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ELECTRONICALLY
FILED
Superior Court of California, County of San Francisco
10/14/2025
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN FRANCISCO

ISIN AL OTAT, an individual and on behalf of similarly aggrieved employees, Plaintiff, vs. CYCLE GEAR, INC., a California corporation; COMOTO HOLDINGS, INC., a Delaware corporation; COMOTO HOLDINGS, LLC, a Delaware limited liability company; and DOES 1 – 50, inclusive; Defendants.	Case No.: CGC-23-606243 Assigned to: Dept 606 *Honorable Jeffrey Ross* **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF THE CLASS ACTION SETTLEMENT AND APPROVE THE PAGA SETTLEMENT** Date: December 4, 2025 Time: 10:00 a.m. Complaint Filed: May 1, 2023

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD: PLEASE TAKE NOTICE that on December 4, 2025, at 10:00 a.m., or as soon thereafter as the matter may be heard in the Department. 606 of the San Francisco Superior Court, located at 400 McAllister St, San Francisco, CA 94102, Plaintiff Isin al- Otat ("Plaintiff") moves the Court for an Order Granting Preliminary Approval of the Class Action and of the Private Attorneys General Act ("PAGA")

Settlement. The Motion will be made on the grounds that the proposed Settlement is fair, adequate, reasonable, and in the best interest of Plaintiff, all aggrieved employees, and the Parties.

The Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities, the Declarations of Jessica Gomez, Samantha Bigonger, and Settlement Administrator), the Joint Stipulation Of Settlement And Release Of Class and PAGA Claims (Exhibit “2” to the concurrently filed Gomez Declaration), and all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

Defendants and their counsel have had an opportunity to review the moving papers and do not intend to oppose the motion.

DATED: October 14, 2025 **Law Office of Jessica Gomez**

Jessica P. Gomez, Esq.
Attorney for Plaintiff:
Isin al-Otat

Table of Contents

TABLE OF AUTHORITIES

Cases

- **Arias v. Superior Court** (2009) 46 Cal.4th 969
- **Bell v. Farmers Ins. Exchange** (2004) 115 Cal.App.4th 715
- **Brinker Restaurant Corp. v. Superior Court** (2012) 53 Cal.4th 1004
- **Cartt v. Superior Court** (1975) 50 Cal.App.3d 960
- **Classen v. Weller** (1983) 145 Cal.App.3d 27
- **Collins v. Rocha** (1972) 7 Cal.3d 232
- **Dunk v. Ford Motor Co.** (1996) 48 Cal.App.4th 1794
- **Duran v. U.S. Bank Nat'l Assn.** (2014) 59 Cal.4th 1
- **Fireside Bank v. Superior Court** (2007) 40 Cal.4th 1069
- **Hanlon v. Chrysler Corp.** (9th Cir. 1998) 150 F.3d 1011
- **Hicks v. Kaufman & Broad Home Corp.** (2001) 89 Cal.App.4th 908
- **Kullar v. Foot Locker Retail, Inc.** (2008) 168 Cal.App.4th 116
- **Lockheed Martin Corp. v. Superior Court** (2003) 29 Cal.App.4th 1096
- **Magadia v. Wal-Mart Associates, Inc.** (N.D. Cal. 2019) 384 F.Supp.3d 1058, rev'd in part, vacated in part, 999 F.3d 668 (9th Cir. 2021)
- **Officers for Justice v. Civil Service Commission** (9th Cir. 1982) 688 F.2d 615
- **Rose v. City of Hayward** (1981) 126 Cal.App.3d 926
- **Sav-on Drug Stores, Inc. v. Superior Court** (2004) 34 Cal.4th 319
- **Seastrom v. Neways, Inc.** (2007) 149 Cal.App.4th 1496
- **Simons v. Horowitz** (1984) 151 Cal.App.3d 834
- **Starbucks Corp. Wage & Hour Litigation** (N.D. Cal. 2008) 2008 WL 4196690
- **Trotsky v. L.A. Federal Savings & Loan Association** (1975) 48 Cal.App.3d 134

Statutes

- California Code of Civil Procedure § 382
- California Civil Code § 1542
- California Civil Code § 1781(f)
- California Labor Code §§ 201–204, 210, 216, 221–224, 226, 226.3, 226.6, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2698–2699.5, 2800, 2802, 2810.5
- California Business & Professions Code § 17200 et seq.

Rules

- California Rules of Court, rule 3.769
- Federal Rule of Civil Procedure 23(e)

Regulations and Wage Orders

- California Code of Regulations, Title 8, § 11050(5)(A)
- Industrial Welfare Commission Wage Order 7

MEMORANDA OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Isin–al Otat ("Plaintiff ") respectfully requests that this Court conditionally certify the below-defined Class for settlement purposes only pursuant to Code of Civil Procedure section 382; preliminarily approve the class action Settlement; direct that notice be disseminated to the Class; and schedule a final approval hearing.

