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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

KIANA MATHEWS, individually, and on
behalf of other members of the general public
similarly situated;

Plaintiff,

v.

PINTEREST, INC., a Delaware corporation;
MAGNIT, LLC; and DOES 1 through 100,
inclusive;

Defendants.

Case No.: CGC-21-589584

Assigned for All Purposes to:
Honorable Ethan P. Schulman
Department 304

CLASS ACTION

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

[Declaration of Proposed Class Counsel
(Douglas Han); Declaration of Proposed
Named Representative (Kiana Mathews);
Declaration of Proposed Settlement
Administrator (Julie Green); Declaration of
Dustin Erwin; Declaration of Adam Mahoney;
and [Proposed] Order filed concurrently
herewith]

Hearing Date: October 31, 2023
Hearing Time: 9:00 a.m.
Hearing Place: Department 304

Complaint Filed: February 2, 2021
FAC Filed: December 27, 2021
SAC Filed: July 10, 2023
Trial Date: None Set

1 **PLEASE TAKE NOTICE** that on October 31, 2023, at 9:00 a.m., or as soon as the matter
2 may be heard, before the Honorable Ethan P. Schulman in Department 304 of the San Francisco
3 County Superior Court located at 400 McAllister St., San Francisco, California 94102, Plaintiff
4 Kiana Mathews (“Plaintiff”) will and hereby does move for an order:

- 5 • Granting Preliminary Approval of the proposed class action settlement described
6 herein and as set forth in the Joint Stipulation of Class and PAGA Action
7 Settlement and Release (“Settlement Agreement,” “Settlement,” or “Agreement”),
8 attached as **Exhibit 2** to the Declaration of Douglas Han, including, and not limited
9 to, the means of allocation and distribution of funds;
- 10 • Conditionally certifying the Class for settlement purposes only;
- 11 • Appointing Plaintiff as the named representative;
- 12 • Appointing Justice Law Corporation as Class Counsel;
- 13 • Approving the Notice of Class and PAGA Action Settlement and Release (“Class
14 Notice”) attached as **Exhibit A** to the Settlement Agreement;
- 15 • Directing the mailing of the Class Notice by first-class mail and email to Class
16 Members at their last known address and email address;
- 17 • Approving the deadlines for the notice and settlement administration process;
- 18 • Approving CPT Group Class Action Administrators as the Settlement
19 Administrator; and
- 20 • Scheduling a hearing to consider whether to grant final approval of the Settlement
21 Agreement, at which time the Court will also consider whether to grant final
22 approval of the requests for the Attorneys’ Fees, Litigation Expenses,
23 Enhancement Payment, Settlement Administration Costs, and Private Attorneys
24 General Act of 2004 (“PAGA”) Penalties.

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1 This motion is based upon the following memorandum of points and authorities;
2 Declaration of Proposed Class Counsel (Douglas Han); Declaration of Proposed Named
3 Representative (Kiana Mathews); Declaration of Dustin Erwin; Declaration of Adam Mahoney;
4 Declaration of Proposed Settlement Administrator (Julie Green); [Proposed] Order filed
5 concurrently with this motion; pleadings and other records on file with the Court in this matter;
6 and such documentary evidence and oral argument as may be presented at the hearing on this
7 motion.

8
9 Dated: October 4, 2023

JUSTICE LAW CORPORATION

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11 By: 
12 Douglas Han
13 *Attorneys for Plaintiff*
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1 **I. INTRODUCTION**

2 This motion seeks preliminary approval of a non-reversionary \$3,350,000 proposed wage-
3 and-hour class action and PAGA settlement in this lawsuit brought by Plaintiff Kiana Mathews
4 (“Plaintiff”) on behalf of herself and any current or former hourly-paid or non-exempt employee
5 (whether hired directly or through a staffing agency) of Defendant Pinterest, Inc. (“Defendant
6 Pinterest) within the state of California at any time from August 7, 2016, through August 7, 2023
7 (“Class Period”), and shall specifically include all contingent workers of Defendant Magnit, LLC,
8 f/k/a PRO Unlimited, Inc. (“Defendant Magnit”) who were its employees of record and were
9 assigned to provide services to Defendant Pinterest during the Class Period (“Class” and “Class
10 Members”). At the time of this filing, the number of Class Members is estimated to be 1,042,
11 which was confirmed by Defendant Pinterest and Defendant Magnit (collectively, “Defendants”).
12 (Declaration of Douglas Han in Support of Plaintiff’s Motion for Preliminary Approval (“Han
13 Decl.”), ¶¶ 8-9.) Furthermore, for purposes of the PAGA claim covered by the Settlement, the
14 relevant time period is March 9, 2022, through August 7, 2023 (“PAGA Period”). At the time of
15 this filing, the number of all current and former hourly-paid or non-exempt employees (whether
16 hired directly or through a staffing agency) of Defendant Pinterest within the State of California
17 during the PAGA Period, including all contingent workers of Defendants Magnit who were its
18 employees of record and were assigned to provide services to Defendant Pinterest during the
19 PAGA Period (“Aggrieved Employees”), is 293. Defendants are updating the class roster and
20 compiling contact information to assist the Settlement Administrator in preparing for distribution
21 of the Notice of Class and PAGA Action Settlement And Release (“Class Notice”).

