.6% Meal Viol. Rate x \$24.42 Hourly Rate. That leads to a potential recovery of \$1,435,953.81. However, for the reasons stated in Paragraph 32 <i>infra</i> , the value of this claim is discounted by 80% leading to potential realistic exposure of \$287,190.76.
Rest Period Claim	\$291,785.79.	327,360 shifts x 73.0% of shifts > 3.5 hours x 25% Rest Viol. Rate x \$24.42 Hourly Rate. That leads to a potential recovery of \$1,458,928.94. However, for the reasons stated in Paragraph 32 <i>infra</i> , the value of this claim is discounted by 80% leading to potential realistic exposure of \$291,785.79.
Off-the-clock Claim	\$266,471.04	327,360 shifts x 10 mins off-the-clock per shift x \$24.42 Hourly Rate. That leads to a potential recovery of \$1,332,355.20. However, for the reasons stated in Paragraph 32 <i>infra</i> , the value of this claim is discounted by 80% leading to potential realistic exposure of \$266,471.04.
Reimbursement for Business Expenses	\$18,396.00	1,533 putative class members assuming each incurred \$60 on uniforms/apparel and cleaning products. That leads to a potential recovery of \$91,980.00. However, for the reasons stated in Paragraph 32 <i>infra</i> , the value of this claim is discounted by 80% leading to potential realistic exposure of \$18,396.00

Sub-Total (Compensatory Claims)	\$863,843.59	
Labor Code § 226 Penalties	\$1,016,592.50	(1,091 initial violations in 1-yr SOL x \$50) [\$54,550] + (28,500 subsequent violations in 1-yr SOL x \$100) [\$2,850,000] that leads to a potential recovery of \$2,904,550. However, for the reasons stated in Paragraph 32 <i>infra</i> , the value of this claim is discounted by 65% leading to potential realistic exposure of \$1,016,592.50.
Subtotal (Statutory Penalties + Compensatory Claims)	\$1,880,436.09	
PAGA Penalties	\$2,198,077.32	\$100 per pay period for violation of Labor Code section 226.7 (meal breaks) with 9,291 pay periods assuming 32.6% of pay periods had a violation. \$302,886.60 \$100 per pay period for violation of Labor Code section 226.7 (rest breaks) with 28,500 pay periods assuming 25% of pay periods had a violation. \$712,500.00. \$100 per pay period for violation of Labor Code section 1194 for off-the-clock violations with 28,500 pay periods assuming 100% of pay periods had a violation. \$2,850,000.00. \$250 per pay period penalty for violation of Labor Code section 226(a) for failure to provide accurate wage statements with 28,500 pay periods assuming 100% of pay periods had a violation. \$7,125,000.00. This results in a total PAGA penalties of \$10,990,386.60. However, for the reasons stated in Paragraph 32 <i>infra</i>, the value of the PAGA claims is discounted by 80% leading to potential realistic exposure of \$2,198,077.32
Total if PAGA included	\$4,078,513.41	

1 32. Despite a total potential recovery of \$1,880,436.09 on all class claims, including
2 statutory penalties, Plaintiff recognized the challenges they would have to face in certifying a class
3 action and establishing liability on the wage and hour and PAGA claims. Plaintiff estimate their
4 likelihood of prevailing on all their causes of action is extremely low and thus the likelihood of
5 recovering over \$4 million or anything close to that amount on behalf of the Class is very unlikely.
6 With respect to the claims asserted on behalf of the Settlement Class in this case, there are significant
7 risks that support the reduced compromise amount. These risks include, but are not limited to, the
8 following:

9 (i) The risk that Plaintiff would be unable to establish liability for allegedly unpaid straight
10 time and overtime wages. *See Duran v. U.S. Bank Nat'l Ass'n*, 59 Cal.4th 1, 39 & fn. 33 (2014)
11 (“Duran”), *citing Dilts v. Penske Logistics, LLC*, 2014 WL 205039 (S.D. Cal. 2014) (dismissing
12 certified off-the-clock claims based on proof at trial). Defendant contends, e.g., that straight time was
13 paid and that overtime was properly paid or not due or owing to the putative class members as alleged
14 by Plaintiff.

