

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, Esq. (SBN 185123)
eric@kingsleykingsley.com
KELSEY M. SZAMET, Esq. (SBN 260264)
kelsey@kingsleykingsley.com
JESSICA ADLOUNI, Esq. (SBN 328571)
jessica@kingsleykingsley.com
16133 Ventura Blvd., Suite 1200
Encino, CA 91436
Tel: (818) 990-8300, Fax (818) 990-2903

Attorneys for Plaintiffs JOEY STEPHENS, MANUEL
MARTINEZ, ERIC MCINTYRE, JEREMY CAPPS, and
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, on behalf of themselves and
all 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
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

*[Filed concurrently with Declaration of Kelsey
M. Szamet and Proposed Order]*

Date: January 26, 2023

Time: 8:30 a.m.

Dept.: 17

Complaint Filed: July 16, 2020

FAC Filed: August 7, 2020

Trial Date: October 29, 2020

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

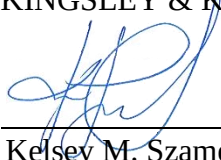
2 **PLEASE TAKE NOTICE** that on January 26, 2023 at 8:30 a.m. in Department 17 of the
3 above-entitled court, Plaintiffs JOEY STEPHENS, MANUEL MARTINEZ, ERIC MCINTYRE,
4 JEREMY CAPPS, and TYLER IRISH will move the Court for an Order of Preliminary Approval
5 of the Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement Agreement”
6 or “Settlement”), a copy of which is filed concurrently herewith.

7 The Motion will be made on the grounds that the proposed Settlement Agreement is fair,
8 adequate, reasonable, and in the best interest of the Class and the Parties.

9 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
10 and Authorities, the Declarations of Kelsey M. Szamet and Aaron Kaufmann, the Settlement
11 Agreement and Release, all other papers and records on file in this action, and on such oral and
12 documentary evidence as may be presented at the hearing on this Motion.

13 DATED: January 3, 2023

KINGSLEY & KINGSLEY, APC

14
15 By: 

Kelsey M. Szamet
Attorneys for Plaintiffs JOEY STEPHENS,
MANUEL MARTINEZ, ERIC MCINTYRE,
JEREMY CAPPS, and TYLER IRISH and the
Proposed Settlement 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 Memorandum of Points and Authorities in
5 support of Plaintiffs’ Motion for Preliminary Approval of the Joint Stipulation of Class Action
6 Settlement and Release of Claims reached between Plaintiffs and Defendant HALL
7 AMBULANCE SERVICE, INC. (“Defendant”) (Plaintiffs and Defendant together, the “Parties”).

8 By this Motion, Plaintiffs request that the Court:

9 (1) Grant preliminary approval of the fully-executed Joint Stipulation of Class Action
10 Settlement and Release of Claims (“Settlement” or “Settlement Agreement”). A true and correct
11 copy of the Settlement Agreement is attached hereto as Exhibit “1”;

12 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
13 Settlement Agreement as Exhibit “A,” and direct that the Notice be sent to Class Members in the
14 manner set forth in the Settlement Agreement;

15 (3) Schedule a hearing on final approval of the proposed Settlement and Plaintiffs’
16 Counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
17 may be heard (“Final Approval Hearing”).

18 **II. FACTUAL BACKGROUND**

19 A. Litigation Overview and Procedural History

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

26 After the tolling agreement was executed by the Plaintiffs, Leonard Carder began working
27 with Hall Ambulance’s Counsel to attempt to mediate this dispute. (Kaufmann Decl. ¶20.) This
28 included requesting the informal production of data and documents from Hall Ambulance (*Id.*) By