22 **II. BACKGROUND**

23 On February 2, 2021, Plaintiff filed a wage-and-hour class action lawsuit against Defendant
24 Pinterest in the Superior Court of California, County of San Francisco, alleging eight (8) causes of
25 action. (Han Decl., *supra*, at ¶ 10.)

26 On December 27, 2021, Plaintiff filed a First Amended Complaint that updated the factual
27 allegations underlying the causes of action. (Han Decl., *supra*, at ¶ 11.)

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1 After engaging in discovery, investigations, and negotiations, the Parties remotely attended
2 mediation with mediator Mark Rudy on March 9, 2023, resulting in a settlement via a mediator’s
3 proposal. (Han Decl., *supra*, at ¶ 12.)

4 In line with the settlement, on May 15, 2023, Plaintiff provided written notice to the
5 California Labor and Workforce Development Agency (“LWDA”) and Defendants. (Han Decl.,
6 *supra*, at ¶ 13; Exhibit 4.)

7 Pursuant to the settlement, the Parties also stipulated to file a Second Amended Complaint
8 that added Defendant Magnit as a defendant and added a cause of action for violation of Labor
9 Code sections 2698, *et seq.* (PAGA). (Han Decl., *supra*, at ¶ 14.) Plaintiff subsequently filed her
10 Second Amended Complaint on July 10, 2023. (*Id.* at ¶ 14; Exhibit 5.)

11 **III. INVESTIGATION/ LITIGATION HISTORY**

12 **a. Discovery, Investigation, and the Parties’ Staunchly Conflicting Positions**

13 Plaintiff propounded one (1) set of form interrogatories, one (1) set of special
14 interrogatories, one (1) set of requests for admission, and one (1) set of requests for production of
15 documents. (Han Decl., *supra*, at ¶ 16.) Defendants propounded one (1) set of special
16 interrogatories and one (1) set of requests for production of documents. (*Ibid.*) The Parties met and
17 conferred extensively on the responses to the formal discovery requests, resulting in supplemental
18 responses and motions to compel. (*Ibid.*) The Parties also prepared for and attended Plaintiff’s
19 deposition on February 10, 2023. (*Ibid.*) The Parties then met and conferred and agreed to engage
20 in an informal exchange of information and then eventually attended mediation. (*Ibid.*)

21 The Parties conducted significant investigation and discovery of the relevant facts and law.
22 (Han Decl., *supra*, at ¶ 17.) Defendants produced documents relating to its wage-and-hour
23 policies, practices, and procedures. (*Ibid.*) Defendants also assembled and produced a random
24 sampling of time and pay records for twenty-eight percent (28%) of the Class Members along with
25 information relating to the size and scope of the Class. (*Ibid.*) Several putative class members were
26 also located and interviewed to attain a better understanding of the extent and frequency of the
27 day-to-day alleged violations. (*Ibid.*)

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1 Based upon the information provided by Defendants and interviews with putative class
2 members, Plaintiff contends – and Defendants deny – Defendants: (1) failed to provide employees
3 with legally mandated rest and meal breaks; (2) failed to pay employees for all hours worked; (3)
4 failed to reimburse employees for necessary business expenses; (4) issued noncompliant wage
5 statements; and (5) are liable for waiting time penalties. (Han Decl., *supra*, at ¶¶ 19-25.)