The Settlement provides for a non- reversionary settlement fund of $1,350,000 for approximately 1,100 workers in compromise of disputed claims for unpaid wages and penalties. The Settlement is as follows: $1,000,000 in cash and $350,000 in gift cards/vouchers that are freely transferable, do not require a claim, and do not expire.

This Court should grant this Motion because: (1) the Class meets the requirements for conditional class certification for settlement purposes only under of Code of Civil Procedure section 382; (2) the Settlement warrants preliminary approval based on fairness, reasonableness, and adequacy; (3) Plaintiff is adequate to serve as Class Representative; (4) Plaintiff's attorneys are adequate to serve as Class Counsel; (5) the proposed class notice and procedures fully comport with due process and adequately apprise Class Members of their rights; and (6) a final fairness hearing must be scheduled to allow Class Members an opportunity to be heard regarding the Settlement and to give it finality. Accordingly, for the reasons detailed below,

Plaintiff respectfully request that the Court grant this Motion in its entirety and preliminarily approve the Settlement as presented herein.

II. FACTUAL AND PROCEDURAL BACKGROUND

Defendant's Cycle Gear Inc., Comoto Holdings, LLC, and Comoto Holding, Inc. is a retail store that sells motorcycle products. Plaintiff Isin al-Otat was hired as a key card holder and an associate salesperson. While working as a salesperson, Plaintiff al-Otat earned hourly pay and commission for sales. Plaintiff's main allegation is that while working is these positions that Defendants failed to pay her regular rate of pay because her missed meal and rest breaks did not include commission payments.

On or about March 2, 2023, Plaintiff's counsel filed and served a PAGA letter on behalf of

Plaintiff Isin al-Otat to Cycle Gear, Inc., Comoto Holdings, Inc., and Comoto Holdings LLC (collectively "Defendants"). Plaintiff's PAGA notice asserts, among other violations, failure to pay wages, failure to pay the regular rate of compensation, including nondiscretionary incentive payments, failure to provide and failed to maintain complete and accurate time records, and failure to pay waiting penalties, sick pay, and reimburse business expenses. (See Gomez Decl. ¶3, Ex. 1)

At the time that Al-Otat's PAGA letter was filed, there were no other active PAGA claims filed. (*Id.* at ¶4). The LWDA did not respond or assume jurisdiction of the claim by the 65-day expiration deadline. (*Id.* at ¶5)Plaintiff did not add her PAGA claim until December 8, 2023 via amendment. (*Id.*) Plaintiff's counsel filed her class action on May 1, 2023. (*Id.* at ¶6). At the time, there were no other class actions filed against any of the Entity Defendants. (*Id.*)

On December 8, 2023, Plaintiff's counsel filed her first amended complaint alleging (1) Failure to Provide Required Meal Periods Cal. Labor Code §§ 226.7,510,512,1194,1197; (2) Failure to Provide Required Rest Periods [Cal. Labor Code §§ 226.7,512; (3) Failure to Pay Minimum Wages [Cal Labor Code §§1194,1197; (4) Failure to Pay Overtime Labor Code §510 (5) Failure to Furnish Accurate Itemized Wage Statements [Cal. Labor Code §§ 226;] (6) Waiting Time Penalties Labor Code §§201-203 (7) Failure to Pay Reporting Time Pay (Labor Code § 1198 and California Code of Regulations Title 8, Section 11050 Subdivision 5(A)) (8) Wages Not Timely Paid (Violation of California Labor Code §§ 201, 202, and 203) (9) Unfair and Unlawful Business Practices [Cal. Bus. & Prof. Code §§ 17200 et. Seq; (10) Private Attorney General Act (Cal Labor Code §2699, et.seq ((*Id.* at ¶7). The Entity Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and deny any liability for the causes of action alleged. (*Id.*)

III. <u>SUMMARY OF THE TERMS OF THE SETTLEMENT</u>

A. Settlement Payments

As detailed in the Settlement agreement submitted herewith, the Settlement provides for Defendants ' payment of $1,350,000 ("Gross Settlement Amount"). (Exhibit 2 to Bronski Decl., Settlement at § 13.) The parties agreed to the following allocation of the Gross Settlement Amount to determine the Net Settlement Amount ("NSA") for distribution to the Class:

Gross Settlement Amount Cash Merchandise Voucher	$1,350,000 $1,000,000.00 $350,000.00[1]
Proposed Attorney's Fees[2]	$445,500.00
Costs	$41,368.96
Enhancement to Plaintiff	$5,000
PAGA Payment to LWDA	Up to $75,000
Cost of Administration	$11,850
Left Over	Cash: $421,281.04 Merchandise Voucher: $350,000

