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on behalf of herself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

TONYA DWYER, an individual on behalf of herself and all others similarly situated , Plaintiff, v. PIN SETTERS, INC., a California corporation doing business as COUNTRY CLUB LANES; and DOES 1 through 50, inclusive, Defendants.	Case No.: 24CV002452 <u>CLASS ACTION</u> <u>Assigned for All Purposes To:</u> Hon. Jill Talley **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARILY APPROVAL OF CLASS AND PAGA ACTION SETTLEMENT** *[filed concurrently with Plaintiff's Notice of Motion and Motion; Declaration of Enoch J. Kim; Declaration of Tonya Dwyer; and [Proposed] Order]* Date: May 16, 2025 Time: 9:00 a.m. Dept.: 23 Original Complaint Filed: February 8, 2024 First Amended Complaint Filed: April 12, 2024 Trial Date: None Set

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Tonya Dwyer ("Plaintiff") seeks preliminary approval of a putative class and representative action settlement with Defendant Pin Setters, Inc., dba Country Club Lanes ("Defendant") (Plaintiff and Defendant are collectively referred to herein as "the Parties") on behalf of herself and a proposed class of all current and former nonexempt employees who worked for Defendant in California during the Class Period, which is February 8, 2020, through January 18, 2025 ("Class" or "Class Members"). After participating in mediation, the Parties reached a settlement in the gross amount of $375,000.00 to resolve the foregoing action, subject to this Court's final approval.

Pursuant to California Rules of Court 3.769(d) and (e), Plaintiff respectfully requests that this Court grant preliminary approval of the proposed settlement agreement between the Parties, the terms of which are set forth in the Class and PAGA Settlement Agreement and Release ("Settlement Agreement" or "Settlement"). (*See* Declaration of Enoch J. Kim ("Kim Decl."), Exhibit 1). The Settlement Agreement was reached after the Parties engaged in informal discovery and investigation, participated in mediation with a skilled mediator, and negotiated at arms-length through experienced counsel on both sides.

As discussed below, the proposed Settlement Agreement satisfies all criteria for preliminary approval under California law, falls well within the range of reasonableness, and is in the best interests of the Class. Accordingly, Plaintiff respectfully requests that the Court: (1) grant preliminary approval of the Settlement; (2) conditionally grant certification of the proposed Class solely for the purposes of Settlement, (3) approve the appointment of Apex Class Action LLC ("Apex") as Settlement Administrator, (4) authorize the Settlement Administrator to send the Notice of Class Action and PAGA Settlement ("Class Notice"), attached to the Settlement Agreement as Exhibit A, to the Class Members, (5) appoint Plaintiff as the Class Representative and Plaintiff's Counsel as Class Counsel, (6) and schedule a final fairness and approval of settlement hearing.

II. STATUS OF THE LITIGATION

A. Procedural History

On February 8, 2024, Plaintiff Tonya Dwyer commenced a Class Action by filing a Complaint alleging ten causes of action against Defendant for (1) Failure to Pay Minimum Wages, (2) Failure to Pay Wages and Overtime Under Labor Code § 510, (3) Meal Period Liability under Labor Code § 226.7, (4) Rest-Break Liability under Labor Code § 226.7, (5) Violation of Labor Code § 226(a), (6) Violation of Labor Code § 203, (7) Violation of Labor Code § 204; (8) Failure to Keep Required Payroll Records under Labor Code §§ 1174, 1174.5, (9) Failure to Reimburse Necessary Business Expenses under Labor Code § 2802, and (10) Violation of Business & Professions Code § 17200 *et seq*. (the "Action"). (Kim Decl., ¶ 3.)

Plaintiff submitted a PAGA notice (LWDA-CM-1009966-24) to the Labor and Workforce Development Agency ("LWDA") on February 8, 2024. (Kim Decl., ¶ 4.) On April 12, 2024, Plaintiff filed her First Amended Complaint ("Operative Complaint"), which added claims for penalties under PAGA, Labor Code §2698. (*Id*. at ¶ 5.)

Plaintiff contends that Defendant failed to pay all wages due and owing, by requiring off the clock work, unlawfully rounding to their detriment, failing to incorporate non-discretionary cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay for overtime pay, failing to provide meal and rest breaks, failing to furnish accurate wage statements, failing to timely pay wages including final wages, failing to maintain accurate records, and failing to reimburse necessary business expenses. (*Id*. at ¶ 6.)

