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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

QUENTECE BOONE, as an individual and on behalf of all others similarly situated, Plaintiff, vs. CEC EMPLOYEE GROUP, LLC, a Delaware Limited Liability Company; and DOES 1 through 100, Defendants.	CASE NO. 23STCV10680 [*Case assigned for all purposes to the Hon. Kenneth R. Freeman, Dept. 14*] **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT** Date: April 29, 2025 Time: 11:00 a.m. Dept.: 14 Action Filed: May 11, 2023 Trial Date: None Set

PLEASE TAKE NOTICE that pursuant to Rule 3.769 of the California Rules of Court, on April 29, 2025 at 11:00 a.m. in Department 14 of the above-entitled Court, located at 312 North Spring Street, Los Angeles, CA 90012, Plaintiff Quentece Boone, individually and on behalf of a class of similarly situated individuals, will and hereby does move this Court for:

1. Preliminary approval of the proposed Settlement of this lawsuit;
2. Pursuant to California Code of Civil Procedure § 382, provisional certification of the Settlement Class defined as follows:

> **CEC Class** – all individuals who are or previously were employed by Defendant CEC Employee Group, LLC who worked in California as non-exempt employees during the time period of March 2, 2020, to June 3, 2024.
>
> **Coding Dojo Class** – all non-exempt individuals who are or previously were working for Coding Dojo in California as non-exempt employees during the time period of May 11, 2019, to June 3, 2024.

3. Preliminary appointment of Quentece Boone as Class Representative;
4. Preliminary appointment of Fletcher W. Schmidt, Paul K. Haines, and Andrew J. Rowbotham of Haines Law Group, APC as Class Counsel;
5. The scheduling of a hearing to consider whether the Settlement should be finally approved, and to determine whether to approve the Class Representative Service Award, Settlement Administrator costs, payment to the LWDA for its 75% share of Private Attorneys General Act civil penalties, and attorneys' fees and costs to Class Counsel;
6. Appointment of Apex Class Action LLC as the third-party Settlement Administrator for mailing notices; and
7. Approval of the proposed Class Notice and entry of the proposed Order instructing the Class Notice to be disseminated to the proposed Settlement Class as provided in the Settlement.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the declarations of Fletcher W. Schmidt, Paul K. Haines, Andrew J. Rowbotham, Quentece Boone, Sean Hartranft, and the exhibits attached thereto, the pleadings and other papers filed in this action, and on any further oral or documentary evidence or argument presented at the time of hearing.

Dated: April 7, 2025

Respectfully Submitted,
HAINES LAW GROUP, APC

By: ______________________________
Andrew J. Rowbotham
Attorneys for Plaintiff

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Quentece Boone ("Plaintiff") filed this putative class action (the "Lawsuit") on behalf of all individuals who are or were employed by CEC Employee Group, LLC ("Defendant") in California as non-exempt employees during the period from March 2, 2020 through June 3, 2024 (the "CEC Class Period"), and all non-exempt individuals who are or were employed by Coding Dojo in California during the period from May 11, 2019 through June 3, 2024 (the "Coding Dojo Class Period"). Plaintiff and Defendant are referred to collectively as the "Parties."

Through this Motion, Plaintiff respectfully requests that the Court preliminarily approve the non-reversionary class action settlement[1], which fully resolves the Lawsuit on behalf of approximately 201 Class Members who worked a combined total of 18,000 workweeks.[2] Defendant has agreed to pay a Gross Settlement Amount ("GSA") of $540,000.00, which represents a substantial recovery for Class Members, who will release only those claims that were asserted, or that could have been asserted, based on the same operative facts alleged in the Lawsuit or in Plaintiff's May 11, 2023 letter to the California Labor and Workforce Development Agency ("LWDA").

After deductions for Plaintiff's Service Award, Settlement Administrator costs, the PAGA Payment, and Class Counsel's attorneys' fees and costs, the Net Settlement Amount, estimated at approximately $272,510.00, will be distributed to the Settlement Class. Class Members are not

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[1] The Class Action and PAGA Settlement Agreement (the "Settlement" or "Settlement Agreement"), based on this Court's model agreement of the same name, is attached to the Declaration of Andrew J. Rowbotham as Exhibit 1. The proposed Notice of Proposed Class Action Settlement ("Class Notice") is attached as Exhibit A to the Settlement Agreement.

[2] The Settlement also includes a release of civil penalties under the Private Attorneys General Act ("PAGA") on behalf of all current and former non-exempt employees of Defendant who worked in California at any time between May 11, 2022 and June 3, 2024 (the "PAGA Period"). See Settlement, § 1.4. These individuals, referred to as PAGA Aggrieved Employees, will release all civil penalty claims under PAGA that were asserted in the Lawsuit, described in Plaintiff's May 11, 2023 letter to the LWDA, or that could have been asserted based on the same facts during the PAGA Period. *See id*., § 5.4; Rowbotham Decl., Ex. 2 (Plaintiff's LWDA Letter).

required to submit a claim form to receive their share of the Settlement, and all Class Members who do not opt out will automatically receive an Individual Class Payment. The highest estimated payment is $4,001.20, and the average payment is $1,355.77.

