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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, Plaintiffs, v. PIN SETTERS, INC., a California corporation doing business as COUNTRY CLUB LANES; and DOES 1 to 50, inclusive, Defendants.	**<u>CLASS ACTION</u>** Case No.: 24CV002452 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AGREEMENT; MEMORANDUM OF POINTS AND AUTHORITIES** <u>Hearing Information:</u> Date: October 17, 2025 Time: 9:00 a.m. Honorable Jill Talley Department 23 Action filed: February 8, 2024 FAC filed: April 12, 2024 Trial date: None Set

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TO THE HONORABLE COURT, ALL INTERESTED PARTIES, AND THEIR RESPECTIVE COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on October 17, 2025, at 9:00 a.m., or as soon thereafter as the matter may be heard, in Department 23 of the Sacramento County Superior Court, located at 720 9th Street, Sacramento, CA 95814, Plaintiff Tonya Dwyer will move for an Order Granting Final Approval of Class Action and PAGA Settlement and Release.

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

The Motion will be based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Enoch J. Kim, the Declaration of Stacey Shim for the Settlement Administrator, and all other papers and records on file in this action, and on such oral and documentary evidence as may be presented at the hearing on this Motion.

Pursuant to Local Rule 1.06 (A), the Court will make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the hearing. The complete text of the tentative ruling may be downloaded off the Court's website. If the party does not have online access, they may call the dedicated phone number for the department as referenced in the local telephone directory between the hours of 2:00 p.m. and 4:00 p.m. on the court day before the hearing and receive the tentative ruling. If you do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no hearing will be held.

Dated: September 24, 2025 D.LAW, INC.

By: ______________________________

Emil Davtyan, Esq.
Natalie Haritoonian, Esq.
Enoch J. Kim
Jonas Agle, Esq.
Antonia McKee, Esq.
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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES - Continued

Page

Cases - Continued

Statutes

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Class Counsel has achieved an excellent result in this litigation, reflected in the Class Action and PAGA Settlement Agreement ("Settlement" or "Settlement Agreement"). The response of Class Members shows that the Settlement is in the best interests of the class: no Class Member opted out of or objected to the Settlement. **The average Class Member will receive a settlement payment of approximately $519.31, and the highest settlement payment will be approximately $2,425.85.** The settlement of this action is fair, reasonable, and adequate. Accordingly, final approval should be granted.

II. RELEVANT BACKGROUND

This is a wage and hour class action, brought on behalf of approximately 376 California non-exempt employees.

On February 8, 2024, Plaintiff Tonya Dwyer filed this putative class action alleging the following claims: (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. On the same date, Class Counsel sent a letter to the LWDA to exhaust her remedies under PAGA. On April 12, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for penalties under the PAGA. (Declaration of Enoch J. Kim ["Kim Decl."], ¶ 2.)

The parties agreed to participate in mediation and informally exchanged information and documents, including data points such as number of Class Members, pay periods, workweeks included in the class period, and Defendant's wage and hour policies and practices and time and pay records for a sample of Class Members employed from February 8, 2020, through August 31, 2024. In preparation for mediation, Plaintiff hired an expert to prepare damage calculations and an exposure analysis for the mediation. (Kim Decl., ¶ 3.) On November 19, 2024, the parties mediated this case with Brandon McKelvey, Esq., a well-respected and experienced mediator in wage and hour class actions. (Kim Decl., ¶ 4.)

After lengthy negotiations during the mediation, the parties ultimately settled the case in the total amount of $375,000 (Gross Settlement Amount) on a class-wide basis for the period of February 8, 2020, through January 18, 2025, and on a PAGA basis for the period of February 8, 2023, through January 18, 2025. The parties executed the Settlement Agreement in January 2025. (Kim Decl., ¶ 5.)

III. THE SETTLEMENT

A. Benefit to the Class

The Class consists of the named Plaintiff and all persons who worked for Defendant as non-exempt employees in California at any time during the Class Period, which is defined as the period of February 8, 2020, through January 18, 2025. ("Class Members"). There is no claim form requirement, and no residual will revert to Defendant. It is an opt-out class. (Kim Decl., ¶ 6.)

The average Class Member will receive a settlement payment of approximately $519.31, and the highest settlement payment will be approximately $2,425.85. (Declaration of Stacey Shim of Apex Class Action, LLC ["Shim Decl."].)