B. Investigation

Before filing the lawsuit, Class Counsel conducted a thorough investigation and researched the facts and circumstances underlying the pertinent issues and applicable law. (*Id*. at ¶ 7.) This required thorough discussions and interviews between Class Counsel and Plaintiff, in addition to the above-described research into the various legal issues involved in the case. (*Id*.) After filing the lawsuit, Class Counsel conducted a thorough investigation of the facts and claims giving rise to the action, including (1) conducting informal discovery and meeting and conferring with defense counsel about same; (2) reviewing and analyzing records and data, as well as employment-related policies; (3) reviewing Plaintiff's personnel file and other documentation; (4) interviewing Plaintiff regarding potential Class Members; (5) researching the applicable law and potential defenses; (6) constructing damage models based on interpretations of California law and the facts and numbers provided by Defendant; and (7) reviewing information provided by Defendant in response to informal discovery and in advance of the mediation. (*Id.*) The Parties conducted their own evaluations of the potential recoveries based on the claims alleged in the Action, including consulting experts. (*Id.*)

Defendant, for its part, vigorously contested liability, the amount of claimed damages, and the propriety of class certification. (*Id.* at ¶ 8.) After analyzing the relevant documents and other gathered data, Class Counsel believed that this case was appropriate for resolution via mediation. (*Id.*) Given the high level of risk present for both sides, the Parties elected to mediate Plaintiff's claims and explore the possibility of settlement. (*Id.*)

C. Settlement Efforts

On November 19, 2024, the Parties participated in an all-day mediation with Brandon McKelvey, Esq., a respected and highly experienced mediator in wage and hour class actions, and were able to reach an agreement on general settlement terms. (Kim Decl., ¶ 9.) During mediation, counsel for Plaintiff and Defendant discussed all aspects of the case, including the risks of continued litigation and the risks to both parties of proceeding with a class certification motion, as well as the law relating to unpaid wages, meal periods, rest periods, wage statements, and final pay. (*Id.*) Following a full day of mediation, the Parties agreed to general settlement terms to resolve the lawsuit. (*Id.*) The Parties continued to work together on a long-form Settlement Agreement following mediation, which resulted in the Settlement Agreement before the Court for approval. (*Id.*)

From Class Counsel's review of the facts, strengths, and weaknesses of the case, and the risks and delays posed by further litigation, Class Counsel believes that the recovery for each Class Member is fair and reasonable taking into consideration the risks of further litigation, the possibility of losing class certification and/or dispositive motions, and the reasonable tailoring of each Class Member's claim to the settlement award he or she will receive. (*Id.* at ¶ 10.) Further, the Settlement

Agreement was the product of a non-collusive settlement process in which the Parties were forced to make significant compromises in the interest of reaching a full and complete settlement of the lawsuit. (*Id.*)

III. SETTLEMENT AGREEMENT AND ACCOMPANYING DOCUMENTS

Under the terms of the proposed Settlement Agreement, Defendant has agreed to pay $375,000.00 (Three Hundred Seventy-Five Thousand Dollars and Zero Cents) ("Gross Settlement Amount") on a non-reversionary basis. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.1.) In addition to and separate from the Gross Settlement Amount, Defendant will pay the employers' portion of any payroll taxes on the wage allocation portion of the individual settlement payments to Class Members. (*Id.*)

The Settlement Agreement defines the "Class" as "all persons who worked for Defendant as non-exempt employees in California during the Class Period," which is February 8, 2020 to January 18, 2025. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 1.5, 1.13.) The Settlement Agreement also defines "Aggrieved Employees" as "all persons who worked for Defendant as non-exempt employees in California at any time during the PAGA Period," which is February 8, 2023, through January 18, 2025. (Kim Decl., Exhibit 1, Settlement Agreement, ¶¶ 1.4, 1.32.)

The "Net Settlement Amount," available for distribution to Class Members, is the Gross Settlement Amount, less the PAGA Penalties payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Costs Payment. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 1.29.) These amounts are detailed as follows:

- <u>Class Counsel Fees and Litigation Expenses Payment</u>*:* Up to one-third of the Gross Settlement Amount, or **$125,000.00**, to Class Counsel as attorneys' fees for the litigation and resolution of this Action and up to **$20,000.00** for actual costs incurred in this Action. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.2);
- <u>Class Representative Service Payment</u>: Up to **$7,500.00** to Plaintiff as an award for her service as the class representative (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.1);
- <u>Settlement Administration Costs Payment</u>: Up to **$8,750.00** to the Settlement Administrator

for its fees and costs to administer the Settlement (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.3);

- PAGA Penalties Payment: **$20,000.00** for settlement of claims for civil penalties under PAGA, with 25% ($5,000.00) allocated to the Aggrieved Employees ("Individual PAGA Payments") and 75% ($15,000.00) allocated to the LWDA ("LWDA PAGA Payment") (Exhibit 1, Settlement Agreement, ¶ 3.2.5).