January 10, 2020, the parties agreed to use mediator Steven Rottman and scheduled May 20, 2020 as the mediation date. (Kaufmann Decl. ¶21.) In early March 2020, Hall Ambulance produced over 8,000 pages of documents including punch-in and punch-out data for putative class members. (Kaufmann Decl. ¶22.) Thereafter, the parties agreed that Hall Ambulance would provide, among other things, compensation data for a sample of the class, any on-duty meal period agreements and 24-hour shift agreements in the personnel files of 15 putative class members. (*Id.*) In April 2020, the parties agreed to reschedule the mediation as there were delays issues with the production of data and documents. (Kaufmann Decl. ¶23.) Given Mr. Rottman’s limited availability, the parties rescheduled a mediation to take place on October 21, 2020. (*Id.*)

On July 16, 2020, the law firm of Kingsley and Kingsley filed the *Stephens v. Hall Ambulance* complaint in Kern County Superior Court, alleging class wide wage and hour violations against Hall Ambulance on behalf of Plaintiff Joey Stephens. (Declaration of Kelsey M. Szamet (“Szamet Decl.”) ¶4.) Thereafter, Leonard Carder and Kingsley firms began to work together as co-counsel to represent the EMTs and Paramedics. (Kaufmann Decl. ¶24; Szamet Decl. ¶5.) The First Amended Class Action Complaint was filed on August 7, 2020, and Manuel Martinez, Eric McIntyre, Jeremy Capps, and Tyler Irish, were added as Plaintiffs to the ongoing *Stephens* litigation. (Szamet Decl. ¶6.) On August 7, 2020, the Plaintiffs also notified the Labor and Workforce Development Agency of the *Stephens* litigation, and their intent to seek PAGA penalties pursuant to California Labor Code § 2699. (Szamet Decl. ¶7.)

On October 7, 2020, Hall Ambulance filed a Motion to Compel Arbitration and Stay Action. (Szamet Decl. ¶8.) In its brief, Hall Ambulance argued that the claims asserted in the First Amended Complaint are covered by arbitration agreements signed by the Plaintiffs, which contain mandatory arbitration provisions. (Szamet Decl. ¶9.) Thereafter, the Court on the Parties’ stipulation continued the hearing date on the Motion to Compel Arbitration and stayed the action to May 14, 2021.¹ (Szamet Decl. ¶10.) In the stipulation, the Parties also agreed that Plaintiffs would file a Second Amended Complaint adding a PAGA claim. (Szamet Decl. ¶11.)

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

1 On October 29, 2020, Plaintiffs filed their Second Amended Class and Representative
2 Action Complaint (“SAC”). (Szamet Decl. ¶12.) The SAC alleges the following causes of action:
3 (1) failure to pay wages and/or overtime pursuant to Labor Code §§ 510, 1194, and 1199; (2)
4 failure to provide meal periods pursuant to §§ 226.7, 512; (3) failure to authorize and permit rest
5 periods pursuant to IWC Wage Order No. 9, § 12, Labor Code § 226.7; (4) failure to pay minimum
6 wage under labor code §§ 1194, 1194.2, 1197, IWC Wage Order No. 9, § 4; (5) waiting time
7 penalties pursuant to Labor Code § 203; (6) violations of the Business and Professions Code §
8 17200; and (7) penalties pursuant to Labor Code § 2699, et seq. (Szamet Decl. ¶13.)

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

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

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

solely to avoid the cost of litigation. (*Id.*) Accordingly, the Parties and their counsel desire to fully, finally, and forever settle, compromise and discharge all disputes and claims arising from or relating to the Action on the terms set forth here. (*Id.*)

III. PLAINTIFFS CONTEND THAT THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

Originally creatures of equity, class actions have been statutorily embraced by the Legislature whenever “the question [in a case] is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069, 1078.) They serve an important function by “establishing a technique whereby the claims of many individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup. Court* (2004) 34 Cal.4th 319, 340.)