Each Participating Class Member will receive a pro rata portion of the Net Settlement Fund, calculated based upon the number of Compensable Workweeks worked by the Class Member during the Settlement Period, divided by the total number of Compensable Workweeks worked by all Settlement Class Members during said period. (Gomez Decl. ¶ Exhibit 2 at §§1.7.5.) Participating Class Members, who are also Aggrieved Employees, shall receive a share of the PAGA Payment based on each Aggrieved Employee 's proportionate number of workweeks in the PAGA Period. Plaintiff 's counsel has submitted the proposed Settlement to the LWDA pursuant to Labor Code section 2699(l)(2). (Gomez Decl. at ¶ 30)

B. <u>Process for Administering the Notice after Preliminary Approval</u>

No later than ten (10) business days after the Court enters its order granting preliminary

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[1] The Gift Cards will be placed in a common fund for the benefit of the settlement class. The gift card benefit will be distributed directly to the members of the class, without the need to submit a claim, and are freely transferable without expiration. Each Participating member shall also receive a Cycle Gear, Inc. Merchandise Voucher in the amount of $320.00. See Stipulation of Settlement and Release 2.15

[2] Plaintiff requests that the Court approve attorney's fees per the 1.35 million settlement given the amount of work prepared in this matter. Prior Courts have approved attorney's fee payments based off settlements that were purely made on gift cards. See CYNTHIA FERNANDEZ and MONICA REYNA, v. VICTORIA SECRET STORES Case 2:06-cv-04149-MMM-SH (2008) (3.5 million in attorneys fees with a 10 million dollar settlement payment in gift card/voucher only).

approval of the Settlement, Defendants will provide the Settlement Administrator with a Plaintiff Class List, in electronic format (including, but not necessarily limited to MS Excel format) , containing, for each Class Member, the Class Member 's first and last name, the last known addresses, the social security number, dates of employment, and the number of Compensable Workweeks that each member of the Plaintiff Class worked for Defendants during the Settlement Period in California with Defendants as commissioned sales associates and key card holders. (Settlement at §1.2.5, 2.3, 6.3.2,)

Before sending out the Class Notice, the Settlement Administrator will use the United States Postal Service National Change of Address ("NCOA") List to update addresses for the Plaintiff Class List, aiming for immediate delivery of claim documents. If a mailed notice is not returned within thirty (30) calendar days, it is assumed to be received. For any returned mail, the Settlement Administrator will seek a new address and re -send the notice within three (3) court days days. Recipients of re -mailed notices get an additional ten (10) calendar days to respond. (Settlement Agreement 6.3.2) (*See Declaration of Lisa Mullins 6-8)*

In an attempt to maximize the recovery of the Class, Class Members will automatically receive payment from the settlement unless they validly object or choose to opt out. (Settlement at §1.2.3.) In sum, this process entails the Settlement Administrator mailing settlement checks to each Class Member who has not opted out of the Settlement and for whom the Claims Administrator has not received a returned Class Notice Packet. They do not need to submit any claim form. To opt out, Class Members must follow instructions in the Class Notice and send their request within thirty (30) calendar days of the initial mailing or not more than ten (10) calendar days of a re - mailing if applicable. Incomplete or late opt -out requests will be considered invalid and not recognized. Those who successfully opt out will not be part of the settlement or affected by its terms or the final court judgment. (*Id*.) Class Counsel believes that the notice procedure established by the Settlement Agreement will efficiently and accurately ensure that

Notice is provided to the approximately one thousand one hundred eleven (1,100) Class Members. (Id. at ¶ ¶6.3.2.) A PAGA Aggrieved Employee and/or Class Member must cash their Settlement Share check within one hundred eighty (180) calendar days after it is mailed to them. (Settlement at § 1.8.4.) If a worker does not cash his or her settlement payment check(s) before the

Void Date, the funds shall be paid to the Office of the California State Controller - Unclaimed Property Fund, to be held in the name of the respective employee. (Settlement at § 1.8.5.)

C. Process for Class Members to Opt -Out or Object to the Settlement

A Class Member who wishes to object to any term of the Settlement must submit a written, signed challenge along with supporting documents, if any exist, to the Settlement Administrator at the address provided on the Class Notice within thirty (30) calendar days of the date the Class Notice was mailed to the members of the Plaintiff Class. (Settlement at § 62.) 1.8.4.

A Class Member who wishes to exclude themselves from the Settlement must send the Settlement Administrator a written and signed Request for Exclusion which must be postmarked no later than thirty (30) calendar days after the date the Class Notice is mailed to the Plaintiff Class. (Settlement at § 6.3.2) To be valid, a Request for Exclusion must be signed, and contain the name and address of the Class Member requesting exclusion from the Settlement. (Id.) A Class Member who submits a timely Request for Exclusion will not participate in or be bound by the Settlement and the Judgment (except as to claims pursuant to the PAGA) and will not receive a Settlement Share (but will receive a PAGA Aggrieved Employ ee Share), and will retain the right, if any, they may have to pursue a claim against Defendants, except pursuant to the PAGA. (See Arias v. Superior Court (2009) 46 Cal.4th 969.)

The Class Notice attached to the Settlement Agreement submitted herewith fully explains the objection/comment and exclusion procedures. (See Gomez Decl. Stip and Release Exhibit § 1.2.3.)