If the Court approves the above allocations from the Gross Settlement Amount, the Net Settlement Amount is estimated to be $**193,750.00**. (Kim Decl., at ¶ 12.) Each Class Member's share of the Net Settlement Amount ("Individual Settlement Payment") will be calculated based on the number of workweeks the Class Member worked during the Class Period. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 1.24.) For the approximately 370 Class Members (if no exclusions), the average gross Individual Settlement Payment, using a straight average, is $523.65. If the Court approves a lesser amount for any of the above requested allocations from the Net Settlement Amount, the remainder will be added to the Net Settlement Amount to be distributed to Class Members. (Kim Decl., Exhibit 1, Settlement Agreement, ¶ 3.2.5.2.)

The Settlement Administrator will mail the Class Notice, attached to the Settlement Agreement as Exhibit A, to all Class Members in no event later than fourteen (14) days following the receipt of Class Data via first class United States Postal Service ("USPS") mail. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.2.) The Class Notice includes a summary of the case and settlement terms and provides Class Members with detailed instructions on how to exclude themselves, object to the settlement, and dispute the number of workweeks and/or pay periods attributed to each Class Member per Defendant's records. (Kim Decl., ¶ 13.) Class Members will have forty-five (45) days from the mailing of the Class Notice (plus an additional fourteen (14) calendar days if they receive a re-mailed Notice) to opt out of or object to the Settlement or to dispute the number of work weeks and/or pay periods. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement, ¶ 7.4.4.)

IV. CERTIFICATION FOR SETTLEMENT PURPOSES ONLY IS APPROPRIATE

Express judicial policy favors maintaining wage and hour actions as class actions. *Prince v.*

CLS Transp., Inc. (2004) 118 Cal. App. 4th 1320, 1328; *Richmond v. Dart Industries, Inc.* (1981) 29 Cal. 3d 462. Any doubt as to the appropriateness of class treatment should be resolved in favor of class certification, subject to later modification if necessary. *Richmond*, 29 Cal. 3d at 473-75.) The decision to certify a class is a procedural one and should be based on the allegations in the operative complaint, and not in the perceived factual or legal merit of the class claims. (*Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 439-41.

To certify a settlement class, the Court must find the two primary requirements for maintaining a class action: (1) there must be an ascertainable class, and (2) there must be a well-defined community of interest in the questions of law and fact involving the parties to be represented. *See Vasquez v. Superior Court* (1971) 4 Cal. 3d 800, 805-09; *Daar v. Yellow Cab Company* (1967) 67 Cal. 2d 695, 704. These criteria are met here for the reasons set forth below.

A. There Is a Numerous and Ascertainable Class

Whether a class is ascertainable is determined by examining the class definition, the size of the class, and the means available for identifying class members. *See Vasquez, supra,* 4 Cal. 3d at 821-22; *Reyes v. Board of Supervisors of San Diego County* (1987) 196 Cal. App. 3d 1263, 1271. Class members are "ascertainable" when they may be readily identified without unreasonable expense or time.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that the numerosity and ascertainability elements are satisfied here. Class Members are all current and former non-exempt, hourly employees of Defendant employed in California during the Class Period (February 8, 2020 to January 18, 2025). Defendant has identified 370 Class Members based on a review of its payroll and personnel records. (*Id.*, ¶ 15.)

Therefore, and notwithstanding the foregoing, there is a numerous and ascertainable class.

B. There Is a Well-Defined Community of Interest

A community of interest is established by the predominance of common issues of law and fact. *See Vasquez*, 4 Cal. 3d at 811. The requirement of a community of interest:

> [D]oes not depend upon an identical recovery, and the fact that each member of the class must prove his separate claim to a portion of any recovery by the class is only one factor to be considered ... The mere

> fact that separate transactions are involved does not of itself preclude a finding of the requisite community of interest so long as every member of the alleged class would not be required to litigate numerous and substantial questions to determine his individual right to recover subsequent to the rendering of any class judgment which determined in plaintiffs' favor whatever questions were common to the class.

Id. at 809.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that common issues of fact and law predominate as to each of the claims alleged by Plaintiff, and the Class is united in its proof. (Kim Decl., ¶ 16.) Because Plaintiff has alleged a single scheme, "the relevant proof [does] not vary among class members" and "clearly presents a common question fundamental to all class members." *See In Re NASDAQ Market-Makers Antitrust Litigation* (SDNY 1997) 172 F.R.D. 119, 123 (citing In Re NASDAQ Market-Makers Antitrust Litigation, (SDNY 1997) 169 F.R.D. 493, 518). California courts show "no hesitancy" in inferring class-wide causation, class-wide injury, and class-wide damages when a common course of action has been shown. *B.W.I. Custom Kitchen*, 191 Cal. App. 3d at 1350. This inference "eliminates the need for each class member to prove individually the consequences of the defendants' actions to him or her." *Id.* at 1351 (quoting *Rosack v. Volvo of America Corp* (1982) 131 Cal. App. 3d 741, 753 [emphasis added]).