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

7 **i. The Parties Attended Mediation Which Led to the Settlement**

8 The Parties remotely attended mediation with an experienced mediator on March 9, 2023.
9 (Han Decl., *supra*, at ¶ 26.) Under the auspices of the mediator, the Parties reached a settlement,
10 the terms of which are memorialized in the Agreement. (*Id.* at ¶ 26; Exhibits 2, 6.)

11 **ii. The Settlement Was Reached as a Result of Arm’s-length Negotiations**

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

16 Plaintiff and Class Counsel believe in the merits of the case but also recognize the expense
17 and length of additional proceedings necessary to continue the litigation through trial and through
18 any possible appeals. (Han Decl., *supra*, at ¶ 30.) Plaintiff and Class Counsel considered the
19 uncertainty and risk of further litigation, potential outcome, and difficulties and delays inherent in
20 such litigation. (*Ibid.*) Plaintiff and Class Counsel believe the Settlement is a fair, adequate, and
21 reasonable settlement, and is in the best interests of the Class. (*Ibid.*)

22 **iii. The Settlement Is the Result of Thorough Investigation and Discovery**

23 The Parties thoroughly investigated and evaluated the factual strengths and weaknesses of
24 the claims and defenses before reaching the Settlement. (Han Decl., *supra*, at ¶ 31.) The Settlement
25 was only possible following significant investigation and evaluation of the relevant policies and
26 practices and the data produced. (*Ibid.*) Furthermore, this case has also reached the stage where
27 the Parties understand “the strength of the case; the reasonableness of the settlement in light of the
28 attendant risks of litigation, and in light of the best possible recovery” sufficient to support the

Settlement’s reasonableness, adequacy, and fairness. (Han Decl., *supra*, at ¶ 31; *Boyd v. Bechtel Corp.* (N.D.Cal. 1979) 485 F.Supp. 610, 617.)

c. Terms of the Proposed Settlement

i. Deductions from the Settlement

The Parties agreed (subject to the Court’s approval) this action be settled for the non-reversionary sum of \$3,350,000 (“Gross Settlement Amount”), which includes: (a) Attorneys’ Fees of no more than \$1,116,666.67 (1/3 of the Gross Settlement Amount); (b) Litigation Expenses of no more than \$30,000¹; (c) Enhancement Payment of up to \$10,000; (d) Settlement Administration Costs not to exceed \$20,000; and (e) PAGA Penalties not to exceed \$335,000. (Han Decl., *supra*, at ¶ 27.)

ii. Calculation of Settlement Payments

After all Court-approved deductions from the Gross Settlement Amount, it is estimated \$1,838,333.33 (“Net Settlement Amount”) will be paid to Class Members who do not timely opt out of the non-PAGA portion of the Settlement by submitting an opt-out request to the Settlement Administrator by the opt-out deadline (“Settlement Class Members”) – with a gross *average* Individual Class Settlement Payment estimated at \$1,764.24. (Han Decl., *supra*, at ¶ 28.)

Settlement Class Members will receive a proportionate share of the Net Settlement Amount using the formula set forth in the Settlement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § 7.8.) The portion of the PAGA Penalties that is paid to each Aggrieved Employee shall be determined using the formula set forth in the Settlement. (*Id.* at § 7.5.3.) Aggrieved Employees’ portion of the PAGA Penalties will be allocated as hundred percent (100%) penalties. (*Id.* at § 7.6.)

Defendants’ corporate payroll tax obligation shall be calculated by the Settlement Administrator and paid separately from the Gross Settlement Amount. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § 7.7.)

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¹ (See Han Decl., *supra*, at ¶ 69; Exhibit 3.)

1 **iii. The Allocation of 50% to Wages and 50% to Interest and Penalties Is**
2 **Justified Under the Claims of this Action**

3 Fifty percent (50%) of Individual Class Settlement Payments will be treated as wages, and
4 fifty percent (50%) will be treated as interest and penalties. (Han Decl., *supra*, at ¶ 26; Exhibit 2,
5 *supra*, at § 7.9.)