This Settlement is well within the range of possible approval, given the legal and factual challenges faced by Plaintiff, the risks and expense of further litigation, and the meaningful monetary relief secured for the Class. For the reasons set forth herein, Plaintiff respectfully requests that the Court grant preliminary approval.

II. SUMMARY OF THE LITIGATION

Defendant owns and operates online for-profit universities, including Trident at American InterContinental University ("Trident"). Declaration of Andrew J. Rowbotham ("Rowbotham Decl."), ¶ 9. Plaintiff Quentece Boone ("Plaintiff") worked for Defendant as a Senior Admissions Advisor from approximately October 2016 through March 31, 2023. Declaration of Quentece Boone ("Boone Decl."), ¶ 2. Like all Class Members, Plaintiff was subject to Defendant's wage and hour policies and practices. *Id*.

On May 11, 2023, Plaintiff filed the initial Complaint, alleging that Defendant failed to: (i) provide all required meal periods; (ii) authorize and permit all required rest periods; (iii) issue accurate, itemized wage statements; (iv) timely pay all final wages upon separation; and (v) comply with California's Unfair Competition Law. Rowbotham Decl., ¶ 10. On July 17, 2023, Plaintiff filed the operative First Amended Complaint ("FAC"), adding a cause of action for civil penalties under the PAGA. *Id*.

A. PLAINTIFF'S CLAIMS AND DEFENDANT'S DEFENSES

At the outset, Defendant contends that many or all Class Members signed arbitration agreements containing class action waivers, which could have potentially barred classwide adjudication and required individual arbitration of their claims. Rowbotham Decl., ¶ 11. The presence of these agreements introduced a significant litigation risk, particularly with respect to class certification and the ability to obtain relief on a representative basis. *Id.*

Plaintiff asserts that Defendant is liable for meal period premium wages due to its failure to provide uninterrupted, 30-minute meal periods commencing before the end of the fifth hour of work. Rowbotham Decl., ¶ 12; *see also Kaanaana v. Barrett Business Services, Inc*. (2018) 29 Cal.App.5th 778, 799 ("The remedy for an employer violation of the [failure to provide a 30-minute meal period] is the hour of premium pay provided under section 226.7.") Due to work demands imposed by Defendant, Plaintiff and other employees were regularly required to delay, shorten, or skip their meal periods. *Id.* Further, Plaintiff asserts Defendant failed to pay all meal period premiums owed, which is itself a certifiable issue. *See, e.g., Safeway, Inc. v. Superior Court* (2015) 238 Cal.App.4th 1138, 1159 (certifying UCL claim based on employer's failure to pay premium wages under Labor Code section 226.7).

Defendant contends that it maintains a facially compliant written meal period policy, has always provided meal periods consistent with that policy, and is only required to provide the opportunity to take meal periods, not to ensure they are taken. *See Brinker Restaurant Corp. v. Superior Court* (2012) 54 Cal.4th 1004, 1038. Defendant further argues that any meal period violations reflected in the time records were the result of employee choice, not company policy, and that individualized inquiries would be required to determine whether a waiver applied, whether a premium was paid, and why a particular meal period was late, short, or missed, thereby posing significant obstacles to class certification. Rowbotham Decl., ¶ 13.

Plaintiff also alleges that Defendant failed to authorize and permit rest periods due to work demands that made it difficult or impractical for employees to step away from their desks or work responsibilities. Rowbotham Decl., ¶ 14. Like meal periods, Plaintiff contends that rest periods were often missed, delayed, or cut short due to workload expectations, mandatory availability for student communication, or a lack of coverage. *Id.* Plaintiff maintains that this practice violated California law, which requires employers to "authorize and permit" uninterrupted 10-minute rest periods for every four hours worked, or major fraction thereof. *See Brinker, supra,* 54 Cal.4th at 1029 ("Employees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.").

Defendant disputes these allegations and asserts that it maintains a facially lawful written rest period policy, and that it has always authorized and permitted rest breaks consistent with

California law. Rowbotham Decl., ¶ 15. Defendant further contends that rest periods are inherently unrecorded, and that any missed or delayed rest breaks were the result of employee choice rather than company policy. *Id.* As such, Defendant argues that individual inquiries would be required to determine whether an employee was truly denied a rest period on any given shift, rendering the claim unsuitable for class treatment. *Id*. Defendant also asserts that these individualized questions, such as whether the employee had a rest break opportunity, whether workload demands justified delay, or whether breaks were waived or voluntarily skipped, would overwhelm any common questions and raise serious manageability concerns. *Id*.