This action involves, *inter alia*, a determination about Defendant's alleged failure to provide meal and rest periods, failure to pay wages and overtime due to allegedly common off-the-clock work, failure to reimburse business expenses; the resulting failure to pay final wages when required and to provide accurate wage statements; and largely derivative claims under the UCL and PAGA. (Kim Decl., ¶ 16.) Plaintiff contends Defendant's practices affected Class Members in the same way and presents questions that are suitable for common adjudication because all Class Members were subject to the same employment policies and practices. (*Id.*) The outcome of litigation in this matter depends upon questions that are common to Class Members. (*Id.*)

C. The Named Plaintiff's Claims Are Typical

A class representative's claims are typical when they arise from the same event, practice, or course of conduct that gives rise to the claims of other putative class members, and if their claims rest on the same legal theories. The class representative's claims must be "typical" but not necessarily identical to the claims of other class members. 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. *Classen v. Weller* (1983) 145 Cal.App.3d 27, 47; *B.W.I. Custom Kitchens v. Owens-Illinois, Inc.* (1987) 191 Cal.App.3d 1341, 1347 ("[I]t has never been the law in California that the class representative must have identical interests with the class members."). Thus, it is not necessary that the class representative should have personally incurred all the damages suffered by each of the other class members. *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 228.

Plaintiff contends, and Defendant does not dispute for settlement purposes only, that Plaintiff's claims are typical of Class Members' claims because they arose from the same factual basis and are based on the same legal theories. (Kim Decl., ¶ 17.) Thus, Plaintiff's claims are typical of the claims of the putative Class. (*Id.*)

D. Adequacy of Class Counsel and Class Representative

As detailed below, Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 18, 74-80.) The Class Representative's interests are aligned with those of the Class Members, as she has suffered the same injuries as the Class Members and has no conflicts of interest. (*Id.* at ¶ 18.) Plaintiff has not shrunk from this responsibility. (*Id.*) Indeed, Plaintiff has devoted a substantial amount of time and energy to litigating this Action and effectuating a settlement. (*Id.*) Therefore, Class Counsel and the Class Representative are adequate.

E. Predominance and Superiority

Individual issues do not predominate over those common to the class. (Kim Decl., ¶ 19.) As explained, *supra*, Plaintiff alleges there are common issues of law and fact given that Plaintiff and all Class Members were subjected to the same policies and pay practices during the relevant time period. (*Id.*) Plaintiff and Class Members seek meal and rest premiums, unpaid wages and overtime, and penalties for work performed as non-exempt employees for Defendant. (*Id.*) Plaintiff alleges that these issues are suitable for common adjudication because all Class Members were allegedly subject to the same employment policies, and Plaintiff contends the practices applied uniformly to all Class Members. (*Id.*)

Plaintiff contends that class resolution is superior to other available methods for the fair and efficient adjudication of the controversy as there is little interest or incentive for Class Members to individually control the prosecution of separate actions. (*Id.* at ¶ 20.) Although the alleged injury resulting from Defendant's policies and practices are real and significant, the cost of individually litigating each such case against Defendant would easily exceed the value of any relief that could be obtained by any one Class Member individually. (*Id.*) If Class Members are forced to litigate their claims individually, it would potentially result in over 370 individual actions against Defendant, each for relatively small amounts. (*Id.*) Hence, an individual suit would prove uneconomical for potential plaintiffs because litigation costs would dwarf a potential recovery. (*Id.*)

V. THE THREE STEP APPROVAL PROCESS

California Rule of Court 3.769 requires court approval of the settlement of class action lawsuits. Preliminary approval is merely the first of three steps that comprise the approval procedure for settlements of class actions. *See* Manual for Complex Litigation, Second §30.44 (1993); *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801. The second approval step is the dissemination of notice of the settlement to all Class Members. *Id*. The third step is a final settlement approval hearing, at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented and Class Members may be heard. *Id.*

The determination of whether a settlement should be preliminarily approved requires, "basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of those claims represents a reasonable compromise." *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. However, the record need not contain an explicit statement of the maximum theoretical amount that the class could recover. *See Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409 ("*Kullar* does not… require any such explicit statement of value; it requires a record which allows "an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation."). "If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that notice be given to the Class Members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement." Manual for Complex Litigation, Second § 30.44, at 229.

In deciding whether to approve a proposed class action settlement, the Court must find that a proposed settlement is "fair, adequate, and reasonable" and falls within the "range of approval." *Dunk*, 48 Cal.App.4th at 1801-02. The trial court considers all relevant factors, such as "the strength of plaintiffs' case, the risk, expense, complexity and likely duration of further litigation, the risk of maintaining class action status through trial, the amount offered in settlement, the extent of discovery completed and the stage of the proceedings, the experience and views of counsel, the presence of a governmental participant, and the reaction of the Class Members to the proposed settlement." *Id.* The Settlement satisfies all of these requirements.

