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TYLER IRISH, on behalf of themselves and all others
similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

JOEY STEPHENS, MANUEL MARTINEZ,
ERIC MCINTYRE, JEREMY CAPPS, AND
TYLER IRISH, an individual, on behalf of
themselves and others similarly situated,

PLAINTIFFS,

v.

HALL AMBULANCE SERVICE, INC.; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. BCV-20-101643

[Case Assigned for All Purposes to Hon.
Thomas S. Clark in Dept. 17]

**NOTICE OF MOTION AND MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with Motion for Approval
of Attorneys' Fees and Costs; Declarations of
Kelsey M. Szamet, Makenna Snow and
Plaintiffs, Proposed Order, and Judgment]*

Date: August 1, 2023

Time: 8:30 A.M.

Dept.: 17

Complaint Filed: July 16, 2020
FAC Filed: August 7, 2020

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on August 1, 2023 at 8:30 A.M. in Department 17 of the
3 above-entitled court, Plaintiffs JOEY STEPHENS, MANUEL MARTINEZ, ERIC MCINTYRE,
4 JEREMY CAPPS, AND TYLER IRISH (“Plaintiffs”) will, and hereby do, move the Court for an
5 Order of Final Approval of the Class Settlement in this case. Plaintiffs move the Court for an
6 order:

7 1. Granting final approval of the settlement in the case pursuant to the Joint
8 Stipulation of Class Action Settlement and Release of Claims (“Settlement Agreement”), a copy
9 of which is attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”;

10 2. Affirming Kingsley & Kingsley, APC and Leonard Carder, LLP as Class Counsel;

11 3. Affirming JOEY STEPHENS, MANUEL MARTINEZ, ERIC MCINTYRE,
12 JEREMY CAPPS, and TYLER IRISH as Class Representatives and awarding a total
13 enhancement of \$50,000.00 (\$10,000 each);

14 4. Awarding ILYM claims administration fees of \$17,132.80 for its services as
15 Settlement Administrator; and,

16 5. Entering judgment.

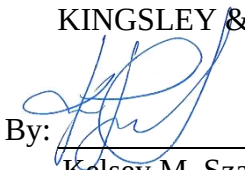
17 This Motion will be made pursuant to Code of Civil Procedure section 382 and California
18 Rule of Court, rule 3.769 on the grounds that the proposed Settlement Agreement is fair, adequate,
19 reasonable, and in the best interest of the Settlement Class Members and the parties.

20 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
21 and Authorities, the Declarations of Kelsey M. Szamet, Plaintiffs Joey Stephens, Manuel Martinez,
22 Eric McIntyre, Jeremy Capps, Tyler Irish, Makenna Snow of ILYM, all other papers and records
23 on file in this action, and on such oral and documentary evidence as may be presented at the hearing
24 on this Motion.

1 DATED: July 10, 2023

KINGSLEY & KINGSLEY, APC

2
3 By:


Kelsey M. Szamet

Attorneys for Plaintiffs and the Proposed Class

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs JOEY STEPHENS, MANUEL MARTINEZ, ERIC MCINTYRE, JEREMY
4 CAPPS, and TYLER IRISH (“Plaintiffs”) submit this Motion for Final Approval of Class
5 Settlement and requests that the Court:

6 1. Grant final approval of the settlement in this case pursuant to the Joint Stipulation
7 of Class Action Settlement and Release of Claims (“Settlement Agreement”), a copy of which is
8 attached to the concurrently-filed Declaration of Kelsey M. Szamet as Exhibit “1”;

9 2. Award attorneys’ fees and costs as detailed in the concurrently-filed Motion for
10 Attorneys’ Fees and Costs;

11 3. Award ILYM claims administration fees of \$17,132.80 for its services as
12 Settlement Administrator;

13 4. Affirm named Plaintiffs JOEY STEPHENS, MANUEL MARTINEZ, ERIC
14 MCINTYRE, JEREMY CAPPS, and TYLER IRISH as Class Representatives and award a total
15 enhancement of \$50,000.00 (\$10,000 each); and

16 5. Enter judgment.

17 **II. FACTUAL BACKGROUND**

18 **A. Litigation Overview and Procedural History**

19 Plaintiffs Martinez, McIntyre, and Capps retained the law firm of Leonard Carder in
20 August 2019 to represent them in asserting their claims against Hall Ambulance. (Declaration of
21 Aaron Kaufmann (“Kaufmann Decl.”) ¶18.) Prior to filing a complaint, the Leonard Carder firm
22 entered into a tolling agreement with Hall Ambulance to explore if the parties’ dispute could be
23 resolved without litigation. (Kaufmann Decl. ¶19.) The agreement covered individuals working as
24 EMTs and Paramedics for Hall Ambulance in California since August 2015. (*Id.*)

25 After the tolling agreement was executed by the Plaintiffs, Leonard Carder began working
26 with Hall Ambulance’s Counsel to attempt to mediate this dispute. (Kaufmann Decl. ¶20.) This
27 included requesting the informal production of data and documents from Hall Ambulance (*Id.*) By
28 January 10, 2020, the parties agreed to use mediator Steven Rottman and scheduled May 20, 2020

1 as the mediation date. (Kaufmann Decl. ¶21.) In early March 2020, Hall Ambulance produced
2 over 8,000 pages of documents including punch-in and punch-out data for putative class members.
3 (Kaufmann Decl. ¶22.) Thereafter, the parties agreed that Hall Ambulance would provide, among
4 other things, compensation data for a sample of the class, any on-duty meal period agreements and
5 24-hour shift agreements in the personnel files of 15 putative class members. (*Id.*) In April 2020,
6 the parties agreed to reschedule the mediation as there were delays issues with the production of
7 data and documents. (Kaufmann Decl. ¶23.) Given Mr. Rottman’s limited availability, the parties
8 rescheduled a mediation to take place on October 21, 2020. (*Id.*)