6 The allocation of wages and penalties indicated above was based on the estimated
7 exposure Plaintiff could expect to receive for meal and rest break premiums and unpaid wages.
8 (Han Decl., *supra*, at ¶ 50.) First, Plaintiff added the realistic exposure for rest break premiums
9 and meal break premiums (\$669,188.98 + \$521,723.35 = \$1,190,912.33). (*Ibid.*) Plaintiff then
10 added the \$1,190,912.33 to the low-end realistic exposure for unpaid wages due to off-the-clock
11 work (\$1,190,912.33 + \$1,246,227.67 = \$2,437,139.99). (*Ibid.*) The realistic exposure of
12 \$2,437,139.99 Plaintiff can expect to receive if she were to prevail at trial for meal and rest break
13 premiums and low-end unpaid wages due to off-the-clock work is about forty-seven percent
14 (47.18%) of the low end total realistic exposure ($\$2,437,139.99 \div \$5,166,053.49 = 0.4718 \times 100$
15 = 47.18%). (*Ibid.*) Because this represents about fifty percent (50%) of wages, it means allocating
16 fifty percent (50%) as wages and fifty percent (50%) as interest and penalties pursuant to the
17 Agreement is appropriate. (*Ibid.*)

18 **iv. Notice to the Class**

19 Defendants will provide the Class Information to the Settlement Administrator within
20 thirty (30) calendar days after the Court enters an order granting preliminary approval of the
21 Settlement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § 8.5.) Within ten (10) calendar days
22 of receiving the Class Information, the Settlement Administrator will send the Class Notice to
23 Class Members by first-class mail at their last known address and by email at their last known
24 email address. (*Id.* at § 8.6.) The Parties have deemed that the Class's language needs will be met
25 without a translated Class Notice. (Declaration of Adam Mahoney in Support of English-Only
26 Class Notice, ¶¶ 3-5; Declaration of Dustin Erwin in Support of Plaintiff's Motion for Preliminary
27 Approval of Class Action Settlement, ¶ 2.)

28 ///

1 **v. Distribution of Funds**

2 The Gross Settlement Amount will be funded in the manner and timeframe set forth in the
3 Settlement Agreement. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at §§ 8.8.2., 8.8.3.)

4 Settlement Checks will remain negotiable for one hundred eighty (180) calendar days from
5 the original date of mailing. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § 8.8.4.) Funds
6 represented by Settlement Checks returned as undeliverable and those settlement checks remaining
7 uncashed for more than one hundred eighty (180) calendar days after the original date of mailing
8 shall be redistributed to participating Class Members who cashed their checks. (*Ibid.*) Funds
9 represented by these redistributed Settlement Checks that remain uncashed for more than one
10 hundred eighty (180) calendar days after the redistribution date shall be deposited to the Unclaimed
11 Property Fund in the name of the individual who the Settlement Check was made out to. (*Ibid.*)

12 **vi. Release of Claims**

13 When the Court’s final approval order and judgment becomes final and upon funding of
14 the Gross Settlement Amount, the Settlement Class Members shall release the Released Parties
15 from the Class Released Claims. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § 9.1.)

16 When the Court’s final approval order and judgment becomes final and upon funding of
17 the Gross Settlement Amount, the LWDA and Plaintiff, acting as a proxy of California, shall
18 release, and they and all Aggrieved Employees shall be barred from alleging any of the PAGA
19 Released Claims against Released Parties. (Han Decl., *supra*, at ¶ 26; Exhibit 2, *supra*, at § 9.2.)

20 As consideration for the Enhancement Payment, upon the Effective Date, Plaintiff, on
21 behalf of herself and each of her respective heirs, representatives, successors, assigns, and
22 attorneys, shall provide a general release for the Released Parties. (Han Decl., *supra*, at ¶ 26;
23 Exhibit 2, *supra*, at § 9.4.) Regarding Plaintiff’s Released Claims, Plaintiff expressly waives all
24 rights under Civil Code section 1542. (*Id.* at § 9.5.)

25 With regards to class action releases, ““[A] court may release not only those claims alleged
26 in the complaint and before the court, but also claims which ‘could have been alleged by reason of
27 or in connection with any matter or fact set forth or referred to in’ the complaint.”” (*Amaro v.*
28 *Anaheim Arena Management, LLC* (2021) 69 Cal.App.5th 521, 537.) The scope of the releases in

1 this case are acceptable because they are limited to the scope of the allegations contained in the
2 operative complaint. The released claims are ““based on the identical factual predicate as that
3 underlying the claims in the settled class action.”” (*Amaro v. Anaheim Arena Management, LLC*,
4 *supra*, 69 Cal.App.5th at p. 537.) In other words, the released claims do not ““go beyond the scope
5 of the allegations in the operative complaint”” (*Ibid.*)