15 (ii) Defendant argues that Plaintiff would not be able to prove liability for alleged failure to
16 provide compliant meal and rest breaks; or that to establish liability for the failure to provide compliant
17 rest breaks would require an individualized inquiry that would prevent these issues from being resolved
18 on a class basis. Plaintiff alleged employees were regularly subject to meal break violations. Defendant
19 contends that many employees took their meal and rest breaks and that in order to prove whether each
20 employee took their meal periods and/or rest breaks would require an individualized inquiry that would
21 prevent this issue from being resolved on a class basis.

22 (iii) The risk that Defendant’s challenged employment policies might not ultimately support
23 class certification or a class-wide liability finding. *See, Duran v. US Bank Nat'l Ass'n* (2014) 59 Cal. 4th
24 1, 14 & fn. 28 (citing Court of Appeal decisions favorable on class certification issue without expressing
25 opinion as to ultimate viability of proposition). *See, e.g., Morillion v. Royal Packing Co.* (2000) 22 Cal.
26 4th 575, 585 (employer not required to pay employees for time spent performing work of which the
27 employer had no knowledge). Defendant has also argued that Plaintiff’s off-the-clock allegations would
28 necessitate individualized issues pertaining to when the putative class members were working off the

1 clock and for what purpose, such that Plaintiff could not obtain class certification. Even if such a
2 problem did exist, Defendant contends that it did not have such a policy, and therefore, it is not a
3 systematic problem across Defendant's entire California workforce.

4 (iv) For the same reasons, liability, damages recovery, and certification risks are heightened
5 given: (1) the risk that uncertainties pertaining to the ultimate legality of Defendant's policies and
6 practices could preclude class-wide awards of statutory penalties under Labor Code section 226(e); (2)
7 the risk that individual differences between settlement Class Members could be construed as pertaining
8 to liability, and not solely to damages, *see, Duran*, 59 Cal.4th at 19; and (3) the risk that class treatment
9 could be deemed improper as to one or more claims except for settlement purposes.

10 (v) For those claims, if any, that are certified for class treatment, Plaintiff must prevail at a
11 trial on the merits.

12 (vi) The risk that any civil penalties award under PAGA could be reduced by the Court in its
13 discretion could materially impact the recovery by the Class, *see* Labor Code section 2699(e)(1).

14 (vii) The risk that lengthy appellate litigation could ensue as to both liability and certification
15 issues, with associated litigation risk and costs, further enhances the value of a confirmed settlement as
16 opposed to unpredictable litigation.

17 (viii) Although the PAGA penalties calculated by Plaintiff's expert amounts to \$2,198,077.32,
18 that amount is not likely to bear fruit in this case. Most significantly, the ultimate decision as to the
19 amount of penalties is always up to the discretion of the Court. Labor Code § 2699(e)(2) states: "In any
20 action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or
21 (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if,
22 based on the facts and circumstances of the particular case, to do otherwise would result in an award that
23 is unjust, arbitrary and oppressive, or confiscatory." Subdivision (a) states, "Notwithstanding any other
24 provision of law, any provision of this code that provides for a civil penalty to be assessed and collected
25 by the Labor and Workforce Development Agency or any of its departments, divisions, commissions,
26 boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
27 a civil action brought by an aggrieved employee on behalf of himself or herself and other current or
28 former employees pursuant to the procedures specified in Section 2699.3." Subdivision (f) specifies the

1 penalties in instances where the underlying statute does not specify any civil penalty. In other words,
2 where the facts and circumstances of the particular case demonstrate that an unreduced award would be
3 “unjust, arbitrary and oppressive, or confiscatory,” the court (or arbitrator) may reduce the award so as
4 to ameliorate any such finding.

5 In *Carrington v. Starbucks*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal affirmed the
6 trial court’s significant reduction of PAGA meal break penalties from the \$50 maximum penalty per
7 initial violation to only \$5 per initial violation. As the Court of Appeal in *Carrington* observed, although
8 the trial court ultimately disagreed with the Defendant’s arguments regarding its liability, it considered
9 the circumstances of the Defendant when imposing penalties, namely that imposing the maximum
10 penalty would be unjust, arbitrary, and oppressive based on the Defendant’s “good faith attempts” to
11 comply with meal break obligations and because the court found the violations were minimal. *See also*
12 *Thurman v. Bayshore Transit, Management, Inc.* 203 Cal.App.4th 1112, 1136 (2012) (affirming trial
13 court’s 30 percent reduction of maximum penalty.). Although the estimated PAGA penalties amount to
14 \$7,209,744.96, proceeding to trial creates the risk that Plaintiff meet the same outcome as the
15 *Carrington* Plaintiff, resulting in a recovery that is a mere 10% of the estimate.