9 On July 16, 2020, the law firm of Kingsley and Kingsley filed the *Stephens v. Hall*
10 *Ambulance* complaint in Kern County Superior Court, alleging class wide wage and hour
11 violations against Hall Ambulance on behalf of Plaintiffs. (Declaration of Kelsey M. Szamet
12 (“Szamet Decl.”) ¶5.) Thereafter, Leonard Carder and Kingsley firms began to work together as
13 co-counsel to represent the EMTs and Paramedics. (Kaufmann Decl. ¶24; Szamet Decl. ¶6.) The
14 First Amended Class Action Complaint was filed on August 7, 2020, and Manuel Martinez, Eric
15 McIntyre, Jeremy Capps, and Tyler Irish, were added as Plaintiffs to the ongoing *Stephens*
16 litigation. (Szamet Decl. ¶7.) On August 7, 2020, the Plaintiffs also notified the Labor and
17 Workforce Development Agency of the *Stephens* litigation, and their intent to seek PAGA
18 penalties pursuant to California Labor Code § 2699. (Szamet Decl. ¶8.)

19 On October 7, 2020, Hall Ambulance filed a Motion to Compel Arbitration and Stay
20 Action. (Szamet Decl. ¶9.) In its brief, Hall Ambulance argued that the claims asserted in the First
21 Amended Complaint are covered by arbitration agreements signed by the Plaintiffs, which contain
22 mandatory arbitration provisions. (Szamet Decl. ¶10.) Thereafter, the Court on the Parties’
23 stipulation continued the hearing date on the Motion to Compel Arbitration and stayed the action
24 to May 14, 2021.¹ (Szamet Decl. ¶11.) In the stipulation, the Parties also agreed that Plaintiffs
25 would file a Second Amended Complaint adding a PAGA claim. (Szamet Decl. ¶12.)

26 On October 29, 2020, Plaintiffs filed their Second Amended Class and Representative
27

28 ¹ The stay has since been continued several times by way of stipulation and Court order
thereon.

1 Action Complaint (“SAC”). (Szamet Decl. ¶13.) The SAC alleges the following causes of action:
2 (1) failure to pay wages and/or overtime pursuant to Labor Code §§ 510, 1194, and 1199; (2)
3 failure to provide meal periods pursuant to §§ 226.7, 512; (3) failure to authorize and permit rest
4 periods pursuant to IWC Wage Order No. 9, § 12, Labor Code § 226.7; (4) failure to pay minimum
5 wage under labor code §§ 1194, 1194.2, 1197, IWC Wage Order No. 9, § 4; (5) waiting time
6 penalties pursuant to Labor Code § 203; (6) violations of the Business and Professions Code §
7 17200; and (7) penalties pursuant to Labor Code § 2699, et seq. (Szamet Decl. ¶14.)

8 After the SAC was filed, the Parties renewed their discussions about going to mediation.
9 (Szamet Decl. ¶15.) The Parties attended mediation in March 2021 with well-regarded wage and
10 hour mediator Frances “Tripper” Ortman, III Esq. (Szamet Decl. ¶16.) The parties did not resolve
11 the case at mediation but continued to negotiate. (Szamet Decl. ¶17.) They agreed on basic terms
12 in December 2021 as memorialized in a memorandum of understanding. (Szamet Decl. ¶18.) The
13 parties then spent the next several months drafting and negotiating the terms of the full Settlement
14 Agreement. (Szamet Decl. ¶19.) That Settlement Agreement, presented here, was finalized and
15 executed in November 2022. (Szamet Decl. ¶20.)

16 Defendant denies any liability or wrongdoing of any kind associated with the claims
17 alleged in the action, disputes the damages and penalties claimed by Plaintiffs, and further
18 contends that, for any purpose other than settlement, Plaintiffs’ claims are not appropriate for class
19 or representative action treatment. (Szamet Decl. ¶21.) Defendant contends, among other things,
20 that, at all times, it has complied with the California Labor Code, and the Industrial Wage
21 Commission Orders. (*Id.*)

22 Based on their own independent investigation and evaluation, Class Counsel are of the
23 opinion that the Settlement Agreement with Defendant is fair, reasonable and adequate, and in the
24 best interest of the settlement classes in light of all known facts and circumstances, including the
25 risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and
26 representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl.
27 ¶22.) Although Defendant denies any liability, Defendant is agreeing to this Settlement Agreement
28 solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully,

1 finally, and forever settle, compromise and discharge all disputes and claims arising from or
2 relating to the Action on the terms set forth here. (*Id.*)

3 B. Preliminary Approval

4 On March 17, 2023, the Court issued an Order preliminarily approving the settlement in
5 this case, approving the proposed Class Notice, ordering that the Settlement Administrator send
6 notice to the Settlement Class, and setting a date for the Final Approval and Fairness Hearing.
7 (Szamet Decl. ¶23.)

8 **III. THE PRELIMINARILY APPROVED SETTLEMENT**

9 A. The Settlement Class

10 For purposes of Settlement Agreement, the Settlement Class is defined as: “all non-exempt
11 field employees (including Emergency Medical Technicians, Paramedics, and Dispatchers) who
12 are employed or have been employed by HALL AMBULANCE SERVICE, INC., and any of its
13 subsidiary entities, including without limitation, Hall Air Ambulance Service, Inc., Hall Critical
14 Care Transport Service, Inc., Delano Ambulance Service, Inc., in the State of California during
15 the Class Period.” (“Class”, “Class Members” or “Settlement Class Members”.) The term “Class
16 Members” shall not include any person who submits a timely and valid request for exclusion.
17 (Szamet Decl. ¶26; Settlement Agreement, Ex. 1 at § II, ¶12.)