6 **d. Counsel for Both Parties Are Experienced in Similar Litigation**

7 The Parties’ counsel are experienced in wage-and-hour employment law and class actions.
8 (Han Decl., *supra*, at ¶¶ 2-7; Exhibit 1.) Class Counsel have prosecuted numerous cases on behalf
9 of employees for Labor Code violations and are experienced and qualified to evaluate the class
10 claims, advantages and disadvantages of settlement versus trial, and viability of the defenses.
11 (*Ibid.*) This experience instructed Class Counsel on the risks and uncertainties of further litigation
12 and guided their determination to endorse the proposed Settlement.² (*Ibid.*)

13 **IV. ARGUMENT**

14 **a. Class Action Settlements Are Subject to Court Review**

15 California Rules of Court, rule 3.769 requires court approval for class action settlements.³
16 “Before final approval, the court must conduct an inquiry into the fairness of the proposed
17 settlement.” (Cal. Rules of Court, rule 3.769(g).) Rule 3.769 further requires a noticed motion for
18 preliminary approval of class settlements:

- 19 (a) A settlement or compromise of an entire class action, or a cause of action in
20 a class action, or as to a party, requires the approval of the court after
21 hearing.
22 ...
23 (c) Any party to a settlement agreement may serve and file a written notice of
24 motion for preliminary approval of the settlement. The settlement
25 agreement and proposed notice to class members must be filed with the
26 motion, and the proposed order must be lodged with the motion.

24 ² The final factor mentioned in *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794 – the
25 number of objectors – is not determinable until the Class Notice has been provided to the Class
26 Members, and they have had an opportunity to respond. This information will be provided to the
27 Court in conjunction with the Motion for Final Approval of Class Action Settlement.

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

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

b. The Proposed Settlement Is a Reasonable Compromise of Claims

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

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

i. The Settlement Amount of \$3,350,000 Is Fair and Reasonable

The Settlement was only possible following significant investigation and evaluation of the relevant policies and procedures and the data produced for the putative class, as referenced in Section III above, which permitted Class Counsel to engage in a comprehensive analysis of liability and potential damages. (Han Decl., *supra*, at ¶ 31.)

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1 This investigation informed the central theories of liability predicated on the alleged: (1)
2 failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal and
3 rest breaks and consistently pay applicable premiums; (4) failure to timely pay wages; (5) failure
4 to issue compliant wage statements; (6) failure to reimburse business expenses; (7) violation of
5 PAGA; and (8) violation of Business & Professions Code sections 17200, *et seq.* (Han Decl.,
6 *supra*, at ¶ 32.) Defendants vehemently deny the theories of liability. (*Id.* at ¶ 33.)

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

13 **ii. The PAGA Penalties of \$335,000 Is Reasonable**

14 The provisions of the Labor Code potentially triggering PAGA penalties in this case
15 include, but are not limited to, Labor Code sections 201, 202, 203, 204, 226(a), 226(g), 226.3,
16 226.7, 226.7(b), 246(l), 510, 512(a), 558, 1174(d), 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
17 2800, and 2802. (Han Decl., *supra*, at ¶ 44.) Defendants asserted, regardless of the results of the
18 underlying causes of action, PAGA penalties are not mandatory but permissive and discretionary.
19 (*Ibid.*) Defendants maintained they had a strong argument it would be unjust to award maximum
20 PAGA penalties given the law's current unsettled state concerning PAGA penalties. (Han Decl.,
21 *supra*, at ¶ 44; *Thurman v. Bayshore Transit Mgmt.* (2012) 203 Cal.App.4th 1112 [reducing
22 penalties by 30% under this authority].) The maximum potential PAGA penalties could range
23 anywhere from **\$29,300** (293 employees x \$100 penalty for initial violation) on the low end to
24

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

1 **\$175,800** (293 employees x \$100 penalty for initial violation x 6 theories of recovery) on the high
2 end. (Han Decl., *supra*, at ¶¶ 45-47.)