As a result of these alleged violations, Plaintiff contends that Defendant is liable for derivative wage statement violations, waiting time penalties, and civil penalties under PAGA. Rowbotham Decl., ¶ 16. Defendant argues that any wage statement violations were not knowing and intentional, and that Plaintiff cannot establish injury as required under Labor Code § 226(e). *See Amaral v. Cintas Corp*. (2008) 163 Cal.App.4th 1157, 1201. Defendant also contends that it has strong good-faith defenses to Plaintiff's underlying claims, precluding recovery of waiting time penalties, which require a willful failure to pay wages. *See* 8 Cal. Code Regs. § 13520 ("A good-faith dispute that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee."). Defendant further maintains that, based on those good-faith defenses, the Court would exercise its discretion to substantially reduce any PAGA penalties, even if liability were established. *Id.*

B. <u>DISCOVERY AND MEDIATION</u>

In connection with mediation, Defendant provided Plaintiff with timekeeping and payroll records for all putative class members. Rowbotham Decl., ¶ 21. Defendant also provided the employee handbook and other relevant policies in effect. *Id*. Plaintiff, with the help of her expert who holds a Ph.D. in economics, conducted an analysis of this data and created a comprehensive damages model to calculate the likely exposure that Defendant faced on each claim. *Id.*

On March 5, 2024, the Parties participated in a private mediation with Michael J. Loeb, Esq., a highly respected wage and hour class action mediator. Rowbotham Decl., ¶ 22. During the mediation, the Parties exchanged competing views on liability, damages, and the likelihood of class certification. *Id.* At the conclusion of the session, Mr. Loeb issued a mediator's proposal that the Parties ultimately accepted. *Id*. Over the following months, the Parties finalized and executed the long-form Settlement Agreement that is now before the Court for preliminary approval.[3] *Id.*

III. THE PROPOSED SETTLEMENT

A. SETTLEMENT CLASS

This Settlement involves two distinct subclasses of non-exempt employees in California who worked for Defendant or its affiliated entity during different time periods:

> **CEC Class** – all individuals who are or previously were employed by Defendant CEC Employee Group, LLC who worked in California as non-exempt employees during the time period of March 2, 2020, to June 3, 2024.
>
> **Coding Dojo Class** – all non-exempt individuals who are or were employed by Coding Dojo in California as non-exempt employees during the time period of May 11, 2019, to June 3, 2024.

Defendant did not employ any non-exempt employees in California prior to March 2, 2020, which is the date Perdoceo Education Corporation (Defendant's parent company) acquired the assets of Trident at American InterContinental University through an asset sale and began employing Trident's non-exempt California employees through CEC. Rowbotham Decl., ¶ 23. In addition, Perdoceo acquired Coding Dojo on December 1, 2022, and the settlement includes non-exempt California employees of Coding Dojo whose claims arise from the same or similar wage-and-hour practices challenged in this action. *Id.* For settlement purposes, the Class Periods reflect the earliest dates on which alleged Labor Code violations may have occurred, based on the scope of the LWDA notice and operative complaint. *Id.*

B. ESSENTIAL TERMS OF THE SETTLEMENT

If the Court grants preliminary approval, Defendant will pay a Gross Settlement Amount ("GSA") of $540,000.00. *See* Settlement, § 3.1. The Settlement is non-reversionary, and all Class Members will automatically receive an Individual Class Payment unless they affirmatively opt out. *Id*.

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[3] Plaintiff provided the LWDA with the Settlement Agreement and all supporting papers filed in connection with this Motion. *See* Rowbotham Decl., Ex. 3 (LWDA Submission Confirmation).

Defendant will fund the GSA within fourteen (14) calendar days of the Effective Date. The "Effective Date" is the later of the following: (a) if no Class Member objects to the Settlement, the date the Court enters Judgment; (b) if one or more Class Members objects, the day after the deadline to appeal the Judgment; or (c) if a timely appeal is filed, the day after the appellate court affirms the Judgment without material modification and issues a remittitur. *See* Settlement, § 1.20.

The monetary terms of the Settlement are summarized as follows:

Gross Settlement Amount:	**$540,000.00**
Minus attorneys' fees (one-third):	$180,000.00
Minus attorneys' costs (up to):	$30,000.00
Minus Class Representative Service Award:	$10,000.00
Minus LWDA PAGA Payment:	$40,000.00
Minus Settlement Administrator costs:	$7,490.00
Net Settlement Amount:	**$272,510.00**

1. **The Settlement Provides for Reasonable Monetary Payments**

After deducting court-approved attorneys' fees and costs, the Class Representative Service Award, Settlement Administrator costs, and the LWDA and PAGA Aggrieved Employees' shares of PAGA penalties, the remaining Net Settlement Amount of approximately $272,510.00 will be distributed to Class Members. *See* Settlement, §§ 1.30, 3.2. One-third (1/3) of each Individual Class Payment will be classified as wages, and two-thirds (2/3) will be classified as interest and penalties. *Id*., § 3.2.4.1. The entirety of payments to PAGA Aggrieved Employees for PAGA civil penalties will be classified as penalties. Id., § 3.2.5.2.