18 The Class Period is August 21, 2015 through July 31, 2022. (Szamet Decl. ¶26; Ex. 1 at §
19 II, ¶17.) There are 974 Class Members. (Snow Decl. ¶5.)

20 B. The Aggrieved Employees

21 For purposes of the Agreement, the PAGA Group is defined as: “all Class Members who
22 performed work for Defendant during the PAGA Period.” (Szamet Decl. ¶27.) The “PAGA Group
23 Member” shall mean an individual who is a member of the PAGA Group. (*Id.*; Settlement, Ex. 1
24 at § I ¶33.)

25 The PAGA Period is December 8, 2020 through July 31, 2022. (Szamet Decl. ¶28; Ex. 1
26 at ¶1.1.35.)

27 ///

28 ///

1 C. Maximum Settlement Amount

2 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
3 pay a Maximum Settlement Amount of \$1,900,000.00, which includes the sum of the Settlement
4 Shares, the Class Representatives service award, the Class Counsel Award, PAGA Payment, and
5 the Settlement Administration Costs. (Szamet Decl. ¶29; Ex. 1 at § IV, ¶52.)

6 The Net Class Settlement Amount is the Maximum Settlement Amount, less Class Counsel
7 Award, Class Representatives Enhancement, PAGA Payment, and Settlement Administration
8 Costs. (Szamet Decl. ¶30; Ex. 1 at § IV, ¶53.) Plaintiffs now request final approval of the allocation
9 of the Maximum Settlement Amount to determine the Net Settlement Amount for distribution to
10 the Settlement Class as follows:

11	Maximum Settlement Amount:	\$	1,900,000.00
12	Attorneys' Fees (1/3):	\$	633,333.33
13	Requested Case Costs:	\$	30,000.00
14	Claims Administration:	\$	17,132.80
15	PAGA Penalties:	\$	50,000.00
16			(\$37,500.00 to the LWDA;
17			\$12,500.00 to remain in the Net
18			Settlement Amount)
19	Named Plaintiffs Enhancement:	\$	<u>50,000.00</u>
20	Net Settlement Amount:	\$	1,119,533.87

21 D. Individual Settlement Payments

22 The amount of each Participating Class Member's Settlement Share is an individualized
23 amount that is based on the number of compensable workweeks worked by the Participating Class
24 Member during the Class Period. (Ex. 1 at § VI, ¶67(i); *see also* Ex. A to the Settlement Agreement
25 at p. 4 [Class Notice].) This individual amount shall be determined according to the settlement
26 payment formula set forth in the Settlement Agreement. (*See Id.*) The Settlement Agreement
27 provides for a specific and detailed dispute process. (See Ex. 1 at § VI, ¶68.)

28 The individual PAGA settlement amount of each PAGA Group Member will be paid from
the twenty-five percent (25%) of the PAGA Payment Share to be paid to aggrieved employees (or
\$12,500.00) and is an individualized amount that is based on the number of Workweeks worked
by the PAGA Group Member during the PAGA Period in comparison to the aggregate number of

1 PAGA Workweeks. (See Ex. 1 at ¶67; see also Ex. A to the Settlement Agreement at pp. 4-5 [Class
2 Notice].)

3 Based on these calculations, the average potential recovery is \$809.58, per Settlement Class
4 Member. (Snow Decl. ¶14.)

5 E. Class Notice

6 The Court approved the proposed Class Notice and directed the mailing of the Notice by
7 first-class mail to Settlement Class Members in accordance with the proposed implementation
8 schedule. (Szamet Decl. ¶31.) The procedures for giving notice to the Settlement Class Members,
9 as set forth in the Settlement Agreement and Plaintiffs' Motion for Preliminary Approval and
10 approved by the Court, have been fully and properly carried out. (Snow Decl. ¶3.)

11 To date, ILYM has received six (6) request to be excluded ("opt-outs") from the proposed
12 Settlement Agreement and zero (0) objections. (Snow Decl. ¶¶11-12.)

13 F. Check Mailed Settlement – No Reversion

14 The Parties agreed to, and the Court preliminary approved, a checks-mailed settlement
15 without the possibility of reversion of settlement funds to Defendant. Under the Settlement
16 Agreement, every Settlement Class Member will receive a settlement check and Settlement Class
17 Members do not need to submit a claim in order to receive a settlement check. Any funds that
18 remain uncashed after 180 days shall be turned over by the Settlement Administrator, with
19 information for each Settlement Class Member who failed to timely cash his/her settlement check,
20 to the State of California Controller's Office Unclaimed Property Fund. (Ex. 1 at § III, ¶61.)

21 **IV. THE COURT SHOULD ORDER FINAL APPROVAL OF THE SETTLEMENT**

22 Pursuant to California Code of Civil Procedure § 1781(f), "a class action shall not be
23 dismissed or compromised without the approval of the court, and notice of the proposed dismissal
24 or compromise shall be given to all members of the Class in such manner as the court directs"
25 In deciding whether to grant final approval to a proposed class action settlement under Code of
26 Civil Procedure § 382, the court's overriding concern is whether the proposed settlement is "fair,
27 adequate, and reasonable." (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.)