3 Plaintiff recognized the risk that any PAGA award could be reduced. (Han Decl., *supra*, at
4 ¶ 48.)⁵ Many of the causes of action brought were duplicative of the statutory claims. (*Ibid.*) Thus,
5 allocating \$335,000 to PAGA civil penalties was reasonable based on a rate of **\$36.80** per pay
6 period [$\$335,000 \div 9,103$ pay periods in PAGA date range] given that Defendants are also paying
7
8
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12
13

14 ⁵ Class Counsel are aware of several court decisions assessing much lower amounts of civil
15 penalties against employers than were sought by the plaintiffs. (See e.g. *Carrington v. Starbucks*
16 *Corp.* (2018) 30 Cal.App.5th 504, 529 [affirming a rate of \$5 per violation and total PAGA
17 penalties of \$150,000 while the plaintiff requested a rate of \$25 to \$75 per violation and total
18 PAGA penalties of \$70,000,000]; *Morales v Bridgestone Retail Operations LLC*, Orange County
19 Superior Court No. 30-2017-00900244 (Aug. 2, 2018) [of \$7 million PAGA penalties requested,
20 the court awarded \$425,000]; *Arnold v San Diego Second Chance Program*, San Diego County
21 Superior Court No. 37-2016-00018375 (Dec. 18, 2017) [no PAGA penalties awarded]; *Felczer v*
22 *Apple Inc.*, San Diego County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) [no PAGA
23 penalties awarded]; *In re Taco Bell Wage and Hour Actions* (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-
24 01314-SAB, 2016 U.S. Dist. LEXIS 48557 at *41 [the court declined to award PAGA penalties
25 after trial]; *Allen v American Multi-Cinema*, Alameda County Superior Court No. RG11585502
26 (July 24, 2016) [no PAGA penalties awarded]; *Atempa v Pama*, San Diego County Superior Court
27 (July 31, 2015) [of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00]; *Driscoll*
28 *v Granite Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) [the
court declined to award PAGA penalties]; *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK
(OPx) (C.D. Cal. Aug. 12, 2011) 2011 U.S. Dist. LEXIS 154590 at **8-9 [of \$2,800,000 PAGA
penalties requested, the court awarded \$500,000]; *Thurman v Bayshore Transit Mgmt., Inc.*, *supra*,
203 Cal.App.4th at pp.1119, 1135, disapproved on other grounds in *ZB, N.A. v Superior Court*
(2019) 8 Cal. 5th 175, 196 n.8 [of \$512,000 PAGA penalties requested, the court awarded
\$358,588]; *Aguirre v Genesis Logistics*, No. SACV 12-00687-JVS (ANx) (C.D. Cal. Dec. 30,
2013) 2013 U.S. Dist. LEXIS 189820 at **6-7 (of \$1,800,000 PAGA penalties requested, the court
awarded \$500,000); *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No.
468146 (Aug. 30, 2013) [the court declined to award PAGA penalties after trial awarding wages
to class].)

an additional \$3,015,000 in the class settlement.⁶ (Han Decl., *supra*, at ¶ 48.)⁷ The amount of penalties awarded under PAGA is within the court’s discretion and may be reduced to avoid the imposition of penalties that are “unjust, arbitrary and oppressive, or confiscatory.” (Lab. Code, § 2699, subd. (e)(2).)

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

c. Discount Analysis Justifies the Settlement

Excluding the civil penalties, which could be discretionary, the total estimated potential exposure, assuming certification and prevailing at trial, would be around **\$21,627,024.28** on the low end and **\$23,704,441.09** on the high end. (Han Decl., *supra*, at ¶ 49.)

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⁶ When PAGA penalties are negotiated in good faith and “there is no indication that [the] amount was the result of self-interest at the expense of other Class Members,” such amounts are reasonable. (*Hopson v. Hanesbrands Inc.* (N.D.Cal. Apr. 3, 2009, No. CV-08-0844 EDL) 2009 U.S.Dist.LEXIS 33900, at *24). With respect to a PAGA claim, the trial court’s focus is not the monetary amount which aggrieved employees or the State stand to receive, but instead, whether the total settlement amount achieves the PAGA statute’s objectives, which are “to incentivize private parties to recover civil penalties for the government that otherwise may not have been assessed and collected by overburdened state enforcement agencies” (*Ochoa-Hernandez v. CJADERS Foods, Inc.* (N.D. Cal. Apr. 2, 2010), 2010 WL 1340777, at *12 (citing *Arias v. Superior Court* (2009) 46 Cal.4th 969, 986) and to “benefit the public by augmenting the state’s enforcement capabilities, encouraging compliance with Labor Code provisions, and deterring noncompliance.” *O’Connor v. Uber Techs., Inc.* (N.D. Cal. 2016) 201 F.Supp.3d 1110, 1132–33, 1135; see *Arias*, *supra*, 46 Cal.4th at 980; *Williams v. Superior Court* (2017) 3 Cal.5th 531, 546. The LWDA has stated it is “not aware of any existing case law establishing a specific benchmark for PAGA settlements[,]” and in approving a settlement of PAGA claims, courts focus on whether the settlement is robust enough to deter future violations. *Ramirez v. Benito Valley Farms, LLC* (N.D. Cal. Aug. 25, 2017, Case No. 16-cv-04708-LHK) 2017 U.S.Dist.LEXIS 13272; *Viceral v. Mistras Group, Inc.* (N.D. Cal., Oct. 11, 2016, Case No. 15-cv-02987-EMC) 2016 U.S.Dist.LEXIS 140759.) Here, the Settlement will provide a significant sum of money to the Aggrieved Employees and to the State of California (to finance state labor law enforcement activities and education), and the fact that Defendants have agreed to pay a substantial sum for settlement of the Labor Code allegations (in the total amount of \$3,350,000) despite the highly-disputed nature of the allegations, confirms that the action and the settlement will have the deterrent effect intended by the statute.