VI. THE SETTLEMENT IS FAIR, ADEQUATE, AND REASONABLE

The Court's decision to preliminarily approve a settlement is granted great deference as an exercise within its broad discretion. *Wershba v. Apple Computer, Inc*. (2001) 91 Cal.App.4th 224, 234-235. As a matter of public policy, courts both encourage the use of the class action device and favor settlement over continued litigation. *See, e.g., Linder v. Thrifty Oil Co.* (2000) 23 Cal. 4th 429, 434 ("Courts have long acknowledged the importance of class actions as a means to prevent a failure of justice in our judicial system."); *Class Plaintiffs v. City of Seattle* (1992) 955 F.2d 1268, 1276 ("[S]trong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned."). Applying the above factors, the proposed settlement provides a substantial benefit to the Class. It is fair, reasonable, and adequate, and should be preliminarily approved.

A. The Settlement is the Result of Serious, Informed, Non-Collusive Negotiations.

The proposed Settlement was reached as a result of arm's length negotiations after the completion of pertinent discovery and the exchange of necessary class data. (Kim Decl. ¶ 22.) The negotiations have been, at all times, adversarial and non-collusive in nature. (*Id.*) *See*, 4 Newberg on Class Actions § 13:45 (5th ed.) (due to the preference of settlement over litigation, "a court will presume that a proposed class action settlement is fair when certain factors are present, particularly evidence that the settlement is the product of arms-length negotiation, untainted by collusion."). Although Plaintiff steadfastly maintains that her claims are meritorious, Plaintiff acknowledges that there were substantial risks and uncertainty in proceeding with litigation. (*Id.*) As discussed below, Defendant presented multiple defenses to Plaintiff's claims, both on the merits and with respect to class certification. (*Id.*) Thus, while Plaintiff was prepared to litigate these claims through class certification, and ultimately trial, success was far from certain. (*Id.*) Assistance from a well-respected mediator ensured negotiations between the Parties were non-collusive and well-informed. (*Id.*)

B. Extent of Discovery and Stage of Proceedings

As stated above, the Parties engaged in substantial informal discovery before the Settlement was reached to allow them to fully evaluate the class claims and Defendant's defenses. (*Id.* at ¶ 23.) This litigation has reached the stage where the Parties have a clear view of their respective strengths and weaknesses in this case. (*Id.*)

***C.* The Strength of Plaintiff's Case and the Risk, Expense, Complexity, and Likely Duration of Any Litigation.**

Plaintiff's claims are based on Defendant's alleged failure to pay wages (including overtime), failure to provide meal and rest periods, failure to reimburse business expenses, the resulting failure to pay final wages when required and provide accurate wage statements, and largely derivative claims under the UCL and PAGA. (*Id.* at ¶ 24).

Plaintiff alleges that Defendant failed to pay Plaintiff and Class Members at least minimum wages for all hours worked and proper overtime wages for hours worked in excess of eight hours in a day and 40 hours in a week. (Kim Decl., ¶ 25.) Specifically, Plaintiff alleges that Defendant required Plaintiff and Class Members to perform pre-shift and post-shift off the clock work for which they were not paid. (*Id.*) For instance, Plaintiff alleges that Class Members were required to arrive to work several minutes prior to the start of their scheduled shifts to assist customers and coworkers, to clock out and continue working after the end of their scheduled shifts, and to receive calls from Defendant with work demands outside of scheduled work hours. (*Id.*)

Plaintiff also alleges that Defendant failed to incorporate non-discretionary, performance-based cash awards, bonuses, and/or shift differential pay into the regular rate of pay used to calculate and pay overtime wages to Class Members. (*Id.* at ¶ 42.) Moreover, Plaintiff alleged that Defendant had a consistent policy and practice of unlawfully rounding hours worked to the detriment of the Class Members. (*Id.*)

Defendant contends that it did not require off the clock work, paid for all reported hours worked, that Class Members were instructed and required to record all hours worked, that any alleged off the clock work was performed without Defendant's knowledge and was de minimis, that any bonuses or incentives paid to Class Members were discretionary and not includable in the regular rate of pay calculation, and that it paid wages at the proper rates. (Kim Decl., at ¶ 43.) Defendant also argues that given its written policies and practices, any unrecorded hours are likely subject to individualized inquiry and unlikely to be certified. (*Id.*) Given the difficulty in certifying this claim, Class Counsel applied a significant discount to damages based on this theory. (*Id.*)