D. Scope of the Proposed Release for Class Members and Plaintiff

The Settlement Agreement Defines the Scope of the Claims:

> 2.35 "Released Class Claims" means any and all claims, debts, liabilities, demands, obligations, penalties, guarantees, costs, expenses, attorney's fees, damages, action or causes of action of whatever kind or nature, contingent or accrued, that were alleged or that reasonably could have been alleged based on the facts alleged in the Action, as amended, under California State law. This release includes, without limitation, release of all claims under California State law for alleged failure to pay minimum wage, failure to pay overtime, failure to pay for off the clock work, failure to timely pay all wages due, including minimum wage and overtime, liquidated damages, uncompensated time worked, claims for failure to provide accurate itemized wage statements, claims for failure to timely pay wages at end of employment, failure to provide meal and rest breaks, failure to reimburse expenses, failure to provide reporting time pay, failure to maintain employment records, and claims for unfair

competition based upon any of the foregoing. The release period shall extend through the end of the Class Period.

2.36 "Released PAGA Claims" means all claims pled in the Action arising under the California Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*) ("PAGA") during the PAGA Settlement Period, including alleged violations under Labor Code §§ 201-204, 210, 216, 221-224, 226, 226.3, 226.6, 226.7, 246, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2699, 2800, 2802, and 2810.5, as well as Wage Order 7 that Plaintiff identified or contended she identified in her letter to the LWDA (a copy of which is attached as **Exhibit __**).

See Stip and Release 2.35 and 2.36

Named Plaintiff has executed a broader release than Participating Class Members of all claims, whether known or unknown, including an express waiver of section 1542 of the California Civil Code. (See Gomez Decl. Stip and Release Exhibit § 1.9.1.)

IV. <u>LEGAL ARGUMENT</u>

A. <u>The Court Should Grant Preliminary Approval to This Class Settlement</u>

A class action may not be dismissed, compromised, or settled without approval of the Court. (See Civ. Code § 1781(f) ; Rule of Court 3.769; Fed. Rule Civ. Proc. 23(e).) Proper review and approval of a class action settlement requires three steps: (1) preliminary approval of the proposed settlement after submission of a written motion; (2) dissemination of mailed and or published notice of the settlement to all class members; and (3) a formal fairness hearing, or final settlement approval hearing, at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement is presented. (Rule of Court 3.769.)

A settlement is presumptively fair where it is reached through arms ' length bargaining, based on sufficient discovery and investigation to allow counsel and the court to act intelligently, counsel is experienced in similar litigation, and the percentage of objectors is small. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1802.) The decision to approve or reject a proposed settlement is committed to the sound discretion of the court. (See Kullar v. Foot Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 128.) A decision approving a class action settlement may be reversed only upon a strong showing of clear abuse of discretion. (*See Id.*)

Courts consider several factors in determining if a class action settlement should be

approved, including: (1) the strength of Plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. (See id .)
The proposed settlement here satisfies each of the applicable factors. The substantial and comprehensive informal discovery exchanged by the parties prior to mediation with the Hon. John Leo 36, permitted Plaintiff and their counsel to fairly evaluate the strengths of the case and the risks associated with ongoing litigation. (Gomez Decl. at ¶¶ 16) (Stip and Release See § 3).

1. <u>The Strength of Plaintiff's Case</u>

To prepare for mediation with Hon. John Leo Wagner the parties exchanged significant informal discovery, which Plaintiff 's counsel thoroughly analyzed to construct as reliable of a damage model as possible. Plaintiff also hired an expert to review the paystubs concerning the regular rate of compensation. Moreover, following Belaire West notices Plaintiff's counsel initiated communication with Plaintiff's experiences and surveys of putative class members revealed regular rate payment violations, off the clock work and failure to pay overtime (Bigonger Decl. ¶7 and Gomez Decl. ¶ 16(c)) Moreover, Defendants records indicate that Cycle Gear, Inc. began to pay regular rate payments that included commission in some fashion. (Gomez Decl. ¶ 23)

Defendants also provided a sampling of its pay records. The payroll and timekeeping data produced by Defendants also allowed Plaintiff to model the class and PAGA damages for purposes of mediation. (Gomez Decl. ¶ 15(c))

2. <u>The Risk, Expense, Complexity, and Likely Duration of Further Litigation</u>

While Plaintiff and her counsel believe that they would prevail on the core wage claims (failure to pay wages, waiting time penalties and meal and rest violations for pay at the regular rate). The claims alleged are not without weaknesses. For example, the parties have differing views of the valuation of claims concerning regular rate and waiting time penalties: Plaintiff values this matter at 2.9, whereas Defendant presented valuations under $1 million. (See Gomez Decl. ¶ 23).

Further, the meal and rest period claims face significant challenges regarding individual issues predominating that render class certification of those claims far less than certain, as well as the reporting time violations. These evidentiary challenges inherent in certifying and maintaining certification of claims where class-wide, documentary evidence is lacking, make trial a significant risk in this matter and increase the likelihood of appeals.