Defendant's records indicate that there are approximately 201 Class Members who will take part in the Settlement. Rowbotham Decl., ¶ 24. Based on the allocation of the Net Settlement Amount, participating employees will receive, on average, a payment of approximately $1,355.77. *Id*. Class Members will have 60 calendar days from the initial mailing of the Class Notice to opt out of or object to the Settlement, with an additional 14 days for re-mailed notices. *See* Settlement, § 7.5.1. Class Members who do not opt out will be bound by the Settlement's terms and will release any and all claims that were asserted, or could have been asserted, based on the facts alleged in the Lawsuit or Plaintiff's letter to the LWDA dated May 11, 2023. *Id*., § 5.

2. Class Representative Service Award, Attorneys' Fees and Costs

As part of the Settlement, Plaintiff will apply for a service award in the amount of $10,000.00 at the time of seeking final approval. This amount is intended to compensate Plaintiff for her service to the Settlement Class and for executing a general release of all claims, known or unknown, against Defendant. *See* Settlement, §§ 3.2.1, 5.1.1. "[I]ncentive awards are fairly typical in class action cases . . . and are intended to compensate class representatives for work done on behalf of the class [and] to make up for financial or reputational risk undertaken in bringing the action." *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1393–94.

Plaintiff's requested service award reflects the significant benefits conferred upon the Settlement Class due to the time and effort she expended on their behalf. Among other things, Plaintiff provided factual information and documents to her attorneys, identified potential witnesses, participated in multiple meetings to discuss the claims and legal theories, and made herself available for the full day of mediation. Boone Decl., ¶ 5. Plaintiff also undertook reputational risks by serving as the named plaintiff, including the fact that potential employers may discover through a background search that she previously sued an employer. Rowbotham Decl., ¶ 25. Additionally, Plaintiff agreed to a general release of all claims, including a waiver of rights under California Civil Code § 1542. *Id.*

Class Counsel will also seek an award of attorneys' fees in the amount of $180,000.00 (1/3 of the Gross Settlement Amount), and up to $30,000.00 in verified litigation costs. *See* Settlement, § 3.2.2. Plaintiff submits that the requested fee is reasonable compensation for undertaking complex, risky, and time-consuming litigation on a purely contingent basis. Class Counsel incurred substantial attorneys' fees by conducting pre-filing investigation, retaining an expert, analyzing Plaintiff's claims, reviewing data and documents produced by Defendant, developing a detailed damages model, preparing for and attending mediation, negotiating and drafting the long-form Settlement Agreement, preparing this motion for preliminary approval, and otherwise litigating the case. Rowbotham Decl., ¶ 26. Class Counsel will also spend additional time overseeing the notice process, drafting the motion for final approval and supporting documents, attending both hearings, and performing other settlement-related tasks. *Id.*

Both California and federal courts recognize that awarding attorneys' fees as a percentage of the common fund is an appropriate method in class actions. S*ee Laffitte v. Robert Half Int'l Inc*. (2016) 1 Cal.5th 480, 506 ("the percentage of fund method survives in California class action cases"); *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 254 (recognizing both the "percentage of recovery" and "lodestar/multiplier" methods). Historically, courts have approved percentage fees in the range of 20% to 50%, depending on the circumstances. *See 4 Newberg on Class Actions* § 14.6 (4th ed. 2013) ("No general rule can be articulated on what is a reasonable percentage of a common fund… Usually 50% of the fund is the upper limit on a reasonable fee award… although somewhat larger percentages are not unprecedented.").

Class Counsel submits that the requested fee is reasonable in light of the substantial risks, the significant results obtained for the Class, and the efficiency with which the litigation was conducted. Should the Court grant preliminary approval, Class Counsel will formally move for attorneys' fees and verified litigation costs in connection with final approval.

IV. ARGUMENT

A. PRELIMINARY APPROVAL IS WARRANTED

California Rule of Court 3.769 requires court approval for any settlement of a class action and directs the trial court to determine whether the settlement is "fair, reasonable and adequate to all concerned." *Reed v. United Teachers Los Angeles* (2012) 208 Cal.App.4th 322, 337. Courts applying Rule 3.769 often look to the federal standards set forth in Rule 23(e) of the Federal Rules of Civil Procedure. Under Rule 23, the trial court must determine whether the proposed settlement is fundamentally fair, adequate, and reasonable. *Hanlon v. Chrysler Corp*. (9th Cir. 1998) 150 F.3d 1011, 1026.