Additional proposed disbursements are as follows:

1)	Class Counsel Fees:	$125,000;
2)	Costs:	$18,490.51;
3)	Settlement Administrator Fees:	$8,750;
4)	Class Representative Service Payment:	$7,500;
5)	PAGA Penalties:	$20,000 (LWDA Portion: $15,000).

B. Preliminary Approval of the Settlement

On July 21, 2025, the Court granted Preliminary Approval of this Settlement, approved the Notice of Class Action and related forms, appointed the Class Representative, designated Class Counsel, approved the Settlement Administrator, and set timelines for the settlement administration process. (Kim Decl., ¶ 7.)

On or about May 22, 2025, Apex Class Action, LLC ("Apex") received the Court-approved Notice of Class Action Settlement from the parties. The Notice advised Class Members of their right to opt out of the settlement, object to the settlement, dispute the quantity of Workweeks, or do nothing, and the implications of each such action. The Notice also advised Class Members of applicable deadlines and other events, including the date of the Final Approval Hearing, and how Class Members could obtain additional information. (Kim Decl., ¶ 8.)

On or about May 23, 2025, Defendant's counsel provided Apex with a data list containing the names, social security numbers, last known addresses, and pertinent employment information during the Class Period for each Class Member (the "Class Data"). The Class Data contained records for 376 individuals identified as Class Members. (Shim Decl., ¶ 5.)

The mailing addresses contained in the Class Data were processed and updated utilizing the National Change of Address Database ("NCOA") maintained by the U.S. Postal Service ("USPS"). The NCOA contains changes of addresses filed with the USPS. In the event that any individual had filed a USPS change of address request, the address listed with the NCOA was utilized in connection with the mailing of the Notices. (Shim Decl., ¶ 6.)

On June 13, 2025, Apex caused the Notice of Class Action Settlement ("Notice") to be mailed via first class U.S. Mail to 376 Class Members. (Shim Decl., ¶ 7 .)

71 Notices were returned by the post office. For the Notices returned without a forwarding address, Apex performed an advanced address search (i.e., skip trace) on these addresses. Of the 71 traces performed, 48 updated addresses were obtained, and Notices were promptly re-mailed to those Class Members via First Class mail. Of the 48 Notices mailed to a more current address identified from trace, 23 Notices were returned to Apex as undeliverable a second time. As of this date, 23 Notices remain undeliverable as an updated address could not be obtained via skip trace. (Shim Decl., ¶ 8-10.)

The deadline for Class Members to submit a Request for Exclusion, object to the settlement, or dispute pay periods and/or workweeks was August 12, 2025. Re-mailed Notices were provided an extended deadline of August 26, 2025. (Shim Decl., ¶ 11-13.)

As of this date, Apex has received no Request for Exclusions from Class Members. Therefore, 100% of the Class Members are participating in the class settlement. (Shim Decl., ¶ 11.)

IV. FINAL SETTLEMENT APPROVAL IS APPROPRIATE

A class action cannot be dismissed or compromised without court approval and notice of any proposed dismissal or compromise must be given to all class members as directed by the court. (*La Sala v. Am. Sav. & Loan Assn*. (1971) 5 Cal.3d 864, 872; see Code Civ. Proc. § 1781(f).) In deciding whether to grant final approval to a proposed class action settlement under Code of Civil Procedure section 382, a court's overriding concern is whether the proposed settlement is "fair, adequate, and reasonable." (*Dunk v. Ford Motor Company* (1996) 48 Cal.App.4th 1794, 1801.)

A. The Settlement is entitled to a presumption of fairness.

A presumption of fairness exists where: (1) a settlement is reached through arm's length bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is small. (*Dunk v. Ford Motor Company*, *supra*, 48 Cal.App.4th at p. 1802.)

To prevent fraud, collusion, or unfairness to the class, the settlement or dismissal of a class action requires court approval. (*Malibu Outrigger Bd. of Governors v. Superior Court* (1980) 103 Cal.App.3d 573, 578-579.) The purpose of the requirement is the protection of those class members, including the named plaintiff, whose rights may not have been given due regard by the negotiating parties. (*Officers for Justice v. Civil Serv. Com'n of City and County of San Francisco* (1982) 688 F.2d 615, 624.) The trial court has broad powers to determine whether a proposed class action settlement is fair. (*Mallick v. Superior Court* (1979) 89 Cal.App.3d 434.)

At the Final Approval hearing, the Court should consider the relevant factors, such as the strength of the plaintiff's case, the risk, expenses, 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, and the reaction of the class members to the proposed settlement. (*Officers* *for Justice*, *supra*, 688 F.2d at p. 624.) "This list is not exhaustive and should be tailored to each case. Due regard should be given to what is otherwise a private consensual agreement between the parties." (*Dunk*, *supra*, 48 Cal.App.4th at p. 1801.)