The PAGA penalties alleged presented another challenge. Plaintiff's estimate the PAGA penalties for the underlying Labor Code violations amount to approximately $1,087,200. (See Gomez Decl. ¶ 21). Despite Defendants' substantial potential exposure, the trial court has broad discretion to reduce PAGA civil penalties "if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory." See Cal. Labor Code § 2699(e)(2). (*Id.* at 22). Thus, the $1,087,200 maximum figure does not account for the likelihood that the Court would reduce the amount of penalties at trial, given the specific facts of this case. (*Id.*) This matter was filed well before the 2024 amendment. (*Id.*) However, the new amendment prohibits stacking for certain sections § 2699(h)(3)(i). See Magadia v. Wal -Mart Assocs., Inc. (N.D. Cal. 2019) 384 F.Supp.3d 1058, 1100, rev' d in part, vacated in part, 999 F.3d 668 (9th Cir. 2021) [awarding "approximately 36% of the original amount of [Labor Code section 226.3] PAGA penalties Plaintiffs requested "].) While it is likely that a court would award some measure of civil penalties pursuant to PAGA for the Labor Code violations that Plaintiff proved at trial, the trial court's discretion to reduce the PAGA penalties awarded in accordance with Labor Code § 2699(e)(2) was a substantial risk for Plaintiff. (Id.)

In sum, should this litigation proceed, Plaintiff would face significant hurdles in his efforts to certify all the claims alleged, prevail, and secure a judgment. Of course, there is also a risk that Defendants would prevail in their asserted defenses which would result a take-nothing for the PAGA class.

3. <u>The Risk of Maintaining Class Action Status Through Trial</u>

In class actions, decertification is always a possibility. There is always a risk that a trial of this nature can become unmanageable, especially since the core wage and hour claims would have likely required representative testimony at trial. Given cases like Duran v. U.S. Bank Nat. Assn . (2014) 59 Cal.4th 1, 34, addressing the complexity of using statistical samples for litigating class claims, decertification is a real risk in any class action.

4. Defendant's financial condition

Settling rather than pursuing litigation was a prudent decision. Litigation is inherently risky and often entails a lengthy and costly process. There is a substantial risk that, even with a favorable judgment, the actual collection of any awarded damages could be highly uncertain or significantly delayed. By opting for a settlement, we ensured a more immediate and guaranteed resolution, avoiding the potential for protracted legal battles and the possibility of uncollectible judgments. This approach not only saved time and resources but also provided a more secure outcome, allowing all parties to move forward without the ongoing burden and uncertainty of legal proceedings.

5. The Amount Offered in Settlement

On April 22, 2025, the parties spent about 6 hours in mediation with an experienced mediator the Hon. John Leo Wagner. (Gomez Decl. at ¶ 16.) The case did not resolve that day. (*Id.* at ¶ 17). Instead the parties engage in continued negotiations that resulted in a mediators proposal of 1,350,000 with $1,000,000 in cash and $350,000 in gift cards). *Id.* The settlement reached and presented to the Court with this Motion is the product of informed, arms -length negotiation between the parties. The mediator, the Hon. John Leo Wagner, was thoroughly apprised of the arguments and facts of this case by means of extensive briefing and factual presentations by both Plaintiff and Defendants. In reaching the settlement, counsel on both sides relied on their respective and substantial litigation experiences in similar class and PAGA actions.

For purposes of mediation, Plaintiff's counsel calculated maximum exposure for the entire action to be approximately $3.9 million for the PAGA and Class Action. (Gomez Decl. at ¶ ¶21.) As noted throughout, the proposed $1,350,000 settlement represents a compromise figure considering the strengths and weaknesses of the claims asserted and the benefit to the Class Members for receiving compensation in the short term without the potential for protracted litigation and appeals. The proposed $1,350,000 settlement represents nearly one-third of the total damage model developed for mediation purposes and is a reasonable compromise. Moreover, the settlement is reasonable given that the Plaintiff's strongest claims – the failure to pay the regular rate of compensation – are valued at $36, 835.00. Moreover, Defendants present evidence that the 226 claims and waiting penalites are valued under $1,000,000.00 (Gomez Decl. ¶ 23)

The participating Class Members will share in a Net Settlement after deducting for attorneys' fees, litigation costs, PAGA payment to the LWDA, class representative service award, and settlement administration costs. Each participating member will at minimum receive a $320.00 gift card. (Settlement Agreement at ¶1.7.1.) These are substantial payments, particularly given the degree of risk on class certification, liability, and damages, and certainty of delay involved in further litigation and potentially appeals as explained herein. After considering the likelihood of success on each claim, Plaintiff's counsel determined that the settlement amount of $ 1,350,000 was fair and reasonable.