The certification question is “essentially a procedural one that does not ask whether an action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–440.) A court ruling on a certification motion must determine “whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

The California Supreme Court has identified three certification requirements: (1) “the existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of interest”; and, (3) “substantial benefits from certification that render proceeding as a class superior to the alternatives.” (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.) The “community of interest” requirement includes three additional requirements: (1) common questions of law or fact predominant over individual questions; (2) the class representatives have claims or defenses typical of the class; and (3) the class representatives can adequately represent

1 the class. (*Ibid*, citing *Fireside Bank*, *supra*, 40 Cal.4th at 1089.)

2 Class certification for settlement purposes is proper in this case as the proposed Settlement
3 Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this
4 Court should certify the putative settlement class.

5 A. Plaintiffs Contend the Proposed Class Is Ascertainable and Sufficiently Numerous

6 1. Plaintiffs Contend There Is Ascertainability

7 Putative class members are deemed “ascertainable” when they may be “readily identified
8 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
9 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
10 scrutinizes the class definition, the size of the class and the means of identifying class members.
11 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

12 Here, Plaintiffs maintain that the proposed Settlement Class is ascertainable for several
13 reasons: First, Defendant has agreed in the Settlement Agreement to provide a class list to the
14 Settlement Administrator containing the first and last name, last known mailing address, Social
15 Security number or Tax ID, employee identification number, if applicable, based on Defendant’s
16 payroll records, the Class Member’s total number of Individual Workweeks, and PAGA Group
17 Members’ total number of Individual Pay Period after issuance of the preliminary approval order.
18 (Szamet Decl. ¶22; Ex. 1 at § VI, ¶65.) Second, Class Members consist of Defendant’s hourly
19 employees, and Defendant is required to keep records of its hourly employees’ names, home
20 addresses, and social security numbers. (See Wage Order 9-2001, subsection 7(c); Szamet Decl.
21 ¶23.) Third and finally, Defendant informally produced records including Plaintiffs’ personnel
22 files and pay statements, and a sampling of shift data, pay data, and wage statements for Class
23 Members containing class member contact information, which confirms that all Class Members
24 may be readily identified based on Defendant’s records. (Szamet Decl. ¶24.)

25 2. Plaintiffs Contend There Is Numerosity

26 There is no set number that is required as a matter of law to maintain a class action. (See,
27 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
28 Class contains, based upon information and belief, approximately 1,203 hourly non-exempt

1 employees in the State of California. (Ex. 1 at § I, ¶9(a).) Therefore, Plaintiffs are confident they
2 will be able to establish that the proposed settlement class is ascertainable and sufficiently
3 numerous. (Szamet Decl. ¶25.)

4 B. Plaintiffs Contend There Is a Well-Defined Community of Interest

5 1. Plaintiffs Contend There Are Predominant Questions of Law and Fact

6 In deciding whether questions of common or general interest predominate, a court must
7 determine whether “the issues which may be jointly tried, when compared with those requiring
8 separate adjudication, are so numerous or substantial that the maintenance of a class action would
9 be advantageous to the judicial process and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d
10 232, 238; *accord, Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
11 general matter, if the defendant’s liability can be determined by facts common to all members of
12 the class, a class will be certified even if the members must individually prove their damages.”
13 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord, Knapp v.*
14 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

15 Here, Plaintiffs argue that there are questions of law and fact common to the proposed
16 Settlement Class that predominate over any questions affecting only individual Class Members.
17 (Szamet Decl. ¶26.) These common questions include:

- 18 1) Whether Defendant failed to pay all wages and/or overtime compensation due,
19 including minimum wages;
- 20 2) Whether Defendant failed to provide lawfully required meal periods and/or failed
21 to compensate employees one (1) hour’s wages in lieu thereof;
- 22 3) Whether Defendant failed to provide lawfully required rest periods and/or failed to
23 compensate employees one (1) hour’s wages in lieu thereof;
- 24 4) Whether Defendant failed to pay compensation due and owing upon termination
25 of employment;
- 26 5) Whether Defendant engaged in unfair competition; and,
- 27 6) Whether Defendant violated § 2699, et seq. of the Labor Code by engaging in the
28 acts previously alleged.