B. The settlement was reached through arm's length negotiations

This settlement was reached through arms-length negotiations with well-respected and experienced mediator, Brandon McKelvey, Esq. He is familiar with this type of class action in its substance and procedure. The parties ultimately agreed on the settlement through the mediator. (Kim Decl., ¶¶ 3-5.)

C. Sufficient discovery and investigation have been completed to warrant settlement.

The stage of the proceedings and the amount of discovery completed when the settlement was reached are important factors in determining the fairness, reasonableness, and adequacy of a settlement. (*Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 128.)

Here, the settlement was reached through arm's-length negotiation with an experienced mediator. Before mediation, the parties engaged in informal discovery, and Defendant provided information and records including data points such as number of Class Members, pay periods, workweeks included in the class period, Defendant's wage and hour policies and practices, and time and pay records and time and pay records for a sample of Class Members employed from February 8, 2020, through August 31, 2024. Plaintiff hired an expert to prepare damage calculations and an exposure analysis for the mediation. (Kim Decl., ¶ 3.)

The attorneys representing the Class have a great deal of experience in wage and hour class action litigation and have been approved as class counsel in numerous other wage and hour class actions. (Kim Decl., ¶¶ 25-31.) Based on that experience, the information produced by Defendant, and the expert's calculations, Class Counsel was able to negotiate a sizable recovery for the Class Members.

D. Class Counsel is experienced and endorses the settlement.

Experienced counsel, operating at arm's length, have weighed all of the foregoing factors and endorse the proposed settlement. The view of the attorneys actively conducting the litigation is "entitled to significant weight." (*Fisher Bros. V. Cambridge-Lee Industries, Inc.* (E.D. Pa. 1985) 630 F.Supp.482, 488.) "The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." (*In re Omnivision Techs., Inc.* (N.D. Cal. 2008) 559 F. Supp. 2d 1036, 1043; see *Dunk, supra*, 48 Cal.App.4th at p. 1801.)

Class Counsel has extensive experience in class actions and employment litigation, and specifically in wage and hour class actions. (Kim Decl., ¶¶ 25-31.) Class Counsel is experienced and qualified to evaluate the class claims and viability of the defenses. (Kim Decl., ¶¶ 25-31.)

The recovery for each Class Member is substantial, given the risks inherent in litigation and the defenses asserted. This Settlement is fair, adequate, and reasonable and in the best interests of the Class.

E. 100% of the Class Members are participating in the settlement.

There are 376 Class Members, all of whom are participating in this Settlement. (Kim Decl., ¶¶ 9.)

V. ATTORNEYS' FEES

A. Attorneys' fees are properly calculated as a percentage of the total value created for the benefit of the Settlement Class.

Class Counsel seek a fee award for the successful prosecution and resolution of this action, calculated as a percentage of the total value of benefits to Class Members by the settlement, which is an appropriate method for determining an award of attorneys' fees. (*Serrano v. Priest* (1977) 20 Cal.3d 25, 34; *Vincent v. Hughes Air West, Inc.* (9th Cir. 1977) 557 F.2d 759, 769.) The purpose of this equitable doctrine is to avoid unjust enrichment of counsel and to "spread litigation costs proportionally among all the beneficiaries so that the active beneficiary does not bear the entire burden alone." (*Vincent v. Hughes Air West, Inc., supra,* 557 F.2d at p. 769.)

The Common Fund Doctrine is predicated on the principle of preventing unjust enrichment. When a litigant's efforts create or preserve a fund from which others derive benefits, the Court may spread litigation costs proportionally among all the beneficiaries to compensate those who created the fund. "Where the lawsuit results in the recovery of a fund or property benefitting others as well as the plaintiff (e.g., a class action), the court has inherent equitable power to order Plaintiff's attorney's fees paid out of the common fund or property." (*Serrano, supra,* 20 Cal.3d at p. 35.)