Settlement is the preferred means of resolving complex class actions. *In re Syncor ERISA Litigation* (9th Cir. 2008) 516 F.3d 1095, 1101. The Court's role in evaluating a proposed settlement is limited to determining whether the agreement, taken as a whole, is fair and not the result of fraud or collusion. *Hanlon, supra*, 150 F.3d at 1027. A settlement negotiated at arm's length by experienced class counsel is entitled to an initial presumption of fairness. *Kullar v. Foot*

Locker Retail, Inc. (2008) 168 Cal.App.4th 116, 130.

1. Standard for Preliminary Approval

To determine whether a proposed settlement is fair, the Court considers several factors, including: (1) the strength of the plaintiff's case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class certification through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and the stage of the proceedings; and (6) the experience and views of counsel. *Dunk v. Ford Motor Co*. (1996) 48 Cal.App.4th 1794, 1801. These factors are not exclusive, and the Court may weigh them as appropriate in light of the circumstances. *Wershba, supra,* 91 Cal.App.4th at 245.

As discussed below, the proposed Settlement is fair, reasonable, and adequate in light of the relevant factors and the risks of continued litigation.

a. Strength of Plaintiff's Case

Class Counsel, with the assistance of a retained expert holding a Ph.D. in economics, thoroughly evaluated the claims, reviewed extensive timekeeping and payroll records, analyzed relevant policies, and developed a detailed damages model to assess Defendant's potential liability. *See* Rowbotham Decl., ¶ 21. While Plaintiff maintains that her claims are meritorious, she acknowledges the substantial risks and uncertainty inherent in pursuing class certification and trial. As discussed in Section II.A, Defendant asserted numerous defenses, both on the merits and with respect to class certification.

Although Plaintiff was prepared to litigate through certification and trial, she reasonably concluded that continued litigation was unlikely to yield a significantly greater result for the Settlement Class than that achieved through the Settlement. Accordingly, this factor supports preliminary approval.

b. Risk, Expense, and Complexity of Further Litigation

The Settlement was reached only after a substantial informal exchange of timekeeping and payroll records, along with other relevant policy documents, to facilitate mediation. *See* Rowbotham Decl., ¶ 21. Absent settlement, the Parties would have been required to engage in costly and time-consuming formal discovery, including written discovery and depositions, followed by briefing and hearings on class certification, summary judgment or adjudication, and ultimately, trial. The Settlement avoids these significant litigation expenses and delays, while also eliminating the risks and burdens associated with continued litigation for both the Parties and the Court. Accordingly, this factor supports preliminary approval.

c. <u>Risk of Maintaining Class Action Status</u>

Plaintiff had not yet filed a motion for class certification at the time the Settlement was reached. Defendant raised several arguments opposing certification, and there was a meaningful risk that the Court could deny certification as to one or more claims, thereby precluding classwide adjudication. In light of the uncertainty surrounding class certification, this factor also weighs in favor of preliminary approval.

d. <u>Value of Settlement Compared to Potential Recovery</u>

The proposed Settlement provides a fair and reasonable monetary recovery in light of the disputed claims and the risks of further litigation. Based on data produced by Defendant prior to mediation, Plaintiff developed a class-wide exposure model, including projected recovery values for each claim:

<u>Meal Period Violations</u>: **$135,400**

Plaintiff contends that Defendant failed to provide legally compliant meal periods resulting in meal periods that were late (commencing after the fifth hour of work), and/or short (less than 30 minutes), or not provided at all. *See* Rowbotham Decl. ¶ 12. Based on Plaintiff's expert's analysis of Defendant's records, and giving credit for meal period premiums already paid, Plaintiff calculated Defendant's potential exposure for meal periods at $541,601 (20,065 first meal violations + 2,516 second meal violations x $24.25 average meal premium – $5,988 meal premiums paid). *Id.*

Defendant contends that it provided compliant meal periods consistent with its written policy, and that any violations were due to employee choice. *See Brinker, supra,* 53 Cal.4th at 1040. Defendant further argues that second meal periods were regularly waived, and that individualized inquiries would be required to determine the reason for each violation, thereby precluding class certification. Rowbotham Decl., ¶ 12. Plaintiff discounted maximum exposure by 50% for the risk of non-certification and 50% for the risk of losing on the merits or obtaining reduced damages, resulting in an estimated value of $135,400. *Id.*, ¶ 12.