Plaintiff also alleges that Defendant failed to provide proper meal breaks to Plaintiff and Class Members. (Kim Decl., ¶ 27.) For example, Plaintiff alleges that Defendant's policy required Class Members to clock out for their scheduled meal periods but continue working, and Class Members were not paid for this time. (*Id.*) This resulted in Plaintiff and Class Members working during their meal periods or missing their meal periods entirely. (*Id.*) Moreover, Plaintiff alleges that Defendant failed to provide a second meal period to Plaintiff and Class Members when they worked over 10 hours in a day. (*Id.*)

Defendant contends that Class Members were given a reasonable opportunity to take their meal periods, and when compliant meal periods were not provided, Defendant provided premium pay to Class Members as reflected in their time and pay records. (Kim Decl., ¶ 28.) Defendant also contends that the relevant Class Members who worked 12-hour shifts signed valid meal period waivers. (*Id.*) Defendant further contends that the meal break claim requires individualized inquiries which would preclude class certification. (*Id.*) If Defendant's contentions are proven true and prevail in trial, the likely outcome would be no recovery for the Class Members on the meal break claim. (*Id.*)

Plaintiff also contends that Defendant did not provide Class Members with paid 10-minute rest breaks for every four hours or major fraction thereof. (Kim Decl., ¶ 29.) Plaintiff contends that Class Members consistently worked in excess of consecutive three and a half-hour shifts and were entitled to paid rest breaks of not less than ten minutes for each consecutive three and a half-hour shift but were required to work through their rest breaks during their shifts. (*Id.*)

Defendant maintains that it did provide a reasonable opportunity for Class Members to take duty-free rest breaks during their shifts and dispute all allegations that rest breaks were not provided. (Kim Decl., ¶ 30.) Considering that unlike meal periods, rest breaks need not be recorded, these violations would likely be difficult to prove at trial and potentially depress the damages ultimately awarded. (*Id.*) Therefore, Class Counsel applied significant and appropriate discounts to the rest break claim. (*Id.*)

Additionally, Plaintiff alleges that Defendant required Plaintiff and Class Members to use their cellular phones for work, for which they were not reimbursed. (Kim Decl., ¶ 31.) Defendant maintained that Plaintiff and Class Members were not required to use their personal cell phones to perform their job duties and that individualized issues relating to this claim would preclude class certification. (*Id.*)

As for the wage statement and waiting time penalties claims, Defendant contends that these claims are merely derivative of the underlying claims and that Plaintiff and Class Members would be unable to first establish liability for the underlying claims for the reasons described above. (Kim Decl., ¶ 32.) Defendant further contends that even if they could first establish liability for the underlying claims, Plaintiff and Class Members would be unable to establish that Defendant's conduct was willful and knowing as required by the relevant statutes since Defendant acted in good faith to provide accurate wage statements and pay all wages due to Plaintiff and Class Members. (*Id.*) Thus, Defendant contends that the wage statement and waiting time penalties claims to have little to no value. (*Id.*)

Similarly, Defendant contends that the PAGA claim is also derivative of the underlying claims in the Action and ultimately fails because the underlying claims have no merit. (Kim Decl.,

¶ 33.) Defendant also contends that even if Plaintiff and Class Members could establish Labor Code violations, the Court has the discretion to award less than the maximum civil penalty amount and would award substantially less civil penalties here because Defendant acted in good faith to comply with the relevant wage and hour laws and any violations were minor and technical in nature. (*Id.*)

Defendant generally denies all claims alleged in the Action and further denies class and/or representative treatment is appropriate for any purpose other than this Settlement and that it complied with all applicable laws. (Kim Decl.,¶ 34.) However, after careful consideration, Defendant has concluded that further litigation would be protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner and upon the terms and conditions herein. (*Id.*)

As stated above, while Plaintiff and Class Counsel contend the claims asserted in the Action have merit, they also acknowledge the expense, delay, and risks of continued litigation. (Kim Decl.,¶ 35.) Although the Parties engaged in significant informal discovery in advance of mediation, the Parties still had significant discovery to complete had the matter not settled. (*Id.*) This would have required the expenditure of substantial time and resources by both Parties that would have very likely spanned several years. (*Id.*) Even if Plaintiff were to certify the classes, the Parties would incur considerably more attorney fees and costs through a possible decertification motion, trial, and possible appeal. (*Id.*) This Settlement avoids those risks and the accompanying expense. (*Id.*)

D. The Risk of Maintaining Class Action Status Through Trial.

Plaintiff has not yet filed her motion for class certification, and as such, the extent to which Plaintiff's proposed classes are certifiable is somewhat speculative. (*Id.* at ¶ 36.) Absent settlement, there is a risk that there would not be a certified class at the time of trial, or if there were, it could consist of a significantly smaller group of employees than the proposed Settlement Class, resulting in less overall recovery. (*Id.*)