Such fee spreading assures that all those benefited by the litigation pay their fair share of obtaining the recovery. (*Lealao v. Beneficial Calif., Inc.* (2000) 82 Cal.App.4th 19, 26.) "Percentage fees have traditionally been allowed in such common fund cases." (*Id.* at p. 27.) The California Supreme Court has long approved of awarding fees as a percentage of the settlement. (*Serrano, supra,* 20 Cal.3d at p. 35.) California courts have been expressly authorized to award attorneys' fees so as "to ensure that **the fee awarded is within the range of fees freely negotiated in the legal marketplace incomparable litigation**." (*Lealao*, *supra*, 82 Cal.App.4th at p. 50, emphasis added.) As *Lealao* explained, in a representative action, courts must consider the amount of attorney fees typically negotiated in comparable litigation: "Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace, as it will otherwise be economic for defendants to increase injurious behavior. It has therefore been urged (most persistently by Judge Richard Posner) that in defining a 'reasonable fee' in such representative actions the law should 'mimic the market.'" (*Id.* at p. 47.)

In this case, the fees are being paid from the common fund; accordingly, the fee should be awarded to mimic fees freely negotiated in the legal marketplace for comparable common fund cases under *Lealao*. As *Lealao* acknowledged, in cases like this, the percentage-of-the-benefit approach should be considered, because "it better approximates the workings of the marketplace than the lodestar approach." (*Lealao, supra,* 82 Cal.App.4th at p. 49; see also *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal.App.4th 1253, 1270 [observing that "attorney fees awarded under the common fund doctrine are based on a 'percentage-of-the-benefit' analysis"].)

In *Laffitte v. Robert Half International Inc.* (2016) 1 Cal.5th 480, 503, the California

Supreme Court affirmed that trial courts may grant attorneys' fees in a common fund case based on a percentage of the recovery. The *Lafitte* court held: "We join the overwhelming majority of federal and state courts in holding that when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created. The recognized advantages of the percentage method—including relative ease of calculation, alignment of incentives between counsel and the class, a better approximation of market conditions in a contingency case, and the encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging the litigation…—convince us the percentage method is a valuable tool that should not be denied our trial courts." (*Ibid*.)

Thus, California courts have affirmed the continued validity of percentage fee awards in class action cases. Under these principles, a percentage of the common fund fee award is properly based on the total settlement. Class Counsel's application for an award of attorneys' fees in an amount of one-third of the settlement amount created on behalf of the Class is reasonable and fair.

Class Counsel seek a fee award calculated as a percentage of the total Settlement Amount for the successful prosecution and resolution of this action. For Class Counsel, the fees here were wholly contingent in nature, and the case presented far more risk than the usual contingent fee case. There was the prospect of the enormous cost inherent in class action litigation, as well as a long battle with a corporate defendant. Class Counsel risked their time, money, and resources to ensure the successful litigation of this action on behalf of the Class Members. Accordingly, the requested percentage of the common fund is appropriate, and Class Counsel respectfully requests that the Court enter an Order to that effect. (Kim Decl. ¶ 16.)

Defendant has not objected to the fees and costs being requested in this case. (Kim Decl., ¶ 17.) Moreover, the Notice mailed to Class Members stated the amount of fees being requested by Class Counsel. Not a single Class Member objected to an award of fees in the amount requested. (Kim Decl., ¶ 14.)

B. A lodestar analysis also supports the attorneys' fees award.

California courts have been expressly authorized to award attorneys' fees so as "to ensure that the fee awarded is within the range of fees freely negotiated in the legal marketplace in comparable litigation." (*Lealao, supra,* 82 Cal.App.4th at p. 50.) Specifically, *Lealao* holds that if the court sets fees under a lodestar, the multiplier should consider what counsel would have earned on the free market. The free market is determined by the percentage of the common fund, not the lodestar amount. (*Ibid.*) Accordingly, whatever method the court uses to set fees, the Court is encouraged to look to what the free market would bear under any circumstances. Even if the Court awards fees under the lodestar method, under *Lealao*, the lodestar fees can be adjusted by a multiplier to reflect the percentage of the fund. (*Id.* at pp. 19, 50.)

Once the Court establishes the lodestar amount, it may enhance the fee award by a multiplier in order to make an appropriate fee award. (*Serrano*, *supra*, 20 Cal. 3d at p. 48.) The pertinent factors include the difficulty of the questions involved and the skill in presenting them, the contingent nature of the fee award, the extent to which the litigation precluded other employment, and the percentage-of-the-fund the attorney would have received on the fair market. (*Ibid.*; *Lealao*, *supra*, 82 Cal.App.4th at p. 49.) However, this list is not exhaustive, and the Court can consider other factors it deems important in setting the multiplier. (*Id.* at p. 40.)