28 ///

1 A. The Settlement is Entitled to a Presumption of Fairness

2 “A presumption of fairness exists where: (1) the settlement is reached through arm’s length
3 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
4 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors is
5 small.” (*Dunk, supra*, 48 Cal.App.4th at p. 1802.) The proposed Settlement in the present case
6 meets all of the *Dunk* factors and is therefore entitled to a presumption of fairness.

7 As to the first *Dunk* factor, this settlement is the result of adversarial, non-collusive, and
8 arm’s-length negotiations overseen by an experienced mediator. All settlement discussions were
9 made by experienced and informed counsel, who believe that this settlement represents a favorable
10 resolution for the Settlement Class Members. (Szamet Decl. ¶32.) The settlement negotiations
11 have been, at all times, adversarial and non-collusive, with the aid of a mediator, and no self-
12 dealing or other type of misconduct by either side has taken place. (Szamet Decl. ¶33.)

13 Second, the Parties engaged in informal discovery that permitted Class Counsel to fairly
14 evaluate the strength of the case and the risks associated with ongoing litigation. In addition,
15 Defendant produced data and documents informally for purposes of settlement. This included the
16 number of allegedly violating itemized wage statements at issue, payroll and timekeeping data,
17 and sample itemized wage statements issued to the Settlement Class Members. (Szamet Decl. ¶34.)
18 Receipt of appropriate discovery allowed Class Counsel to fairly evaluate the exposure and risks
19 associated with each claim alleged in the lawsuit. (Szamet Decl. ¶35.)

20 Third, Class Counsel have significant experience in cases of this type, including several
21 years prosecuting wage, hour, and working condition violations. (Szamet Decl. ¶36.) Class
22 Counsel is thus qualified to evaluate the class claims and viability of the defenses. Class Counsel
23 believes that the settlement is fair, reasonable, adequate, and in the best interests of the class and
24 that the average recovery for each Settlement Class Member of \$ 804.59 is substantial, given the
25 risks inherent in litigation and the defenses asserted. (Szamet Decl. ¶37.)

26 Finally, the fourth *Dunk* factor considers the percentage of objectors. Here, there were six
27 (6) requests to be excluded and no objectors. (Snow Decl. ¶¶11-12.) As all of the *Dunk* factors are
28 satisfied, this settlement is entitled to a presumption of fairness.

1 B. The Court Should Approve This Class Action Settlement Because it Satisfies Each
2 of the Kullar Factors

3 In *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, the court set forth
4 several factors that should be analyzed in determining whether to approve a class action settlement.
5 These factors include: 1) the strength of plaintiffs’ case; (2) the risk, expense, complexity and
6 likely duration of further litigation; (3) the risk of maintaining class action status through trial; (4)
7 the amount offered in settlement; (5) the extent of discovery completed and stage of the
8 proceedings; (6) the experience and views of counsel; (7) the presence of a governmental
9 participant; and (8) the reaction of the class members to the proposed settlement. *Id.* at 128.

10 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
11 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id.* at
12 Szamet Decl. ¶¶16-22.) This discovery permitted Class Counsel to fairly evaluate the strength of
13 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶39.) Class Counsel is very
14 experienced in handling wage and hour class actions and, after weighing all of the following
15 factors, supports this Settlement Agreement. (Szamet Decl. ¶40.)

16 1. The Strength of Plaintiffs’ Case

17 a) Defendant’s Alleged Failure to Pay All Wages and/or Overtime

18 Plaintiffs alleged that Defendant had a uniform policy and practice of not paying Plaintiffs
19 and Settlement Class Members for all hours worked in violation of established law guaranteeing a
20 minimum wage and wages owed under contract or statute and prohibitions on making deductions
21 reducing the agreed upon wage. (See Lab. Code §§ 218, 218.5, 222, 223, 224, 1194, 1194.2, 1197.)
22 California workers are statutorily entitled to overtime compensation, unless they are properly
23 classified as falling within one of the narrow exemption categories. Under California law, “[a]ny
24 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
25 workweek...shall be compensated at the rate of no less than one and one-half times the regular
26 rate of pay for an employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny work in excess of
27 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay
28 for an employee.” (Lab. Code, § 510, subd. (a).)

1 An employer may not pay employees in the same job position a lower regular rate when
2 they work shifts with more overtime hours, unless there is a material distinction in the type of work
3 being performed. *Huntington Memorial Hospital v. Superior Court*, 131 Cal.App.4th 893, 905
4 (2005). Such diminishing rate schedules are evasive of the overtime laws because they manipulate
5 the pay for regular hours to make up for the overtime rate that will have to be paid. *Id.*; see also 29
6 C.F.R. §778.327(b) (explaining that if working more overtime hours results in a lower hourly rate,
7 “the device is evasive and the rate actually paid in the shorter or non-overtime week is [the] regular
8 rate for overtime purposes in all weeks”).

9 Here, Plaintiffs alleged that they and the Settlement Class Members have been required to
10 work on a regular and consistent basis without receiving compensation for all hours worked at the
11 proper rate. (Szamet Decl. ¶41.) Specifically, Plaintiffs alleged that they and the Settlement Class
12 have not been properly compensated for overtime at the appropriate hourly rate of pay because
13 Defendant paid them at different rates of overtime pay depending on the length of their scheduled
14 shift, with the hourly rate decreasing as the length of the scheduled shift increased. (Szamet Decl.
15 ¶42.) Plaintiffs contend that overtime worked on every single shift should be paid at 1.5 times the
16 appropriate 8-hour shift rate, and it was not. (Szamet Decl. ¶43.)