Finally, in class actions, decertification is always a possibility, and there is always a risk that a trial of this magnitude can become unmanageable. (*Id.* at ¶ 37.) Cases like *Duran v. U.S. Bank Nat. Assn*. (2014) 59 Cal. 4th 1, 34 address the complexity of using statistical samples in class actions and demonstrate that decertification is a real risk that Class Counsel must consider. (*Id.*) A class trial would have also required expert witnesses, the accrual of extensive litigation costs, and the commitment of extensive further time and financial resources. (*Id.*) Finally, given the complexity and unsettled nature of the issues, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal. An appeal would result in further delay for the Class Members who have already waited years for resolution in this matter. (*Id.*) Risk and legal uncertainty must be dealt with in any litigation, and this Settlement was the product of compromise accounting for those risks and uncertainty. (*Id.*)

E. The Presence of a Governmental Participant

Class Counsel will be submitting the Settlement Agreement and this Motion to the LWDA concurrently with the filing of this Motion pursuant to Labor Code § 2699(l)(2). (*Id.* at ¶ 38.)

F. The Amount Offered in Settlement is Fair Given the Potential Value of the Claims.

If the Court approves the requested allocations from the Gross Settlement Amount of $375,000.00 as addressed above, the Net Settlement Amount is estimated to be $193,750.00. (Kim Decl., ¶ 12.) There are approximately 370 total Class Members. (*Id.*) If there are no exclusions from the Class, the average gross Individual Settlement Payment, per Class Member, using a straight average, is $523.65. (*Id.*)

Based on an analysis of Plaintiff's time and pay records and a sampling of time and pay records for the Class, Plaintiff estimated the potential realistic exposure for the main claims as follows: **$28,481.13** for unpaid wages claims, including minimum and overtime wages, due to off the clock work; **$86,673.50** for meal period violations; **$138,503.20** for rest period violations; **$45,090.00** wage statement penalties; **$157,054.00** in waiting time penalties; **$3,700.00** for unreimbursed business expenses; and **$20,000.00** for PAGA penalties. (*Id.* at ¶¶ 41-64.) As such, the total estimated realistic exposure Defendant could face is **<u>$479,501.83</u>**. (*Id.* at ¶ 67.)

The Gross Settlement Amount of $375,000.00 represents a recovery for the Class of approximately 78.20% of the total realistic exposure Plaintiff estimated that Defendant could face on the primary claims in this case. (*Id.*) Plaintiff and Class Counsel submit that this is an excellent result in the face of uncertainty and the prospects of protracted and contested litigation through class certification, summary judgment, and trial, and particularly in light of all of the factors described above. (*Id*.)

G. A Balance of Risk Factors and *Kullar* Analysis Support Approval

In deciding whether to approve the settlement, the Court must balance these risk factors against an "understanding of the amount in controversy and the realistic range of outcomes of the litigation." *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 130, 133; *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal.App.4th 399, 408-09. The court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case …." *Munoz*, at 408. Plaintiff's counsel used the comprehensive data and documents provided to perform an analysis of the potential exposure Defendant faced on Plaintiff's main class-wide claims, establishing the realistic range of outcomes in this case. As noted above, the Gross Settlement Amount represents a recovery of approximately 78.20% of the estimated total realistic exposure facing Defendant. (Kim Decl., ¶ 67.)

There was a very real prospect that nothing would be recovered by the Class if litigation continued and class certification were ultimately denied. At the same time, further litigation would require the expenditure of significant time and financial resources, and there is always the possibility of adverse developments in the law and the likelihood of extended battles in both the trial court and courts of appeal. Settlement is a prudent compromise that benefits the Class Members promptly.

H. Experience and Views of Counsel

Experienced counsel, operating at arm's length, have weighed the strengths of the case, examined all the issues and risks of litigation, and endorsed the proposed settlement. Class Counsel are experienced in class actions, have represented their clients zealously, and have no conflicts of interest. (Kim Decl., ¶¶ 74-80.) Class Counsel submits the Settlement is fair, adequate, and reasonable in view of the risks and other considerations addressed and is well-suited for final approval upon completion of the administration process. (Kim Decl., ¶ 80.)

VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS FAIR AND

REASONABLE

"At the conclusion of a class action, the class representatives are eligible for a special payment in recognition of their service to the class." 5 Newberg on Class Actions § 17:1 (5th ed.).

Plaintiff is entitled to a reasonable service payment for her efforts and initiative in bringing and helping to prosecute this action. (Kim Decl., ¶ 69.) Plaintiff spent significant time better apprising herself of her rights, deciding whether remedial action should be taken and how it should be taken, searching for attorneys, and contacting Class Counsel, who spent many hours with Plaintiff discussing the case and the law. (*Id.*)

Both before and after the filing of this lawsuit, Plaintiff conferred with Class Counsel on to discuss every aspect of her case. (Kim Decl., ¶ 70.) Plaintiff provided Class Counsel with information about Defendant and about the industry generally, produced and reviewed documents, identified witnesses, consulted with Class Counsel regarding litigation strategy, participated in the mediation process, monitored the progress of the litigation with Class Counsel, and reviewed and signed the Settlement Agreement. (*Id.*)

In light of the foregoing, Class Counsel believes that the $7,500.00 incentive award to the Class Representative is fair and reasonable. (Kim Decl., ¶ 71.)