6. The Extent of Discovery Completed and Stage of the Proceedings

Plaintiff has conducted and exhaustive review of this matter. Specifically, Plaintiff's counsel propounded and responded to discovery; filed motions to compel, opposed demurrers and removal by filing a motion for remand, took depositions and interviewed potential class members. (Gomez Decl. ¶ 16 (a) – (c)). Plaintiff counsel also hired an expert to review a sample of the records (*Id.* at 15).

A review of this data, coupled with the putative class member interviews, demonstrates that the extent and breadth of the evidence sought and provided were sufficient to assess the class damages and the strengths and weakness of the class claims asserted. In sum, Plaintiff has conducted extensive independent investigation and the parties have exchanged a wealth of evidence in order to effectively evaluate the strengths and weakness of the claims and defenses for purposes of mediation, which weighs in favor of settlement.

7. The Experience and Views of Plaintiff's Counsel

Plaintiff 's Counsel litigation experience is listed in the accompanying Declaration of Jessica Gomez and Samantha Bigonger. Counsel has dedicated over two years on this matter and has other current and pending PAGA/class claims. Counsel is well-versed in class and representative action litigation. Plaintiff 's counsel has diligently and aggressively pursued this action since 2023, including opposing a motion for remand, opposing a demurrer, propounding and responding to discovery, communicating with experts, and preparing this matter for mediation.

After weighing the strengths and weakness of both the claims and defenses asserted as Detailed above, Plaintiff's counsel firmly believes that this is a fair and reasonable Settlement.

8. The Proposed Plan of Allocation Is Fair and Reasonable.

Distribution of class settlements are subject to the same standard of review as class action settlements; they must be " fair, adequate and reasonable. " (See, e.g., Officers for Justice v. Civil Service Comm 'n (9th Cir. 1982) 688 F.2d 615, 624- 25, 629- 30.) Here, the proposed plan of distribution compensates Class Members based on a pro rata basis based on each Participating Class Member 's proportionate workweeks worked during the Class Period, as described above. Participating Class Members, who are also Aggrieved Employees, shall receive a share of the PAGA Payment based on their proportionate number of workweeks in the PAGA Period. (Gomez Decl. at ¶ ¶12-14, Settlement Agreement 1.7)

The proposed payment will be as follows:

Ten percent (10%) of the Individual Settlement Payments shall be allocated for payment of disputed wages to Participating Class Members. For this portion of the Individual Settlement Payments, Participating Class Members shall receive a W-2 form.

Fifty percent (50%) of the Individual Settlement Payments shall be allocated for disputed penalties. This portion of the Individual Settlement Payments consists of other income, not wages, for which the Participating Class Members shall receive a 1099 form as and if required by law.

Forty (40%) of the Individual Settlement Payments shall be allocated for disputed interest. This portion of the Individual Settlement Payments consists of other income, not wages, for which the Participating Class Members shall receive a 1099 form as and if required by law.

Accordingly, the Wage Portion will be reduced by applicable payroll tax withholding and deductions, and the Class Members will receive a Form W-2. (Id.) The Gross Settlement Amount does not include required Employer Payroll Contributions on the wage portion of Class Member Settlement Shares, which Defendants shall pay separately. (Id. at § 43.) The Proposed Notice Fairly Apprises Class Members as to the Settlement.

This proposed distribution method provides a simple, readily determinable, and fair method for distribution, while also allowing for a distribution that corresponds closely to the alleged damages and likely recoveries. Further, this method will allow Class Members to review and confirm for themselves the number of months of employment. The formula employed in the Settlement is commonly used in wage -and-hour cases, and is appropriate in this case, where the vast majority of workers experience the same working conditions and have similar claims that roughly correlate with the above formula.

Plaintiff requests that the Court approve the proposed plan and form of Class Notice. (See Exhibit 2 to Bronski Decl.) The standard for determining the adequacy of notice is whether the notice has " a reasonable chance of reaching a substantial percentage of the class members." (Cartt v. Superior Court (1975) 50 Cal.App.3d 960, 974.)

Following preliminary approval of the Settlement by the Court, the Settlement Administrator will mail a Class Notice Packet to each of the approximately 1,100 Class Members detailing the terms of the Settlement and how a Class Member can request exclusion from the Settlement or object to the terms of the Settlement included in the Class Notice Packet will be an estimate of the Class Member's respective share of the Settlement, as well as a Class Member

Settlement Administrator, in addition to mailing of the Notice will publish the Class Notice, the complaint, the Settlement Agreement and the Court 's preliminary approving the Settlement on Settlement on a website designed for this Settlement, with the URL for such website appearing in the mailed Class Notice. (Settlement at §2.40.)

With respect to the contents of the Notice, the "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members. " (Trotsky v. L.A. Fed. Sav. & Loan Ass 'n (1975) 48 Cal.App.3d 134, 151- 52.) Here, the Notice clearly explains the proposed Settlement and the option to request exclusion from the Settlement or contest it at the Final Approval Hearing. (Settlement at § 6.3.3.)