⁷ (*Nordstrom Com. Cases* (2010) 186 Cal.App.4th 576, 579, “[T]rial court did not abuse its discretion in approving a settlement which does not allocate any damages to the PAGA claims”).

Category	Potential Exposure	Certification Risk	Merits Risk	Realistic Exposure
Rest Break Premiums	\$4,461,259.88	70%	50%	\$669,188.98
Meal Break Premiums	\$2,086,893.38	50%	50%	\$521,723.35
Overtime/Minimum Wage: Off-the-Clock Work	\$4,154,092.22 to \$6,231,509.03	50%	40%	\$1,246,227.67 to \$1,869,452.71
Unreimbursed Business Expenses	\$228,120	20%	70%	\$54,748.80
Wage Statement Penalty	\$893,650	50%	50%	\$223,412.50
Waiting Time Penalty	\$9,803,008.80	50%	50%	\$2,450,752.20
MAXIMUM TOTAL EXPOSURE	\$21,627,024.28 to \$23,704,441.09⁸			\$5,166,053.49 to \$5,789,278.54⁹

Plaintiff estimates the realistic recovery for this case is about **\$5,166,053.49** on the low end and **\$5,789,278.54** on the high end. (Han Decl., *supra*, at ¶ 57.) The Gross Settlement Amount is about fourteen percent (14.13%) of the maximum potential exposure and around fifty-eight percent (57.87%) of the maximum realistic exposure at trial. (*Ibid.*)

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

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⁸ (Han Decl., *supra*, at ¶¶ 35-42.)

⁹ (*Id.* at ¶¶ 51-56.)

1 **d. Conditional Certification of the Class Is Appropriate**

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

7 The Class is ascertainable and numerous as to make it impracticable to join all Class
8 Members, and there are common questions of law and fact that predominate over any questions
9 affecting any individual Class Member. (Han Decl., *supra*, at ¶ 58.) Plaintiff contends, as a former
10 hourly-paid, non-exempt employee of Defendants, that her claims are typical of the Class and
11 Class Counsel will fairly and adequately protect the interests of the Class. (*Ibid.*) Plaintiff also
12 asserts the prosecution of separate actions by individual Class Members would create the risk of
13 inconsistent or varying adjudications. (*Ibid.*)

14 **i. The Proposed Class Is Ascertainable and Sufficiently Numerous**

15 “Ascertainability is required in order to give notice to putative class members as to whom
16 the judgment in the action will be res judicata.” (*Hicks v. Kaufman & Broad Home Corp.* (2001)
17 89 Cal.App.4th 908, 914.) “A class is ascertainable if it identifies a group of unnamed plaintiffs
18 by describing a set of common characteristics sufficient to allow a member of that group to identify
19 himself or herself as having a right to recover based on the description.” (*Bartold v. Glendale*
20 *Federal Bank* (2000) 81 Cal.App.4th 816, 828.) The proposed class must also be sufficiently
21 numerous. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435.)

22 This case involves approximately 1,042 Class Members, meaning the Class is sufficiently
23 numerous. (Han Decl., *supra*, at ¶ 59; *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th
24 1524, 1531, n.5 [finding that a proposed class of “as many as 190 current and former employees”
25 is sufficiently numerous].)