1 (Szamet Decl. ¶27.)

2 Plaintiffs' challenge to Defendant's uniform policies and practices involves common
3 factual and legal issues that are amenable to class treatment. (Szamet Decl. ¶28.) As the California
4 Supreme Court has emphasized, "[c]laims alleging that a uniform policy consistently applied to a
5 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
6 found suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*
7 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
8 similarly situated employees may be certified based on common questions of fact or law, even if
9 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
10 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th
11 at 340.)

12 Here, Plaintiffs allege that the proposed Settlement Class suffered the same injuries, in the
13 same manner: (1) Class Members were not properly paid all wages/overtime, including overtime
14 and minimum wages; (2) Class Members did not receive their meal and rest periods as required or
15 premium pay in lieu thereof; (3) Class Members were not paid all wages owed upon
16 termination/resignation. (Szamet Decl. ¶29.) Plaintiffs allege that the Settlement Class worked in
17 the same or similar capacities as hourly field employees for the same employer and were subject
18 to the same employment policies and practices, the questions of fact and claims regarding the status
19 of these employees are the same for each member of the settlement class. Accordingly, for
20 purposes of settlement, the evidence reviewed by Class Counsel demonstrates that common wage
21 payment policies and meal and rest policies applied to the proposed Class Members and
22 certification for settlement purposes is appropriate. (Szamet Decl. ¶30.)

23 2. Plaintiffs Contend The Class Representatives Have Claims Typical of the
24 Proposed Class

25 A putative class representative's claim must be "typical," but not necessarily identical, to
26 the claims of other class members. The test of typicality "is whether other members have the same
27 or similar injury, whether the action is based on conduct which is not unique to the Class
28 Representatives, and whether other class members have been injured by the same course of

conduct.” (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, 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. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, 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. (*See, e.g., Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not necessary that the class representative have personally incurred all of the damages suffered by each of the other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.)

Plaintiffs worked as “hourly employees” for Defendant as Emergency Medical Technicians (EMTs) in Kern County during the Class Period. (Szamet Decl. ¶31.) Plaintiffs allege that they: (1) worked without being paid all wages and/or overtime, including minimum wage; (3) worked without being provided meal/rest periods as required by law; and (3) two of the Plaintiffs worked without being paid all wages due upon separation. They also allege that he experienced derivative claims for unfair business competition (B&P Code §17200) and Labor Code §2699, et seq. (Szamet Decl. ¶32.) As such, Plaintiffs contend they are similarly situated to the members of the Settlement Class they represent and contend that their claims are typical of those of the Settlement Class. (Szamet Decl. ¶33.)

3. Plaintiffs Contend That As The Class Representatives They Have and Will Fairly Represented the Interests of the Class Members

A putative class representative must show that he can adequately represent the class. (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.App.4th 1096, 1104.) The representative, through qualified counsel, must be capable of “vigorously and tenaciously” protecting the interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

Plaintiffs believe that they are capable of fairly representing and adequately protecting the interests of the proposed Class Members. (Szamet Decl. ¶34.) Plaintiffs’ interests in this litigation are coextensive with the interests of the proposed Class Members. The members of the Proposed Settlement Class all worked for Defendant during the relevant time period and incurred the same type of alleged damages with regard to Defendant’s alleged violations of the law. (Szamet Decl.

¶35.) Moreover, Plaintiffs have agreed to serve as Class Representatives and have retained qualified counsel who are experienced in prosecuting wage and hour class actions. (Szamet Decl. ¶36.) This demonstrates their commitment to bringing about the best possible results for the benefit of the proposed settlement class. (Szamet Decl. ¶37.) Plaintiffs have provided their counsel with all necessary and pertinent information. (Szamet Decl. ¶38.) They have been very active participants in the litigation including having frequent contact with Class Members, working closely with Class Counsel to develop the theories of liability. (Szamet Decl. ¶39.) They also made themselves available during the full-day mediation in this matter and were informed of and involved in all of the settlement negotiations. (Szamet Decl. ¶40.) Therefore, Plaintiffs believe that they have and will continue to adequately represent the proposed Class Members. (Szamet Decl. ¶41.)