In short, the proposed Class Notice should be approved because it describes the proposed Settlement with enough specificity to allow Class Members to make an informed choice regarding whether to participate in the Settlement.

a) <u>Apex Is Well- Qualified as the Settlement Administrator</u>.

After seeking bids from several experienced and known class action settlement administrators, Plaintiff 's counsel has chosen to propose Apex Class Action Administration Solutions ("Phoenix") to administer the settlement. Apex provided a bid not to exceed $11,950 to administer this Settlement. (Bronski Decl. at ¶ 36.) The Settlement Agreement allocated $12,000 to Settlement Administrators ' fees and expenses. (Settlement at § 2.39.)

B. The Proposed Settlement Class Should Be Certified for Settlement Purposes.

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever " the question [in a case] 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." (Code Civ. Proc. § 382; see, e.g., Fireside Bank v. Sup. Court (2007) 40 Cal.4th 1069 , 1078.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (See Sav-on Drug Stores, Inc. v. Sup. Court (2004) 34 Cal.4th 319, 340.)

The California Supreme Court has identified three certification requirements: (1) "the existence of an ascertainable and sufficiently numerous class "; (2) " a well -defined community of interest "; and (3) "substantial benefits from certification that render proceeding as a class superior to the alternatives. " (Fireside Bank v. Superior Court (2007)40 Cal.4th 1069.) The "community of interest " requirement includes three additional requirements: (1) common questions of law or fact predominate over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent the class. (Id., citing Fireside Bank, 40 Cal.4th 1069 at 1089.) Class certification for settlement purposes is proper in this case as the proposed settlement class satisfies each of the requirements under Code of Civil Procedure § 382.1

1. The Proposed Class is Ascertainable and Sufficiently Numerous.

a) Ascertainability

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

Here, the proposed settlement class is ascertainable as Defendants have agreed to provide a class list to the settlement administrator containing the name, employee identification number, last known address, Social Security numbers, the end date for each C lass Member 's employment, and the number of workweeks worked by the Class Member. (Settlement at §6.3.3)

b) Numerosity

In California state court, there is no set number that is required as a matter of law to maintain a class action. (See, e.g., Rose v. City of Hayward, supra, 126 Cal.App.3d at 934.) Here, the proposed Class contains approximately 1,110 Class Members, so there is no question that the proposed Class is sufficiently numerous.

2. There Is a Well -Defined Community of Interest.

a) Questions of Law and Fact Predominate.

A court must determine whether " the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants." (Collins v. Rocha (1972) 7 Cal.3d 232, 238.) As a general matter, if the defendant 's liability can be determined by facts common to all members of the class, a class will be certified even if the members must individually prove their damages. (Hicks v. Kaufman & Broad Home Corp. (2001) 89 Cal.App.4th 908, 916, 107.)

For settlement purposes only, Defendants do not oppose Plaintiff's contentions regarding provisional certification of a class.

Here, there are questions of law and fact common to the proposed Class that predominate over any questions affecting only individual Class Members. These common questions include:

1. Whether the claims are suitable for class resolution, including but not limited to questions as to whether the proposed class is ascertainable, whether there are common issues of law and fact, and whether the class representative is typical of the class and can adequately represent the class, and whether the class action is a superior means of resolving the litigation;
2. Whether Defendants committed any of the alleged violations: failure to provide meal and rest breaks; failure to provide meal and rest break premiums for missed breaks; failure to pay minimum wage; failure to pay overtime wages; failure to pay reporting time pay; failure to timely pay wages; and failure to provide legally-complaint wage statements;
3. Whether the alleged violations of law were class-wide violations;
4. Whether Plaintiff and similarly situated employees are "aggrieved employees"

under the Private Attorneys General Act;

5. Whether Defendants Comoto Holdings, Inc. and/or Comoto Holdings, LLC were joint employers along with Cycle Gear, Inc. of Plaintiff or any class member;
6. Whether Defendants committed any violation of the Private Attorneys General Act; and
7. Whether Defendants accurately calculated the regular rate of pay for its sales and key holders for missed meal and rest premiums as well as applicable overtime.

As the California Supreme Court has emphasized, " [c]aims alleging that a uniform policy consistently applied to a group of employees is in violation of the wage and hour laws are of the sort routinely, and properly, found suitable for class treatment." (Brinker Rest. Corp. v. Sup. Court (2012) 53 Cal.4th 1004, 1033.) Moreover, a class of similarly situated employees may be certified based on common questions of fact or law, even if each employee has to establish the amount of his or his damages. (See Bell v. Farmers Ins. Exch . (2004) 115 Cal.App.4th 715, 741; Sav- On Drug Stores, supra, 34 Cal.4th at p. 340.)

Because the Class Members worked in the same capacity for the same employer and were subject to the same employment policies and practices, the questions of fact and claims regarding the status of these employees are the same for each member of the class. The evidence reviewed by Plaintiff 's counsel demonstrates that common pay, meal, rest, and reimbursement policies applied to the proposed Class, and certification for settlement purposes is therefore appropriate.

b) <u>The Proposed Class Representatives ' Claims Are Typical</u>.