17 Defendant vehemently denied this claim. (Szamet Decl. ¶44.) Defendant argued that it did
18 not violate California overtime laws because Industrial Welfare Commission Wage Order No. 9
19 regulating the Transportation Industry states that daily overtime provisions shall not apply to
20 ambulance drivers and attendants scheduled for 24-hour shifts. See Cal. Code Regs. tit. 8, § 11090
21 at 3(k). (Szamet Decl. ¶45.) Nevertheless, Plaintiffs contend that because this provision only
22 applies to daily overtime pay for 24-hour shifts, Plaintiffs were still paid overtime at the incorrect
23 rate for all 12-hour shifts. (Szamet Decl. ¶46.) Plaintiffs also maintained that Defendant violated
24 California’s overtime requirements for each week in which an employee worked over 40 hours on
25 24-hour shifts (i.e. two 24-hour shifts in the same week). (Szamet Decl. ¶47.) Plaintiffs contend
26 that they and the other EMTs and paramedics are entitled to overtime pay at the 8-hour overtime
27 rate for all hours worked in excess of 40 per week. (Szamet Decl. ¶48.)

28 As part of preparing for and participating in mediation and subsequent negotiations, Class

1 Counsel have now fully investigated the historical pay practices of Defendant and reached the
2 conclusion that Defendant's overtime pay schedule is not and was not a subterfuge to avoid the
3 payment of overtime. (Szamet Decl. ¶49; Settlement, ¶ 10.) Plaintiffs and their counsel agree that
4 the regressive pay scale used by Defendant (i.e., a lower hourly rate for longer shifts) is not
5 unlawful. (*Id.*) Based on this conclusion, Plaintiffs believe it was appropriate to dramatically
6 discount this claim for settlement purposes. (Szamet Decl. ¶50.)

7 Plaintiffs also alleged that, on a regular and consistent basis, Defendant has had a policy
8 and practice of requiring members of the Settlement Class to attend continuing education courses
9 put on by Defendant but were not paid for their time spent in such coursework. (Szamet Decl. ¶51.)
10 While the coursework is necessary for licensing and ordinarily would not be compensable,
11 Plaintiffs contend that the fact that they had to complete the coursework through Defendant did
12 render such time compensable. (Szamet Decl. ¶52.) Plaintiffs felt confident about prevailing on
13 this claim, but have to acknowledge that the time spent on training was generally a matter of
14 approximately 5-6 hours per Class Member per year. (Szamet Decl. ¶53.)

15 Third and finally, Plaintiffs allege that they were required to work off the clock before
16 shifts to prepare their emergency vehicles. (Szamet Decl. ¶54.) Plaintiffs acknowledge that this
17 can be a highly difficult type of claim to prove because there are no time records to substantiate or
18 evaluate the claim. (Szamet Decl. ¶55.) Instead, Defendant would argue that if there was any such
19 issue of pre-shift work, it would necessitate speaking to each and every Settlement Class Member
20 about their experiences day to day and whether any off the clock time was ever worked. (Szamet
21 Decl. ¶56.) This type of inquiry, Defendant would argue, make its very difficult to establish
22 liability based on common proof. (Szamet Decl. ¶57.) Based on this acute risk, Plaintiffs believe
23 it was appropriate to dramatically discount this claim for settlement purposes. (Szamet Decl. ¶58.)

24 Based on this analysis, Plaintiffs believe that taking a significant reduction on the
25 wages/overtime claim for settlement purposes is fair and reasonable. (Szamet Decl. ¶59.)

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1 b) Defendant Allegedly Failed to Provide Compliant Meal Periods

2 Labor Code section 512 requires an employer to provide a first meal period of at least thirty
3 (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift,
4 and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an
5 employee is entitled to a second meal period, it must be provided after no more than ten (10) hours
6 of work.

7 Ordinarily, the meal period must be free of all work duties and employer control. However,
8 under Proposition 11, codified at Labor Code section 880 et seq. ambulance providers can provide
9 ambulance drivers and their attendants with an “on duty meal period.” in that they remain in
10 communication and are subject to call back. Labor Code § 887. Other than remaining on call during
11 the meal period, Labor Code sections 885 and 886 makes clear that the meal period must reflect
12 “inactivity.” If the ambulance staff person is called back during his/her meal period, that period
13 does not count towards the meal period to which they are entitled. Labor Code §§ 886, 887. Labor
14 Code § 226.7 requires an employer to pay an employee one (1) hour of pay at the employee’s
15 regular rate of pay for each day it fails to provide compliant meal periods.

16 Here, Plaintiffs and the proposed Class Members have consistently worked shifts over five
17 (5) hours. Plaintiffs alleged that Defendant failed to provide Plaintiffs and the proposed Class
18 Members with proper “on duty” meal periods of not less than thirty (30) minutes and has failed to
19 pay one (1) hour of pay at the employees’ regular rate of compensation for each workday that
20 compliant meal periods were not provided, as required by California state wage and hour laws.
21 When Defendant paid meal period premiums to Plaintiffs and proposed Class Members, it did so
22 at a rate below the employee’s regular rate of compensation.

23 Pursuant to the California Supreme Court’s recent decision in *Donohue v. AMN Services,*
24 *LLC*, time records showing noncompliant meal periods raise a rebuttable presumption of meal
25 period violations. *Donohue v. AMN Servs., LLC*, No. S253677, 2021 WL 728871, at *9 (Cal. Feb.
26 25, 2021). This rebuttable presumption then shifts the burden to Defendant to demonstrate that,
27 through employee waiver or otherwise, it is not liable. *Id.* at 10. While Plaintiffs recognize that
28 California Proposition 11 allows ambulance providers to require workers to remain on-call during

1 meal and rest breaks, this does not excuse Defendant from properly compensating Plaintiffs for
2 these meal periods or rebutting the presumption of violations as required under *Donohue, supra*.