C. Plaintiffs Contend The Class Action Vehicle Is Superior to the Alternatives

“The ultimate question in every case of this type is whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” (*Lockheed Martin, supra*, 29 Cal.App.4th at 1104–1105.) The California Supreme Court has directed the courts to utilize the class action device to fashion “an effective and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 469.) Normally, in making its class certification decision, the Court must determine that a class action would be superior to alternate means for a fair and efficient adjudication. If the causes of action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g., Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in principal and now seek Court approval of that Settlement, Plaintiffs submit that there is not as much need as there would be in an ordinary motion for class certification for the Court to determine that the case can be manageably tried.

Plaintiffs maintain that class treatment would be the superior method of managing this case. A class action is superior to individual litigation “when numerous parties suffer injury of

insufficient size to warrant individual action and when denial of class relief would result in unjust advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as this, where individual damages may be small, the class action device is the most feasible method of recovery. (*See, e.g. Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard, the superiority of class treatment is evident here because individual pursuit of class members’ claims may not be economically viable. (Szamet Decl. ¶42.) The only alternative to certification would be to force over 1,203 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl. ¶43.) Plaintiffs maintain that this economic reality would result in a windfall for Defendant if this case were not certified. (Szamet Decl. ¶44.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Settlement Agreement, the Settlement Class is defined as: “all non-exempt field employees (including Emergency Medical Technicians, Paramedics, and Dispatchers) who are employed or have been employed by HALL AMBULANCE SERVICE, INC., and any of its subsidiary entities, including without limitation, Hall Air Ambulance Service, Inc., Hall Critical Care Transport Service, Inc., Delano Ambulance Service, Inc., in the State of California during the Class Period.” (“Class”, “Class Members” or “Settlement Class Members”) The term “Class Members” shall not include any person who submits a timely and valid request for exclusion. (Szamet Decl. ¶45; Settlement Agreement, Ex. 1 at § II, ¶12.)

The Class Period is August 21, 2015 through July 31, 2022. (Szamet Decl. ¶46; Ex. 1 at § II, ¶17.) Based on documents and other information produced by Defendant, there are approximately 1,203 Class Members. (Szamet Decl. ¶47; Ex. 1 at § I, ¶9a.)

B. The Aggrieved Employees

For purposes of the Agreement, the PAGA Group is defined as: “all Class Members who performed work for Defendant during the PAGA Period.” (Szamet Decl. ¶48.) The “PAGA Group Member” shall mean an individual who is a member of the PAGA Group. (*Id.*; Settlement, Ex. 1 at § I ¶33.)

1 The PAGA Period is December 8, 2020 through July 31, 2022. (Szamet Decl. ¶49; Ex. 1
2 at ¶1.1.35.)

3 C. Maximum Settlement Amount

4 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
5 pay a Maximum Settlement Amount of \$1,900,000.00, which includes the sum of the Settlement
6 Shares, the Class Representatives service award, the Class Counsel Award, PAGA Payment, and
7 the Settlement Administration Costs. (Szamet Decl. ¶50; Ex. 1 at § IV, ¶52.)

8 The Net Class Settlement Amount is the Maximum Settlement Amount, less Class Counsel
9 Award, Class Representatives Enhancement, PAGA Payment, and Settlement Administration
10 Costs. (Szamet Decl. ¶51; Ex. 1 at § IV, ¶53.)