<u>Rest Period Violations</u>: **$255,632**

Plaintiff alleges that Defendant regularly failed to authorize and permit 10-minute rest periods for every 4 hours worked, or major fraction thereof. *See* Rowbotham Decl., ¶ 14. Plaintiff's expert's review of the payroll data reveals that there were 84,332 shifts worked in excess of 6.0 hours. *Id.* Plaintiff conservatively assumed that a rest period violation occurred in approximately 50% of the shifts worked in excess of 6.0 hours. *Id.* Plaintiff therefore calculated Defendant's potential exposure for rest periods at $1,022,526 (84,332 shifts x 50% violation rate x $24.25 average premium). *Id.*

However, Defendant argues it maintains a facially compliant written rest period policy, that Class Members are encouraged to spend rest periods as they see fit, and that Defendant has always authorized and permitted rest periods in compliance with that policy. *See* Rowbotham Decl., ¶ 15. Defendant also argues this claim is not amenable to class treatment, as individual inquiries would be required to determine whether each employee was in fact authorized and permitted all rest periods based on their schedule, resulting in an unmanageable series of mini-trials. *Id*. Additionally, since rest periods are not recorded this claim faces additional hurdles due to the lack of common evidence in Defendant's records. *Id.* Based on these defenses, Plaintiff discounted Defendant's maximum exposure by 50% for risk of non-certification and 50% for risk of being unsuccessful on the merits, to arrive at an estimated exposure of $255,632. *Id.*, ¶ 14.

<u>Wage Statement Violations</u>: **$95,119**

Defendant issued 2,589 wage statements to 105 employees within the applicable one-year period. Rowbotham Decl., ¶ 17. Plaintiff calculated wage statement penalties at $253,650 (105 "initial" violations x $50 + 2,484 "subsequent" violations x $100). *Id*. Defendant contends that employees could not show they "suffer[ed] injury" as a result of the alleged violations, as required by Labor Code § 226(e). *Id.*, ¶ 16. Considering this argument as well as the potential inability to prove that the violations were "knowing and intentional," Plaintiff discounted the value of this claim by 25% for the risk of non-certification of the underlying claims and discounted 50% for a risk of being unsuccessful on the merits, for an estimated exposure of $95,119. *Id.*, ¶ 17.

Waiting Time Penalties: **$88,755**

Plaintiff identified 61 employees who separated from employment within the three-year limitations period. Rowbotham Decl., ¶ 18. Plaintiff therefore calculated Defendant's maximum waiting time penalty exposure at $355,020 (61 former employees x $24.25 average hourly rate x 8 hours per day x 30 days). *Id*. Defendant contends it acted in good faith and disputes any "willful" failure to pay final wages, as required under Labor Code § 203 and 8 Cal. Code Regs. § 13520. *Id.*, ¶ 16. Additionally, because this claim is entirely derivative of Plaintiff's underlying wage claims, Defendant contends the waiting time penalty claim will fail with those claims. *Id.* Plaintiff discounted the value of this claim by 50% for the risk of non-certification of the underlying claims, and 50% for a risk of being unsuccessful on the merits (including a failure to establish wilfulness), for an estimated recovery on this claim of $88,755. *Id.*, ¶ 18.

PAGA Penalties: **$64,725**

Assuming that Plaintiff could prove at least one underlying Labor Code violation in each pay period within the PAGA Period, Plaintiff calculates Defendant's maximum PAGA exposure at $258,900 (2,589 pay periods x $100 per violation). *See Amaral, supra,* 163 Cal.App.4th at 1207 (finding "initial" violation rate applies until employer is notified that it is violating a Labor Code provision). However, these penalties derived from the underlying wage and hour violations discussed above, which Defendant disputes. *See e.g.*, *Green v. Lawrence Service Co.* (C.D. Cal. 2013) 2013 WL 3907506, *5, n.5 (explaining that a PAGA claim's success was determined by the merits of its underlying claims). Plaintiff also recognizes that the Court has discretion to reduce any award of PAGA penalties where it views them as duplicative. *See Carrington v. Starbucks Corp*. (2018) 30 Cal.App.5th 504, 529 (affirming reduction of PAGA penalties to $5 per initial violation); *Fleming v. Covidien, Inc.* (C.D. Cal. Aug. 12, 2011) Case No. ED CV 10-01487 RGK (OPx), 2011 WL 7563047 at *4 (reducing PAGA penalties from $2.8 million to $500,000); *Kennedy v. Arm Strong Towing Services, Inc*., 2017 WL 9486773, at *3 (Cal.Super.) (reducing PAGA penalties to $1,000 per aggrieved employee – a reduction of more than 70% from the maximum civil penalty). Plaintiff discounted the maximum figure by 50% for the risk of the scope of the PAGA claim being narrowed due to manageability concerns and an additional 50% to account for the likelihood of this Court reducing penalties, to arrive at an estimated exposure of $64,725. Rowbotham Decl., ¶ 19.