3 Plaintiffs argue that if Hall Ambulance takes the position that its employees are provided
4 on-duty meal periods, and therefore no meal period violations occurred, it must show that
5 employees received on-duty meal periods of 30 minutes. See *L'Chaim House, Inc. v. Dep't of*
6 *Indus. Rels.*, 38 Cal.App.5th 141 (2019) (“Thus, absent a waiver, the statute’s plain terms required
7 *L'Chaim* to provide ‘a meal period’—whether off-duty or on-duty—of at least 30 minutes any
8 time an employee worked at least five hours”). In *L'Chaim House*, the employer argued that
9 because employees did not clock in and out for on-duty meal periods, there was no way to track
10 the length of the on-duty meal periods. *Id.* at 147. However, the court dismissed this concern and
11 stated that this type of practical challenge was inherent to providing an on-duty meal period. As a
12 result, Plaintiffs contend Hall Ambulance cannot simply say that EMTs and Paramedics received
13 on-duty meal periods—it bears the burden of demonstrating that any on-duty meal periods
14 provided to its employees were 30 minutes. If it cannot, under Labor Code § 226.7, Plaintiffs and
15 the proposed Class Members would be entitled to damages in an amount equal to one (1) hour of
16 wages per each day they were not provided compliant meal periods.

17 Plaintiffs believe it is fair and reasonable to discount this claim for settlement purposes
18 because there is certainly risk associated with recovery. (Szamet Decl. ¶60.) In order to be
19 compliant, all Defendant has to do is provide meal period records that show that on-duty meal
20 periods of at least 30 minutes were provided. (Szamet Decl. ¶61.) As the time records produced
21 by Defendant did show such meal periods, Plaintiffs had concerns as to their ability to prove meal
22 period violations on a classwide basis. (Szamet Decl. ¶62.)

23 c) Defendant Allegedly Failed to Provide Compliant Rest Periods

24 Plaintiffs believe it is appropriate to deeply discount the rest period claims averred in light
25 of Proposition 11, which allows for on-duty rest periods. At the time of filing the action, it was not
26 clear that Proposition 11 would apply retroactively. It is now clear that it does, making it difficult
27 if not impossible for Plaintiffs to prevail on this claim. *Calleros v. Rural Metro of San Diego, Inc.*,
28 58 Cal.App.5th 660 (2020). (Szamet Decl. ¶63.) As such, Plaintiffs contend that is appropriate to

1 dramatically discount this claim for settlement purposes. (Szamet Decl. ¶64.)

2 d) Defendant Allegedly Failed to Provide All Wages Due at the Time of
3 Termination

4 Under Labor Code section 203, if an employer fails to provide wages at the time of an
5 employee's termination or within seventy-two (72) hours of resignation, then the employee's
6 wages shall continue as a penalty for up to thirty (30) days. (Labor Code § 203.) Section 203
7 reflects a public policy that favors the full and prompt payment of earned wages. (See, e.g.,
8 *Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7; *Mamika v. Barca* (1998) 68
9 Cal.App.4th 487, 492.)

10 Here, numerous members of the proposed Class including Plaintiffs Joey Stephens, Manuel
11 Martinez, and Tyler Irish are no longer employed by Defendant. (Szamet Decl. ¶65.) They were
12 either fired or quit Defendant's employ. (Szamet Decl. ¶66.) Plaintiffs contend that Defendant's
13 failure to pay wages and compensation, as alleged above was willful in that Defendant knew wages
14 and compensation to be due but failed to pay them, thus entitling Plaintiffs and the proposed Class
15 Members to penalties under Labor Code § 203, which provides that an employee's wages shall
16 continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.
17 (Szamet Decl. ¶67.)

18 Plaintiffs risk analysis flows from the wage and meal/rest analysis discussed above.
19 (Szamet Decl. ¶68.) If Plaintiffs were not able to prevail on those allegations, they would not be
20 able to prove that waiting time penalties were owed on a classwide basis. (Szamet Decl. ¶69.)
21 Therefore, Plaintiffs believe that taking a discount on this claim because of the risks associated
22 with the merits is fair and reasonable. (Szamet Decl. ¶70.)

23 e) The Risks Associated with the PAGA Claim

24 California's Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.*, permits
25 private litigants to recover civil penalties for violations of the Labor Code. PAGA provides that
26 plaintiffs may recover previously established civil penalties (section 2699(a)) or, if none were
27 established, plaintiffs may recover default penalties provided in section 2699(f) in the amount of
28 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

1 Plaintiffs discounted the PAGA claim for settlement purposes for multiple reasons.
2 (Szamet Decl. ¶71.) First, the aggrieved employees' PAGA claims are derivative of all the
3 foregoing class claims. (Szamet Decl. ¶72.) Thus, any risk associated with prevailing on the
4 underlying Labor Code claims must also be considered when analyzing the civil penalties tied to
5 those claims. (Szamet Decl. ¶73.) Second, a court has discretion to award less than the maximum
6 penalty. (Szamet Decl. ¶74.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than
7 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
8 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
9 oppressive, or confiscatory"). See e.g., *Carrington v. Starbucks Corporation* (2018) 30
10 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty).
11 Finally, the Settlement Class is arguably compensated for these violations in the proposed
12 Settlement Agreement, and thus any PAGA recovery for these same violations would be
13 duplicative. (Szamet Decl. ¶75.) As such, Plaintiffs contend that the Settlement Agreement's
14 contemplated PAGA payment of \$50,000.00 is appropriate. (Szamet Decl. ¶76.) See *Nordstrom*
15 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
16 million settlement to PAGA penalties).