16 (ix) The risk that Defendant would be unable to pay a higher amount than the GSA if so
17 awarded.

18 (x) Moreover, Plaintiff faced the risk of a potentially prolonged and expensive trial.

19 (xi) Plaintiff faced the risk of being held liable for Defendant’s attorneys’ fees and costs if
20 this case had been unsuccessful.

21 Each of these factors bore heavily on the negotiations leading to the Settlement. Continued
22 litigation of this lawsuit presented Plaintiff and Defendant with substantial legal risks that were (and
23 continue to be) very difficult to assess. In light of the uncertainties of protracted litigation, the Settlement
24 amount reflects a fair and reasonable recovery for the Class Members. The Settlement amount is, of
25 course, a compromise figure. By necessity, it took into account risks related to liability, class action
26 certification, trial manageability, damages and discretionary penalties, and all the defenses asserted by
27 Defendant as to all such matters. Moreover, each Class Member will be given the opportunity to opt out
28 of the Settlement, allowing those who think they have claims that are greater than the benefits they can

1 receive under this Settlement to pursue their own claims.

2 In view of these risks, the Settlement reflects a fair, adequate, and reasonable compromise
3 amount for these claims and warrants preliminary approval. Indeed, while the risks listed herein are far
4 from exhaustive, they show that the Settlement amount reflects a fair and reasonable recovery for the
5 State of California and the Aggrieved Employees.

6 33. Plaintiff's claims are typical of those of the Class Members. Like other Class Members,
7 Plaintiff Perkins was an hourly non-exempt employee of Defendant in California. Plaintiff allege that
8 they and the putative class members were not provided with compliant rest breaks and meal breaks,
9 were not paid all wages, did not receive accurate wage statements, and did not receive all wages during
10 employment. Plaintiff Perkins has no conflict of interest with the Settlement Class members and has agreed
11 to place the Class's interests above her own. Setareh Law Group also has no conflicts of interest with the
12 Settlement Class members.

13 34. The requested Class Representative Service Payment in the amount of \$5,000.00 to
14 Plaintiff Perkins, is warranted. Plaintiff spent considerable time speaking with her counsel,
15 gathering documents, and reviewing the Settlement. She also took on the risk of facing intrusive
16 discovery, facing a potential costs award, and the risk that being involved in litigation would be
17 viewed unfavourably by potential employers.

18 35. The Settlement Class is made up of all current and former hourly-paid or non-exempt
19 employees employed by Touchstone in California at any time during the Class Period, all of whom
20 are readily ascertainable from Defendant's personnel records. Defendants estimate there are
21 approximately 1,500 putative class members.

22 ***Attorneys' Fees***

23 36. The amount of Class Counsel's fee request (one-third of the GSA, **\$333,333.33**) is
24 reasonable as a percentage of the settlement fund. I have been awarded attorneys' fees equaling
25 approximately one-third of the fund in several recent wage and hour class actions, including, but not
26 limited to: *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case
27 No. CIVRS1107056 (one-third of settlement fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles
28 County Superior Court, Case No. BC439558 (one-third of settlement fund); *Perez v. Southwest*

1 *Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of
2 settlement fund); *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No.
3 CIV1002553 (one-third of settlement fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court,
4 Case No. 37-2010-00093743-CU-OE-CTL (one-third of settlement fund); *Butler v. Lexxiom, Inc.*,
5 San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of settlement fund);
6 *Huynh v. Carefusion Resources, LLC, et al*, San Diego County Superior Court, Case No. 37-2009-
7 00103277-CU-OE-CTL (one-third of settlement fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los
8 Angeles County Superior Court, Case No. BC456080 (one-third of settlement fund); *Sandoval v.*
9 *Thrifty Payless, Inc.*, Los Angeles County Superior Court, Case No. BC431249 (one-third of
10 settlement fund); *Tucker v. Maly's West, Inc.*, Los Angeles County Superior Court, Case No.
11 BC483920 (one-third of settlement fund); *Tiwari v. Merrill's Packaging*, San Mateo Superior
12 Court, Case No. 519070 (one-third of settlement fund); *Montgomery v. Del Monte Corp., et al*,
13 Kings County Case No. 13C0204 (one-third of settlement fund); *Adams v. Medical Staffing*
14 *Network, et al*, Sacramento County Case No. 34-2012-00137491-CU-OE-GDS (33% of gross
15 settlement fund).