In this case, by the time of the Final Approval hearing, Class Counsel will have worked at least 129.3 hours on this case, with a lodestar of approximately $90,211.50. (Kim Decl., ¶ 18, **Ex. 2**, Time Records.) Class Counsel requests a fee of $125,000, which requires only a modest multiplier of 1.4 of the amount warranted by the lodestar. (Kim Decl., ¶ 18.) The efficiency with which settlement was reached, the results and quality of the settlement, and the contingent risk support the reasonableness of Class Counsel's fee request.

1. Class counsel's hourly rate

Class Counsel requests an hourly rate of $1,045 for attorney Enoch Kim, $925 for attorney Natalie Haritoonian, $475 for attorney Jonas Agle, $475 for attorney Antonia McKee, and $350 for paralegal Silvia Pimentel, $300 for paralegal Jose Lopez, and $275 for paralegal Jonathan Morataya. (Kim Decl., ¶¶ 25-31.)

A reasonable hourly rate is the prevailing rate charged by attorneys of similar skill and experience in the relevant community. (*PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) The Court may consider other factors when determining a reasonable hourly rate, such as the nature of the work performed, the relevant area of expertise, and the attorney's customary billing rates. (*Flannery v. California Highway Patrol* (1998) 61 Cal App.4th 629, 632.) One difficulty in determining the hourly rate of attorneys of similar skill and experience in the relevant community is the scarcity of hourly fee-paying clients in class action litigation. As a practical matter, few if any consumers pay attorneys' fees on an hourly basis for such extensive litigation, thus retainer agreements in such cases are based on a contingency fee relationship. Although there is no customary billing rate, the nature of class action work should be strongly considered by the Court.

The rates requested are in line with those approved in other cases. (*Simers v. Los Angeles Times Communications LLC* (2024) 104 Cal.App.5th 940, 949 [affirming attorney rates from $400-900]; *Snoeck v. ExakTime Innovations, Inc.* (2023) 96 Cal.App. 5th 908, 914 (2023) [hourly rates of $750, $600, and $535 were reasonable in FEHA case]. (Kim Decl., ¶ 20)

The rates are also consistent with surveys relied on by other courts. (*Martinez v. Helzberg's Diamond Shops* (C.D. Cal., Sept. 24, 2021, No. EDCV201085PSGSHKX) 2021 WL 9181893, at at *10 ([The Real Rate Report provides that, in Los Angeles, partners litigating employment and labor matters have hourly rates ranging from $470 to $784, and associates have hourly rates ranging from $335 to $570"]; *Gutierrez v. Chopard USA Ltd.* (2022) 82 Cal.App.5th 383, 387 [Unruh Act case affirming award based on Laffey Matrix, available at http://www.laffeymatrix.com/see.html].) (Kim Decl., ¶ 21)

In sum, Class Counsel are attorneys who command a high rate based on their skill and experience. They have had success in class actions, are held in high regard by the legal community, and practice in a niche area. This case required attorneys with great skills and financial backing. To obtain such an attorney on the free market, a client must pay appropriate compensation. Therefore, Class Counsel's requested rate is fair and reasonable.

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2. Class Counsel's hours spent on the case

"Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records." (*Martino v. Denevi* (1986) 182 Cal. App. 3d 553, 559.)

Reasonable hours include, in addition to time spent during litigation, the time spent before the action is filed, including time spent interviewing the clients, investigating the facts and the law, and preparing the initial pleadings. (*New York Gaslight Club, Inc. v. Carey* (1980) 447 U.S. 54, 62.) Further, the fee award should include fees incurred to establish and defend the attorneys' fee claim. (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639.)

Here, Class Counsel maintained a record of recorded hours spent on this case and assert that D.Law's hours are fair and reasonable. Class Counsel will have spent approximately over 129.3 hours litigating this case and bringing the settlement to fruition. (Kim Decl., ¶ 18, **Ex. 2**, Time Records.) Class Counsel requests that the Court find that these hours were reasonably expended in this litigation.

VI. THE COURT SHOULD APPROVE THE REQUEST FOR REIMBURSEMENT OF COSTS.

The request for reimbursement of costs is fair and reasonable. The Settlement Agreement provides for reimbursement of costs incurred by Class Counsel of up to $20,000. (Kim Decl. ¶ 13.) Class Counsel has incurred total costs in the amount of $18,490.51. (Kim Decl., ¶ 13, **Ex. 1**, Itemization of Costs.) Class Counsel's request for litigation costs in the amount of $18,490.51 should therefore be granted.

The parties' Settlement Agreement provides for settlement administration fees capped at $8,750. (Shin Decl., ¶ 19) The Settlement Administrator's request for fees in the amount of $8,750 should therefore be granted.