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

27 The community of interest requirement “embodies three factors: (1) predominant common
28 questions of law or fact; (2) class representatives with claims or defenses typical of the class; and

(3) class representatives who can adequately represent the class.” (*Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th at p. 326.) “[T]he community of interest requirement for certification *does not mandate that class members have uniform or identical claims.*” (*Capitol People First v. Department of Developmental Services* (2007) 155 Cal.App.4th 676, 692 (emphasis in original).) Courts focus on the defendant’s internal policies and “pattern and practice . . . in order to assess whether that common behavior toward similarly situated plaintiffs renders class certification appropriate.” (*Ibid.*) The application of these factors is discussed below.

1. Common Issues Predominate

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

Plaintiff asserts common issues of fact and law predominate as to each of the claims alleged. (Han Decl., *supra*, at ¶ 60.) Plaintiff contends all persons employed as hourly-paid, non-exempt hourly employees of Defendant during the Class Period were subject to the same or similar employment practices, policies, and procedures described above. (*Ibid.*)

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

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

Plaintiff is a former hourly-paid, non-exempt employee of Defendants and alleges she and the Class Members were employed by the same company and injured by the common policies and

practices related to the claims detailed above. (Han Decl., *supra*, at ¶ 61; Declaration of Kiana Mathews Re Adequacy In Support of Motion for Preliminary Approval (“Mathews Decl.”), ¶¶ 2-8, 13-16.) Plaintiff seeks relief for these claims and derivative claims on behalf of all Class Members. (*Ibid.*) Thus, the claims arise from the same employment practices and are based on the same legal theories applicable to the Class. (*Ibid.*)

3. Plaintiff Is Adequate to Represent the Class

Plaintiff has proven to be an adequate representative. (Han Decl., *supra*, at ¶ 62; Mathews Decl., *supra*, at ¶¶ 9-12, 17-21.) Plaintiff conducted herself diligently and responsibly in representing the Class, understands her fiduciary obligations, and actively participated in the prosecution of this case. (*Ibid.*) Plaintiff spent time in meetings and conferences with Class Counsel to provide Class Counsel with an understanding of the work environment and requirements. (*Ibid.*) Plaintiff has no interest adverse to the interests of the Class. (*Ibid.*)

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

A class action is superior to other available means for the fair and efficient adjudication of this controversy. Plaintiff contends the joinder of all Class Members is impractical and that class treatment will permit many similarly situated persons to prosecute their common claims for settlement purposes simultaneously in a single forum without the duplication of effort and expense that numerous individual actions would necessitate. A class action is superior to a multitude of individual lawsuits. Given the size and amount of each individual Class Member’s potential claim, Class Members likely have little incentive to litigate their claims on an individual basis because the out-of-pocket expense and personal commitment necessary to litigate each claim outweighs any potential recovery. In sum, class treatment is superior to individual, case-by-case adjudication.

e. The Settlement Is Fair, Reasonable, and Adequate

In deciding whether to approve a proposed class action settlement under Code of Civil Procedure section 382, the Court must find that a proposed settlement is “fair, adequate and reasonable.” (*Dunk v. Ford Motor Co.*, *supra*, 48 Cal.App.4th at p. 1801.) A proposed class action settlement is presumed fair under the following circumstances: (1) the parties reached settlement

1 after arm's-length negotiations; (2) investigation and discovery were sufficient to allow counsel
2 and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
3 percentage of objectors is small. (*Id.* at p. 1802.) All these elements are present herein.

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

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

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

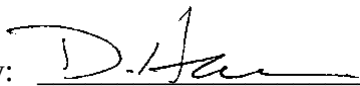
10 The Class Notice meets all these requirements. The Class Notice advises the Class
11 Members of their right to participate in the Settlement, how and when to object to or request
12 exclusion from the Settlement, and the date, time, and location of the Final Approval Hearing.

13 **V. CONCLUSION**

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

18
19 Dated: October 4, 2023

JUSTICE LAW CORPORATION

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21 By: 
22 Douglas Han
23 Attorneys for Plaintiff
24
25
26
27
28

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is manderson@justicelawcorp.com

On October 4, 2023, I served the foregoing document described as

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

for the following case: **Mathews v. Pinterest, Inc.**
LWDA/Court Case No.: **LWDA Case No.: CM-955168-23**
Court Case No.: CGC-21-589584
San Francisco County Superior Court

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

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

[X] BY ELECTRONIC SUBMISSION

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

[X] STATE

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

Executed on October 4, 2023, at Pasadena, California.



Mariah Anderson