VIII. THE PROPOSED CLASS NOTICE PROVIDES ADEQUATE NOTICE TO THE CLASS MEMBERS.

To be deemed proper, a notice must provide the Class Members with sufficient information to make an informed decision as to whether to accept or object to the settlement. *Mullane v. Central Hanover Bank & Trust Co.* (1950) 339 U.S. 306, 314. The notice must apprise the Class Members of the pendency of the action; reasonably convey information regarding the settlement and the Class Members' rights, entitlements, and obligations; and affords Class Members the opportunity to present their objections. *Id.*

The proposed Class Notice provides all the information a reasonable person would need to make a fully informed decision about the settlement. It will notify all Class Members of the terms of the Settlement, its effect on their rights, their options as Class Members (i.e., participate, object, opt-out, and dispute work weeks), and procedures for exercising those options. (Kim Decl., ¶ 13.)

The standard for determining the adequacy of notice is whether it has "a reasonable chance of reaching a substantial percentage of the class members." *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974. Here, the Class Notice will be sent via first-class mail to each of the 307 Class Members at their addresses from Defendant's records. (Kim Decl., ¶ 13, Exhibit 1, Settlement Agreement ¶¶ 4.2, 7.4.2.) Not later than fourteen (14) calendar days after the Court grants Preliminary Approval of the Settlement, Defendant will deliver the Class Information to the Settlement Administrator in the form of a Microsoft Excel spreadsheet. (*Id.*) The Settlement Administrator will mail the Class Notice to all Class Members in no event later than fourteen (14) days following the Preliminary Approval Date via first class USPS. (*Id.*) If the USPS does not provide a forwarding address, the Settlement Administrator shall conduct a Class Member Address Search and re-mail the Class Notice to the most current address obtained. (Kim Decl., ¶ 63, Exhibit 1, Settlement Agreement, ¶ 7.4.3.) Class Notice should be approved as the best and most practicable way to ensure the greatest possible number of Class Members will receive notice. (Kim Decl., ¶ 73.)

IX. THE STIPULATED CLASS COUNSEL AWARD AND CLASS COUNSEL FEES AND COSTS PAYMENT ARE REASONABLE AND SHOULD BE APPROVED.

Class Counsel respectfully requests, without opposition from Defendant, a Class Counsel Fees Payment of $125,000.00 (up to one-third of the Gross Settlement Amount) and a reasonable Class Counsel Litigation Expenses Payment not to exceed $20,000.00, subject to approval by the Court. (Kim Decl. ¶ 68.)

Class Counsel submits it has the requisite experience, knowledge, and resources to serve as Class Counsel and to zealously represent the Class. (Kim Decl., ¶¶ 74-80.) Class Counsel has incurred substantial hours in prosecuting this Action on a contingency basis and will not receive any compensation for their efforts until recovery is obtained for the Class. (Kim Decl. ¶ 68.) In addition, Class Counsel's efforts in reaching the Settlement on behalf of the Class will confer a significant benefit to the Class. (*Id.*) As such, the requested Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment are reasonable.

X. ACTION REQUESTED AS A PART OF THE MOTION FOR PRELIMINARY APPROVAL

The Parties respectfully request this Court, as part of the preliminary approval process, to grant the following relief and make the following orders:

1. Review and approve the Settlement Agreement;

2. Review and approve the Class Notice, attached to the Settlement Agreement as Exhibit A;

3. Consider and determine that the proposed class action settlement as set forth in the Settlement Agreement preliminarily appears fair, reasonable, and adequate;

4. Enter an order conditionally certifying the action as a class action for settlement purposes only and preliminarily approving the proposed class action settlement and the Settlement Agreement;

5. Approve and appoint D.Law, Inc. to serve as Class Counsel for settlement purposes;

6. Approve and appoint Apex Class Action, LLC as the Settlement Administrator to handle the notice and claims procedures as set forth in the Settlement Agreement;

7. Approve the proposed settlement's allocation of funds to claims made under PAGA;

8. Order Defendant to disclose to the Settlement Administrator the Class Member's name, last-known mailing address, email address, telephone number, Social Security number, hire dates, and termination dates as set forth in the Settlement Agreement;

9. Order Apex to mail the Class Notice to Class Members; and

10. Set a date for the Final Approval Hearing.

Dated: April 23, 2025 D.LAW, INC.

By ______________________________
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Natalie Haritoonian
Enoch J. Kim
Jonas Agle
Antonia McKee
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