11 The Parties estimate the amount of the Net Class Settlement Amount as follows:

12			
13	Maximum Settlement Amount:	\$	1,900,000.00
14	Less Class Representatives Enhancement:	\$	50,000.00
15	Less Class Counsel's Fees:	\$	633,333.33
16	Less Class Counsel's Costs:	\$	30,000.00
17	Less PAGA Payment:	\$	50,000.00
18			<i>(\$37,500.00 to the LWDA and</i>
19			<i>\$12,500.00 PAGA Group Members)</i>
20	<u>Less Settlement Administrator Costs:</u>	\$	<u>17,132.80</u>
21	Anticipated Net Class Settlement Amount	\$	1,119,533.87

22 (Ex. 1 at § IV.)

23 D. Individual Settlement Payments

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

provides for a specific and detailed dispute process. (See Ex. 1 at § VI, ¶68.) The anticipated average payment to a Settlement Class Member will be approximately \$930 (\$1,119,533.87 / 1,203 = \$930.61. (Szamet Decl. ¶52.)

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

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Ex. 1 at § VI, ¶66.) The Parties have agreed to use a reputable third-party claims administrator, ILYM, to administer the Settlement Agreement. (Ex. 1 at § I, ¶48.)

F. Process for Class Members to Respond to Class Notice

As detailed in the Settlement Agreement, Class Members will have an opportunity to request exclusion from the Settlement Agreement (i.e. opt out) and to object to the Settlement Agreement at the Final Approval Hearing. (See Ex. 1 at § VII, ¶¶69-70; see also Ex. A to the Settlement Agreement at pp. 6-7 [Class Notice].) The Settlement Agreement and Class Notice contain details about the process to request exclusion or object. (*Id* at Ex. 1; see also Ex. A to the Settlement Agreement at *Id*.)

G. The Release

The Released Claims are defined as: “any and all claims, demands, rights, liabilities, and causes of action that were or could have been brought against the Released Parties in the Class Action based on the facts and allegations set forth in the Class Action (the “Released Claims”). Released Claims for Class Members who worked for Defendant during the Class Period shall have their claims released during the Class Period. The Released Claims release all causes of action and claims that were alleged in the Class Action or reasonably could have been alleged based on the

1 facts and legal theories contained in the operative complaint, including, but not limited to, all of
2 the following claims for relief:

3 All causes of action and claims that were alleged in the Class Action or reasonably could
4 have been alleged based on the facts and legal theories contained in the operative
5 complaint, including, but not limited to, all of the following claims for relief: Failure to
6 Pay Wages and/or Overtime (Labor Code §§ 510, 1194, 1199), Failure to Provide Meal
7 Periods (Labor Code §§ 226.7, 512), Failure to Authorize and Permit Rest Periods (IWC
8 Wage Order No. 9, § 12, Labor Code § 226.7), Failure to Pay Minimum Wage (Labor Code
9 §§ 1194, 1194.2, 1197, IWC Wage Order No. 9, § 4), Waiting Time Penalties (Labor Code
10 § 203), Violations of Business & Professions Code § 17200, Penalties Pursuant to Labor
11 Code § 2699 et seq., claims for restitution and other equitable relief, liquidated damages,
12 civil penalties, statutory penalties, punitive damages, waiting time penalties, interest, as
13 well as all similar provisions under the Federal Fair Labor Standards Act, including 29
14 U.S.C. sections 206, 207, and 216, and the National Labor Relations Act.

15 (i) Participating Class Members who are employed by Defendant and who participate in the
16 Settlement and receive a payment thereunder shall, by virtue of the same, release any
17 Labor Code section 203 claims for failure to pay wages due and owing at the end of
18 employment based upon the claims set forth above in Paragraph 72(i).

19 (Ex. 1 at § VIII, ¶72.)