17 2. The Risk, Expense, Complexity, and Likely Duration of Further Litigation

18 There is significant expense associated with the class certification process, which the
19 Parties can avoid by entering into the contemplated Settlement Agreement now. (Szamet Decl.
20 ¶77.) If the Court did eventually certify an unpaid wages or meal claim on a classwide basis, trial
21 of a case involving approximately 1,203 Class Members would require the retention of expensive
22 expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the
23 parties. (Szamet Decl. ¶78.) Moreover, given the complexity and unsettled nature of the issues in
24 this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal.
25 (Szamet Decl. ¶79.) An appeal would result in further delay for the Class Members who are waiting
26 for a resolution in this matter. (*Id.*)

27 3. The Risk of Maintaining Class Action Status through Trial

28 This case has not been certified to be tried as a class action. (Szamet Decl. ¶80.) While

1 Plaintiffs believe there is strong evidence to support certification of several possible subclasses,
2 certification is always hard fought and subject to judicial discretion. Winning certification may be
3 significantly difficult, as Defendant required Plaintiffs and other Class Members to enter into
4 arbitration provisions that included class action waivers; as noted above, Defendant's Motion to
5 Compel Arbitration has been pending while settlement negotiations were ongoing. (Szamet Decl.
6 ¶81.) Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify
7 a class, the parties would need to conduct multiple depositions, including of the Class
8 Representatives and of several person(s) most knowledgeable regarding Defendant's
9 wage/overtime and meal/rest policies. (*Id.*) There is a risk for both sides as to what these
10 depositions will reveal and whether they will support class certification to the extent expected.
11 (*Id.*)

12 4. The Amount Offered in Settlement

13 It was very difficult for the Parties to reach this Settlement of \$1,900,000.00. (Szamet Decl.
14 ¶82.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations.
15 (Szamet Decl. ¶83.) The Parties arrived at it after extensive investigation and discovery; careful
16 evaluation of the law, risks, and all information substantiating the amount of damages and penalties
17 reasonably likely to be awarded to the class were the trier of fact to find Defendant liable; and the
18 assistance of a very experienced class action mediator, Tripper Orman. (Szamet Decl. ¶84.)

19 a) Plaintiffs' Assessment of Defendant's Maximum Exposure on the 20 Class Claims

21 Based on the data provided for settlement purposes,² Plaintiffs assessed the full value of
22 the Minimum Wage/Overtime claim, without any discount, at approximately \$260,955.93.
23 (Szamet Decl. ¶85.) This calculation is based on 5.5 unpaid training hours per year per Settlement
24 Class Member (training includes: 2 hours for CPR, 1 hour for TB, 1 hour for Blood Borne illness,
25 1 for foggy weather driving, and .5 for annual medical exam). (Szamet Decl. ¶86.) Plaintiffs used
26 an hourly average rate of \$15.07 for their analysis. (Szamet Decl. ¶87.)

27
28 ² Plaintiff worked with an expert to organize and analyze the time and pay records provided
by Defendant. (Szamet Decl. ¶¶85-111.)

1 Plaintiffs assessed the full value of the meal period claim, without any discount, at
2 approximately \$4,278,086.67. (Szamet Decl. ¶88.) This amount is based upon 283,881 allegedly
3 non-compliant shifts from the data. (Szamet Decl. ¶89.) For the reasons above and the risks
4 associated with this claim, Plaintiffs determined that accepting a discount of 75% of the full
5 amount was appropriate for settlement purposes. (Szamet Decl. ¶90.) That amount, reduced for
6 risk, is \$1,069,521.50. (Szamet Decl. ¶91.)

7 The full value of the rest period claim, without any discount, was also approximately
8 \$4,278,086.67 (283,881 shifts x \$15.07 average hourly rate = \$4,278,086.67. (Szamet Decl. ¶92.)
9 Because Plaintiffs were acutely concerned about the risks associated with being able to prevail on
10 this claim as discussed above, Plaintiffs determined that accepting a discount of 90% of the full
11 amount was appropriate. (Szamet Decl. ¶93.) That amount, reduced for risk, is \$427,808.67.
12 (Szamet Decl. ¶94.)

13 For purposes of settlement, Plaintiffs valued the waiting time penalties claim (Labor Code
14 Section 203), tied to the wage/overtime claim, at \$3,310,276.20. (Szamet Decl. ¶95.) This analysis
15 is based upon 30 days of wages for the number of former employees. (Szamet Decl. ¶96.)
16 Considering the derivate nature of Labor Code §203 and the dispute over whether class members
17 were owed any wages, Plaintiffs determined that accepting a discount on this claim was
18 appropriate. (Szamet Decl. ¶97.) Accordingly, based on the risks articulated above associated with
19 each claim, Plaintiffs discounted this claim for settlement purposes by 50% to \$1,655,138.10.
20 (Szamet Decl. ¶98.)

21 Taken together, using the exposure numbers discounted for risk, Plaintiffs assessed
22 Defendant's exposure on the Labor Code violations alleged at approximately \$3,413,424.19.
23 (Szamet Decl. ¶99.) Based on this analysis, Plaintiffs contend that the proposed Settlement is fair
24 and reasonable and should be approved by the Court. (Szamet Decl. ¶100.)