These costs are all litigation related. The authority for the Court to award these amounts is both the parties' Settlement Agreement and the applicable Labor Code provisions. Therefore, these requests should be approved.

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VII. THE CLASS REPRESENTATIVE SERVICE PAYMENT IS REASONABLE AND STANDARD IN CLASS ACTIONS.

A class representative is generally entitled to a fee for service to the Class. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 804.) "Since without a named plaintiff there can be no class action, such compensation as may be necessary to induce him to participate in the suit could be thought the equivalent of the lawyers' nonlegal but essential case-specific expenses, such as long-distance phone calls, which are reimbursable." (*Ibid.; see, e.g., Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393 [approving $10,000 enhancement for each of four named plaintiffs]; *Godfrey v. Oakland Port Services Corp.* (2014) 230 Cal.App.4th 1267, 1272 [affirming $10,000 enhancement for each of two named plaintiffs]; *Glass v. UBS Financial Services, Inc.* (N.D. Cal., Jan. 26, 2007, No. C-06-4068 MMC) 2007 WL 221862, at *17 [awarding $25,000 enhancement to each of four named plaintiffs].)

"[C]riteria courts may consider in determining whether to make an incentive award include: 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation. [Citation.]" (*Van Vranken v. Atlantic Richfield Co.* (N.D.Cal.1995) 901 F.Supp. 294, 299; see *Rodriguez v. West Publishing Corp.* (9th Cir. 2009) 563 F.3d 948, 958 [class representative enhancements "are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general"].)

The request for the Service Payment of $7,500 for Class Representative Tonya Dwyer is fair and reasonable. (Kim Decl., ¶ 10.) This Service Payment is based on her contribution to the Class, risks incurred, stress, execution of a general release, benefit of the Settlement to the Class Members, and all other factors presented to the Court and set forth in her declaration. This settlement had a great result: 100% of the money will be paid out because there is no reversion to Defendant, and 100% of Class Members are participating in the settlement. (Kim Decl., ¶ 8.)

There are no opt-outs to the class portion of the Settlement. (Shin Decl.)

Class Representative Dwyer has worked hard at every step of this litigation, remaining in contact with Class Counsel's office throughout the litigation and the settlement process. She provided all documents in her possession and answered questions. She identified relevant witnesses and spoke with other employees regarding their experiences working for Defendant. She also reviewed numerous pages of documents, participated in the mediation, and reviewed settlement documents. Ms. Dwyer has helped with all aspects of this litigation and has been diligent and acted in accordance with what is expected of a class representative throughout all stages of the litigation, up to and including Preliminary and Final Approval. (See Declaration of Class Representative Tonya Dwyer in support of Plaintiff's Motion for Preliminary Approval of Class Action and PAGA Settlement Agreement, which is attached hereto for the convenience of the Court as **Ex. 4** to the Kim Decl., Declaration of Tonya Dwyer [Dwyer Decl.], ¶¶ 3, 14.) As detailed in the Declaration of Class Representative Tonya Dwyer, she has spent approximately 34 hours on this case. (Dwyer Decl., ¶ 10.)

In addition, the Class Representative faces the threat of stigma and decreased employability. She knew her name would be easily linked to this action through background checks or even an internet search. In fact, a simple Google search of Ms. Dwyer's name and Defendant's name together puts this case at <u>the very top of Google's search results</u>, a copy of which is attached hereto for the convenience of the Court as **Ex. 5** to the Kim Decl. Despite knowing this could damage his future employment options, Ms. Dwyer courageously moved forward in order to achieve justice for the Class Members. (Dwyer Decl., ¶ 11.)

Further, Ms. Dwyer has signed a general release for any and all claims related to his employment with Defendant, so she cannot pursue any other potential claims. (Kim Decl., ¶ 12.)

There are few individuals who are willing to act as a class representative and provide the work, sacrifice, and willingness to assume a substantial risk should the defendant prevail in the case. Here, Class Representative Dwyer's resolve to assume the financial risk is significant. California law states that the losing party must pay the prevailing party's cost. As such, if Plaintiff had not prevailed in this case, Ms. Dwyer may have been subjected to a cost award in the amount of thousands of dollars. (Kim Decl., ¶ 12.)

VIII. CONCLUSION

Plaintiff respectfully requests that the Court grant final approval of the Class Action and PAGA Settlement.

Dated: September 24, 2025 D.LAW, INC.

By: ______________________________

Emil Davtyan, Esq.
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