16 ***Actual Litigation Costs***

17 37. Class Counsel request reasonable litigation costs, up to \$20,000.00, to be paid out of
18 the GSA.

19 38. Setareh Law Group has incurred litigation costs, to date, of **\$16,901.95**. At the time
20 of Plaintiff's Motion for Final Approval and Award of Attorneys' Fees and Litigation Costs,
21 Plaintiff will submit itemized details for expenses and costs for which reimbursement is sought.

22 ***Settlement Administrator***

23 39. The Parties have mutually selected ILYM Group, Inc. ("ILYM) to serve as Settlement
24 Administrator and to provide notice to the Class Members, subject to Court approval. The Parties solicited
25 bids from three class action administrators: Apex, ILYM, and Phoenix. The Parties selected ILYM as it
26 presented the most cost-effective bid. The Settlement provides for administration costs not to exceed
27 \$14,000.00, unless the escalator clause is triggered or as otherwise approved by all Parties and the Court. The
28 settlement administration costs are currently estimated to be \$13,750.00, based on an estimated Class of

1 approximately 1,500 Class Members. In my experience, the fee of \$13,750.00 is reasonable for a settlement
2 of this size. The costs of the Settlement Administrator approved by the Court will be paid from the GSA. The
3 Class Notice will be mailed in English.

4 ***Distribution of Unclaimed Funds***

5 40. The Settlement Agreement provides for a distribution of any excess or uncashed settlement
6 funds (after the 180-day negotiability period) to the California State Controller's Office in the name of the
7 Participating Class Member or Aggrieved Employee, unless practice and precedent in the Alameda courts
8 requires the funds to go to a *cy pres* recipient. In that case, the Parties have selected the Legal Aid Foundation
9 of Los Angeles ("LAFLA") as the *cy pres* recipient, as and if necessary and subject to Court approval.
10 LAFLA is an appropriate *cy pres* recipient under Code of Civil Procedure 384 because it is a nonprofit
11 501(c)(3) organization whose mission is to provide free civil legal services to low-income individuals in Los
12 Angeles County, including representation and advocacy on employment and wage-and-hour matters
13 affecting vulnerable workers. LAFLA's Employment Rights Project, in particular, directly serves low-wage
14 workers seeking to enforce the same categories of Labor Code protections at issue in this Action —
15 including unpaid wages, meal and rest period violations, and retaliation. Any residual funds distributed to
16 LAFLA would therefore be used for a purpose consistent with, and substantially related to, the rights the
17 Class sought to vindicate in this litigation. Additionally, LAFLA has no financial or business relationship
18 with any of the Parties, Class Counsel, or Defense Counsel that would create an appearance of impropriety or
19 conflict of interest in connection with the proposed distribution, consistent with the requirements of Section
20 384 and applicable case law (*see, e.g., In re Microsoft I-V Cases* (2006) 135 Cal.App.4th 706; *Nachshin v.*
21 *AOL, LLC* (9th Cir. 2011) 663 F.3d 1034 (requiring a driving nexus between the plaintiff class, the class's
22 claims, and the *cy pres* recipient)).

23 ***LWDA Notice***

24 41. Upon filing the Motion for Preliminary Approval of Class Action and PAGA
25 Settlement and Certification of Settlement Class, Class Counsel will upload a copy to the California
26 Labor Workforce and Development Agency.

27 I declare under the penalty of perjury of the laws of the State of California that the foregoing
28 is true and correct to the best of my knowledge.

1 Executed on 12th day of August, 2026 in Beverly Hills, California.

2 /s/ Shaun Setareh

3 Shaun Setareh