20 The Released PAGA Claims are defined as:

21 Any and all claims, demands, rights, liabilities, and causes of action that were or could
22 have been brought against the Released Parties in the Class Action for civil penalties
23 pursuant to the PAGA that were alleged or could have been alleged under the Labor Code,
24 state or local wage and hour laws and Wage Orders, whether known or unknown, based on
25 the facts and legal theories contained in the Class Action, including but not limited to (a)
26 failure to properly calculate and pay all minimum wages and/or overtime wages; (b) failure
27 to provide meal periods or compensation in lieu thereof; (c) failure to provide rest periods
28 or compensation in lieu thereof; (d) failure to pay wages timely at time of termination or

1 resignation; (e) failure to timely pay all wages that could have been premised on the claims,
2 causes of action or legal theories of relief described above or any of the claims, causes of
3 action or legal theories of relief pleaded in the operative complaint (the “PAGA Released
4 Claims”) (Ex. 1 at § VIII, ¶73.)

5 **V. ARGUMENT**

6 **A. Plaintiffs Request Approval of This Class Action Settlement**

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

14 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
15 informal discovery before entering into meaningful settlement negotiations in this matter. (*Id.* at
16 Szamet Decl. ¶¶14-21.) This discovery permitted Class Counsel to fairly evaluate the strength of
17 the case and the risks associated with ongoing litigation. (Szamet Decl. ¶53.) Class Counsel is
18 very experienced in handling wage and hour class actions and, after weighing all of the following
19 factors, supports this Settlement Agreement. (Szamet Decl. ¶54.)

20 **1. The Strength of Plaintiffs’ Case**

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

22 Plaintiffs alleged that Defendant had a uniform policy and practice of not paying Plaintiffs
23 and Settlement Class Members for all hours worked in violation of established law guaranteeing a
24 minimum wage and wages owed under contract or statute and prohibitions on making deductions
25 reducing the agreed upon wage. (See Lab. Code §§ 218, 218.5, 222, 223, 224, 1194, 1194.2, 1197.)
26 California workers are statutorily entitled to overtime compensation, unless they are properly
27 classified as falling within one of the narrow exemption categories. Under California law, “[a]ny
28 work in excess of eight hours in one workday and any work in excess of 40 hours in any one

workweek...shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).) Furthermore, “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” (Lab. Code, § 510, subd. (a).)

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

Here, Plaintiffs alleged that they and the Settlement Class Members have been required to work on a regular and consistent basis without receiving compensation for all hours worked at the proper rate. (Szamet Decl. ¶55.) Specifically, Plaintiffs alleged that they and the Settlement Class have not been properly compensated for overtime at the appropriate hourly rate of pay because Defendant paid them at different rates of overtime pay depending on the length of their scheduled shift, with the hourly rate decreasing as the length of the scheduled shift increased. (Szamet Decl. ¶56.) Plaintiffs contend that overtime worked on every single shift should be paid at 1.5 times the appropriate 8-hour shift rate, and it was not. (Szamet Decl. ¶57.)

Defendant vehemently denied this claim. (Szamet Decl. ¶58.) Defendant argued that it did not violate California overtime laws because Industrial Welfare Commission Wage Order No. 9 regulating the Transportation Industry states that daily overtime provisions shall not apply to ambulance drivers and attendants scheduled for 24-hour shifts. See Cal. Code Regs. tit. 8, § 11090 at 3(k). (Szamet Decl. ¶59.) Nevertheless, Plaintiffs contend that because this provision only applies to daily overtime pay for 24-hour shifts, Plaintiffs were still paid overtime at the incorrect rate for all 12-hour shifts. (Szamet Decl. ¶60.) Plaintiffs also maintained that Defendant violated California’s overtime requirements for each week in which an employee worked over 40 hours on

1 24-hour shifts (i.e. two 24-hour shifts in the same week). (Szamet Decl. ¶61.) Plaintiffs contend
2 that they and the other EMTs and paramedics are entitled to overtime pay at the 8-hour overtime
3 rate for all hours worked in excess of 40 per week. (Szamet Decl. ¶62.)