A putative class representative' s claim must be " typical, " but not necessarily identical to the claims of other class members. The test of typicality " is whether other members have the same or similar injury, whether the action is based on conduct, which is not unique to the named Plaintiff, and whether other class members have been injured by the same course of conduct." (Seastrom v. Neways, Inc. (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the representative is similarly situated so that he or she will have the motive to litigate on behalf of all class members. (See, e.g., Classen v. Weller (1983) 145 Cal.App.3d 27, 45.)

Here, the typicality requirement is met because Plaintiff and all other class members claim the same injury and seek the same relief, based on the same policies and practices.

c) <u>The Proposed Class Representatives and Counsel Are Adequate.</u>

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

The named Plaintiff in this action has devoted significant time and effort to prosecuting the claims alleged, including gathering, organizing, and reviewing documents with counsel, assisting counsel with investigating the case, responding to discovery, and assisting counsel in preparing for and participating actively in mediation to resolve the claims and sitting for two sessions of depositions.

Plaintiff Isin al-Otat[3] believes the Settlement is fair and reasonable and in the best interest of the Class. Plaintiff voluntarily signed the Settlement agreement via docusign. Plaintiff is capable of fairly representing and adequately protecting the interests of the proposed Class Members. Plaintiff's interests in this litigation are coextensive with the interests of the proposed Settlement Class. The members of the proposed Settlement Class all worked for Defendants during the relevant period incurred the same type of alleged damages about Defendants' alleged violations of the law. This demonstrates Plaintiff's commitment to bringing about the best possible results for the proposed Class. As discussed above, Plaintiff's counsel is also qualified to represent the Settlement Class.

C. A Class Action Is Superior to the Alternatives

Class certification is appropriate where common questions of law and fact predominate over individual questions, and where class-wide treatment of a dispute is superior to individual litigation. (See Sav- On Drug Stores , 34 Cal.4th at 326.) The test is whether the proposed class is sufficiently cohesive to warrant adjudication by representation. (See Hanlon v. Chrysler Corp. (9th Cir. 1998) 150 F.3d 1011, 1022.) Here, the Settlement Class in this case is sufficiently cohesive, since all members share a " common nucleus of facts and potential legal remedies." (See

[3] Plaintiff filed a separate lawsuit for wrongful termination that has been resolved. Plaintiff will present this matter to the Court separately given the confidentiality of the agreement.

id.) Plaintiff and Class Members seek unpaid wages owed for regular rates of meal and rest breaks that were never paid, overtime and statutory and civil penalties as a result of Defendants ' alleged policies and practices. The Settlement Class Members share many, if not all, potential legal remedies in common.

Furthermore, particularly in the settlement context, class resolution is superior to other available methods for the fair and efficient adjudication of the controversy. (See Hanlon, 150 F.3d at 1023; Dunk , 48 Cal.App.4th at 1807 n.19; Starbucks , 2008 WL 4196690, at *4 ["as the parties have already agreed on a settlement, ' the desirability of concentrating the litigation in one forum is obvious '" (citation omitted)].) The superiority requirement involves a " comparative evaluation of alternative mechanisms of dispute resolution. " (Hanlon, 150 F.3d at 1023.) Here, the alternative methods of resolution are individual claims for a relatively small amount of damages. (See id.) These claims "would prove uneconomic for potential plaintiff s" because "litigation costs would dwarf potential recovery. " (Id.)

"[T]he alternative to a class action is potentially [111] individual cases seeking damages unlikely to cover the costs of litigation, and thus no tangible alternative remedy exists. " (Starbucks , 2008 WL 4196690, at *4.) A large number of repetitive individual cases would waste judicial resources and could lead to inconsistent adjudications of similar monetary issues and claims. Many class members with relatively small claims would likely decide not to bother pursuing their claims at all. Aside from class treatment, a group -wide adjudication of unlawful conduct is not available. Rather than having a multiplicity of proceedings, all involving the same and evidence, a class action allows these matters to be resolved once on behalf of all claimants. For all these reasons, the Settlement Class should be certified.

V. CONCLUSION

The arms -length settlement of this action avoids further litigation and makes a $ 1,350,000 settlement fund available to 1100 of Defendants ' current and former workers. For all the reasons set forth herein, Plaintiff and the putative Class respectfully request that the Court conditionally certify the proposed Settlement Class, grant preliminary approval of the Settlement, approve the proposed Class Notice and notice procedures, appoint the named Plaintiff as Class Representatives, approve Law Office of Jessica Gomez, Esq. and Bigonger & Bigonger as Class Counsel, and schedule a Final Approval hearing.

DATED: October 14, 2025

Law Office of Jessica Gomez

Jessica P. Gomez, Esq.
Attorney for Plaintiff:
Isin al-Otat