25 b) Plaintiffs' Assessment of Defendant's Maximum Exposure on the
26 PAGA Claim

27 Finally, Plaintiffs calculated the value of the PAGA claim at \$2,060,587.5 for aggrieved
28 employees (Szamet Decl. ¶101.) This based upon approximately 20,605 pay periods during the

1 PAGA liability period x \$100 per pay period. (Szamet Decl. ¶102.) The main risk taken into
2 account with the PAGA penalty analysis is the derivative nature of the claim and that in order to
3 recover civil penalties, Plaintiffs first have to prevail on the underlying claim. (Szamet Decl. ¶103.)
4 As discussed, Plaintiffs believe there is risk associate with each claim and had to also consider that
5 risk when analyzing the civil penalties. (Szamet Decl. ¶104.) Second, Plaintiffs had to consider the
6 discretionary nature of the penalty award. (Szamet Decl. ¶105.) A judge can award the statutory
7 maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage
8 statement. (Szamet Decl. ¶106.) While there is a dearth of available authority, in Plaintiffs’ views,
9 were they to succeed on any of the underlying Labor Code violations, it is not likely that a Judge
10 would also award a large amount of penalties of top of any damages recovered. (Szamet Decl.
11 ¶107.) Thus, Plaintiffs reduced this number by 50% for settlement purposes to \$1,030,293.75.
12 (Szamet Decl. ¶108.)

13 Per Plaintiffs’ assessment, the realistic potential value of all of Plaintiffs’ and the
14 Settlement Class Members’ claims at trial was approximately \$4,443,717.94 (\$3,413,424.19 +
15 \$1,030,293.75 = \$4,443,717.94. (Szamet Decl. ¶109.) When analyzing this number coupled with
16 the risks associated with recovery as to each claim at trial, Class Counsel believes the Maximum
17 Settlement Amount of \$1,900,000.00 is fair and reasonable. (Szamet Decl. ¶110.)

18 ///

19 5. The Extent of Discovery Completed and Stage of the proceedings

20 As outlined above, Class Counsel conducted a thorough investigation into the facts of the
21 claims alleged. (Szamet Decl. ¶111.) The agreement to settle did not occur until Class Counsel
22 exchanged and possessed sufficient information to make an informed judgement regarding the
23 likelihood of success on the merits and the results that could be obtained through further litigation.
24 (*Id.*)

25 6. The Experience and Views of Counsel

26 Lenoard Carder and Kingsley & Kingsley are very experienced in prosecuting employment
27 litigation. (Kauffman Decl. ¶2; 15-16; Szamet Decl. ¶¶112-113.) The firms are extremely well-
28 versed in class action litigation and have diligently and aggressively pursued this action. (*Ibid.*)

After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶114.)

7. The Presence of a Governmental Participant

There is no governmental participant in this action. (Szamet Decl. ¶115.)

8. The Proposed Plan of Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Class Members pro rata based on the number of Workweeks worked by the Class Member during the Class Period. The lump sum payment to each Class Member not excluding him/ herself will be determined on an individualized basis based upon multiplying each Participating Class Member’s payment ratio by the portion of the Net Settlement Amount allocated to the Class. (Ex. 1 at § VI, ¶67(i).) This allocation distributes Settlement Agreement funds proportionally to each class member’s potential damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶116.)

9. The Reaction of the Class Members to the Proposed Settlement

To date, there are six (6) requests to be excluded from the proposed Settlement Agreement and zero (0) objections. (Snow Decl. ¶¶11-12.) Such indicates that the reaction of Settlement Class Members on the whole is positive and weighs in favor of approval.

V. ENHANCEMENT TO PLAINTIFF

Plaintiffs’ Counsel request a total enhancement of \$50,000.00 (\$10,000 each) to the five Class Representatives JOEY STEPHENS, MANUEL MARTINEZ, ERIC MCINTYRE, JEREMY CAPPS, and TYLER IRISH, for work on behalf of the Settlement Class. (Szamet Decl. ¶169.) “Courts routinely approve incentive awards to compensate named plaintiffs for the services they provide and the risks they incurred during the course of the class action litigation.” *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 694 (N.D. Ga 2001) (internal quotations and citations omitted); *see also Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 299 (N.D. Cal. 1995). In *Coca-Cola*, the Court approved service awards of \$300,000 to each named plaintiff in

1 **VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

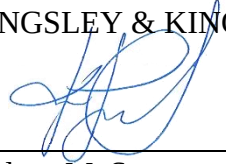
2 As indicated on the Proof of Service, Plaintiff's Motion for Final Approval of Class Action
3 Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development
4 Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of
5 submission of Plaintiff's Motion, all related documents, and copy of the email from the LWDA
6 confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "6." (Szamet
7 Decl. ¶177.)

8 **VII. CONCLUSION**

9 Plaintiffs respectfully submit that the proposed Settlement Agreement is fair, adequate,
10 reasonable, and in the best interest of the Settlement Class Members. Therefore, Plaintiffs
11 respectfully request that the Court (1) grant Final Approval of the Settlement Agreement and all
12 of its terms; (2) award attorneys' fees and costs in the amount detailed in the concurrently filed
13 Motion for Attorneys' Fees and Costs; (3) award ILYM claims administration fees of \$17,132.80;
14 and (4) award the Class Representatives a total enhancement of \$50,000.00 (\$10,000 each); and
15 (5) enter judgment.

16 DATED: July 10, 2023

KINGSLEY & KINGSLEY, APC

17
18 By: 

Kelsey M. Szamet

Attorneys for Plaintiffs and the Proposed Class

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On July 10, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

**JEFFER MANGELS BUTLER
& MITCHELL LLP**
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[] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] BY ELECTRONIC SERVICE: I caused a true and correct copy thereof to be electronically filed using the Labor and Workforce Development Agency Electronic Filing ("EF") System (<https://dir.tfaforms.net/315>) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be send to the persons at the e-mail address(es) listed on the attached service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful. A pdf copy of which was sent via email to the below email address(es).

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 10, 2023, at Sherman Oaks, California.



Leslie Sanchez