Based on these estimates, Plaintiff values the total realistic recovery at approximately $639,631. Rowbotham Decl., ¶ 20. The Gross Settlement Amount of $540,000.00 represents roughly 84% of this value, while avoiding the delay, risk, and cost of continued litigation. *Id*. This result is consistent with or exceeds recoveries approved in other wage and hour class actions involving similar risks and discounting. *See Altamirano v. Shaw Industries, Inc*. (N.D. Cal. 2015) 2015 WL 4512372, at *9 (approving settlement representing 15% of maximum value); *Rodriguez v. RCO Reforesting, Inc.* (E.D. Cal., Jan. 25, 2019) 2019 WL 331159, at *5 (approving PAGA settlement representing 6% of maximum exposure). Accordingly, this factor weighs strongly in favor of preliminary approval.

e. <u>Experience and Views of Counsel</u>

"Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation." *In re Pacific Enterprises Securities Litigation* (9th Cir. 1995) 47 F.3d 373, 378.

Plaintiff is represented by experienced counsel who have been appointed as class counsel in numerous wage and hour cases and have litigated such cases from both the plaintiff and defense perspectives. *See* Rowbotham Decl., ¶¶ 2-8. With the assistance of a retained expert, Class Counsel analyzed Defendant's records and relevant policies and evaluated the strengths and weaknesses of the claims based on their extensive experience. *Id*., ¶ 21.

The Settlement was also reached with the guidance of Michael J. Loeb, Esq., a highly respected wage and hour mediator. *Id*., ¶ 22. The informed and experienced views of Class Counsel and the neutral further support the fairness of the Settlement. *See Kullar, supra,* 168 Cal.App.4th at 130.

2. <u>Preliminary Approval Standard is Met</u>

At the preliminary approval stage, the Court may authorize dissemination of the Class Notice and provisionally approve the Settlement if it: (1) falls within the range of possible approval; (2) appears to be the product of serious, informed, and non-collusive negotiations; and (3) is free of obvious deficiencies. *See* Manual for Complex Litigation § 30.41 (3d ed. 1995); 4 *Newberg on Class Actions* §§ 11:24–11:25 (4th ed. 2013).

a. <u>Settlement Falls Within Range of Possible Approval</u>

The proposed Settlement represents an excellent recovery in light of the substantial litigation risks. It provides meaningful compensation for contested wage and hour violations and derivative penalties. Based on the estimated Net Settlement Amount, the average Individual Class Payment is $1,355.77, which exceeds average recoveries in comparable wage and hour class action settlements. *See, e.g., Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616-AWI-SKO, 2012 WL 2117001, at *17 (E.D. Cal. June 11, 2012) (approving settlement with $198.70 gross recovery per class member as substantial).

Plaintiff submits that the proposed Settlement is within the range of possible approval, such that notice should be provided to the Class Members so they can consider the Settlement. The Court will have the opportunity to again assess the reasonableness of the Settlement after the Class Members have had the opportunity to opt-out or object.

b. <u>Settlement Was the Product of Informed, Arm's-Length Negotiations</u>

The proposed Settlement is entitled to an initial presumption of fairness. *See Kullar, supra,* 168 Cal.App.4th at 130. The Parties engaged in an extensive exchange of information, including timekeeping and payroll data. Plaintiff's counsel, with the assistance of an expert holding a Ph.D. in economics, conducted a comprehensive analysis of the data and developed a detailed damages model. The Settlement was reached following arm's-length negotiations during a mediation with Michael J. Loeb, Esq., a respected wage and hour class action mediator, and finalized over several months of continued negotiation. *See* Rowbotham Decl., ¶ 22. These facts support the conclusion that the Settlement was negotiated in good faith and is the product of informed, non-collusive efforts by experienced counsel.

c. <u>Settlement Has No Obvious Deficiencies</u>

The Settlement provides substantial monetary relief to Class Members. The Settlement does not require Class Members to submit a claim form. Each Class Member who does not opt out will automatically receive their Individual Class Payment without taking any action. The proposed allocations for the Class Representative Service Award, Settlement Administrator costs, Class Counsel's attorneys' fees and costs, and the LWDA's and PAGA Aggrieved Employees' share of civil penalties are all reasonable and consistent with applicable law. There is no indication of preferential treatment or collusion. Because the Settlement is devoid of any obvious deficiencies, this factor supports preliminary approval.

B. <u>THE COURT SHOULD CERTIFY THE SETTLEMENT CLASS</u>

The proposed Settlement Class satisfies the requirements for certification under California Code of Civil Procedure § 382 because: (1) the Settlement Class is sufficiently numerous that joinder is impracticable; (2) common questions of law and fact predominate over individual issues; (3) Plaintiff's claims are typical of those of the Class; and (4) Plaintiff and her counsel will fairly and adequately represent the Class.

1. <u>Class Is Ascertainable and Numerous</u>

A class is ascertainable where members can be readily identified "without unreasonable expense or time by reference to official [or business] records." *Sevidal v. Target Corp*. (2010) 189 Cal.App.4th 905, 919. Here, the proposed Settlement Class includes all current and former non-exempt employees of Defendant in California who worked at any time during the CEC Class Period or the Coding Dojo Class Period. Defendant's records indicate that the Class comprises approximately 201 individuals. Rowbotham Decl., ¶ 24. Assembling all Class Members for individual litigation would be impracticable. Accordingly, the Settlement Class is ascertainable and satisfies the numerosity requirement.

2. <u>Common Issues Predominate</u>

In evaluating predominance, the focus is not on the merits, but on whether common or individual questions are likely to arise. *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327. Plaintiff's claims are based on Defendant's uniformly applied wage and hour policies, including those governing meal and rest periods, wage statements, and final pay. Such claims are regularly certified for class treatment. *See Brinker, supra*, 53 Cal.4th at 1032–34 (holding that a uniform unlawful policy is "by its nature a common question eminently suited for class treatment"); *Bradley v. Networkers Int'l, LLC* (2012) 211 Cal.App.4th 1129, 1150 (affirming class certification of meal and rest period claims based on common policies and practices); *Bluford v. Safeway Inc*. (2013) 216 Cal.App.4th 864, 871–73 (reversing denial of class certification where employer failed to record rest periods and policies were uniformly applied). Accordingly, common issues predominate.

3. Plaintiff's Claims Are Typical

Typicality exists where the named plaintiff's claims are similar to those of the class. B.*W.I. Custom Kitchen v. Owens-Illinois, Inc*. (1987) 191 Cal.App.3d 1341, 1347. Plaintiff, like other Class Members, was employed by Defendant in California during the Class Periods and alleges that she experienced the same wage and hour violations, including missed or late meal periods, missed rest periods, and derivative wage statement and waiting time violations. Boone Decl., ¶ 2. Plaintiff's claims arise from the same policies and factual circumstances applicable to the Class, and are subject to the same defenses. Her claims are therefore typical.

4. Plaintiff and Class Counsel Will Adequately Represent the Class

Adequacy turns on whether the proposed class representative and counsel have any conflicts of interest with the class, and whether they will vigorously prosecute the claims. *Capitol People First v. Dept. of Developmental Services* (2007) 155 Cal.App.4th 676, 697. Plaintiff's interests are aligned with those of the Class, and there are no conflicts. *See McGhee v. Bank of America* (1976) 60 Cal.App.3d 442, 450 (finding adequacy where there was no indication of antagonistic interests or inadequacy of counsel). Class Counsel are experienced wage and hour class action litigators with a track record of successful class certification and settlement. *See* Rowbotham Decl., ¶¶ 2-8; Haines Decl., ¶¶ 2-12; Schmidt Decl., ¶¶ 2-9. They, along with Plaintiff, will fairly and adequately represent the Class.

C. THE COURT SHOULD ORDER DISTRIBUTION OF THE NOTICE

The Court should direct distribution of the proposed Class Notice to the Settlement Class by first-class mail, postage prepaid, using the last known mailing addresses provided by Defendant. This method constitutes the "best notice practicable under the circumstances" because it provides "individual notice to all members who can be identified through reasonable effort."

Eisen v. Carlisle and Jacquelin (1974) 417 U.S. 156, 173.

Plaintiff proposes that notice and administration be handled by Apex Class Action LLC ("Apex"), an experienced class action settlement administrator. *See* Declaration of Sean Hartranft. Defendant will provide Apex with Class Members' last known mailing addresses from its personnel and payroll records within fourteen (14) business days after preliminary approval. *See* Settlement, § 4.2. Apex will update addresses using the National Change of Address database prior to mailing the Class Notice packets. *Id*., § 4.4.2. For any returned mail, Apex will perform a skip-trace search and promptly re-mail the notice to any more current address found. *Id*.

The content of the Class Notice complies with California Rule of Court 3.766(d). It describes the nature of the lawsuit, summarizes the claims and defenses, explains the terms of the Settlement, and provides Class Members with clear instructions on how to opt out or object. It also describes the allocation formula and the estimated recovery, advises Class Members that they will be bound by the Settlement unless they opt out, and includes the final approval hearing date and contact information for Class Counsel. *See* Settlement Agreement, Ex. A (Class Notice). This method of notice also satisfies Rule 3.766(e) as the most practical and cost-effective means of reaching Class Members.[4]

D. THE COURT SHOULD SET A FINAL APPROVAL HEARING

The Court should schedule a hearing on final approval of the Settlement for a date following the deadline for Class Members to submit objections or opt-out requests, as required under California Rule of Court 3.769.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary approval of the proposed Settlement, provisionally certify the Settlement Class for settlement purposes, approve the form and method of providing notice, and enter the proposed order

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[4] The Parties propose that the final judgment be posted on the Settlement Administrator's website. The URL will be included with each Class Member's Individual Class Payment.

submitted concurrently herewith, including setting a final approval hearing date.

Dated: April 7, 2025

HAINES LAW GROUP, APC

By: ______________________

Andrew J. Rowbotham
Attorneys for Plaintiff