4 As part of preparing for and participating in mediation and subsequent negotiations, Class
5 Counsel have now fully investigated the historical pay practices of Defendant and reached the
6 conclusion that Defendant's overtime pay schedule is not and was not a subterfuge to avoid the
7 payment of overtime. (Szamet Decl. ¶63; Settlement, ¶ 10.) Plaintiffs and their counsel agree that
8 the regressive pay scale used by Defendant (i.e., a lower hourly rate for longer shifts) is not
9 unlawful. (*Id.*) Based on this conclusion, Plaintiffs believe it was appropriate to dramatically
10 discount this claim for settlement purposes. (Szamet Decl. ¶64.)

11 Plaintiffs also alleged that, on a regular and consistent basis, Defendant has had a policy
12 and practice of requiring members of the Settlement Class to attend continuing education courses
13 put on by Defendant but were not paid for their time spent in such coursework. (Szamet Decl.
14 ¶65.) While the coursework is necessary for licensing and ordinarily would not be compensable,
15 Plaintiffs contend that the fact that they had to complete the coursework through Defendant did
16 render such time compensable. (Szamet Decl. ¶66.) Plaintiffs felt confident about prevailing on
17 this claim, but have to acknowledge that the time spent on training was generally a matter of
18 approximately 5-6 hours per Class Member per year. (Szamet Decl. ¶67.)

19 Third and finally, Plaintiffs allege that they were required to work off the clock before
20 shifts to prepare their emergency vehicles. (Szamet Decl. ¶68.) Plaintiffs acknowledge that this
21 can be a highly difficult type of claim to prove because there are no time records to substantiate or
22 evaluate the claim. (Szamet Decl. ¶69.) Instead, Defendant would argue that if there was any such
23 issue of pre-shift work, it would necessitate speaking to each and every Settlement Class Member
24 about their experiences day to day and whether any off the clock time was ever worked. (Szamet
25 Decl. ¶70.) This type of inquiry, Defendant would argue, make its very difficult to establish
26 liability based on common proof. (Szamet Decl. ¶71.) Based on this acute risk, Plaintiffs believe
27 it was appropriate to dramatically discount this claim for settlement purposes. (Szamet Decl. ¶72.)

28 Based on this analysis, Plaintiffs believe that taking a significant reduction on the

wages/overtime claim for settlement purposes is fair and reasonable. (Szamet Decl. ¶73.)

b) Defendant Allegedly Failed to Provide Compliant Meal Periods

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

Ordinarily, the meal period must be free of all work duties and employer control. However, under Proposition 11, codified at Labor Code section 880 et seq. ambulance providers can provide ambulance drivers and their attendants with an “on duty meal period.” in that they remain in communication and are subject to call back. Labor Code § 887. Other than remaining on call during the meal period, Labor Code sections 885 and 886 makes clear that the meal period must reflect “inactivity.” If the ambulance staff person is called back during his/her meal period, that period does not count towards the meal period to which they are entitled. Labor Code §§ 886, 887.

Labor Code § 226.7 requires an employer to pay an employee one (1) hour of pay at the employee’s regular rate of pay for each day it fails to provide compliant meal periods.

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

Pursuant to the California Supreme Court’s recent decision in *Donohue v. AMN Services, LLC*, time records showing noncompliant meal periods raise a rebuttable presumption of meal period violations. *Donohue v. AMN Servs., LLC*, No. S253677, 2021 WL 728871, at *9 (Cal. Feb. 25, 2021). This rebuttable presumption then shifts the burden to Defendant to demonstrate that, through employee waiver or otherwise, it is not liable. *Id.* at 10. While Plaintiffs recognize that

1 California Proposition 11 allows ambulance providers to require workers to remain on-call during
2 meal and rest breaks, this does not excuse Defendant from properly compensating Plaintiffs for
3 these meal periods or rebutting the presumption of violations as required under *Donohue*.

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

18 Plaintiffs believe it is fair and reasonable to discount this claim for settlement purposes
19 because there is certainly risk associated with recovery. (Szamet Decl. ¶74.) In order to be
20 compliant, all Defendant has to do is provide meal period records that show that on-duty meal
21 periods of at least 30 minutes were provided. (Szamet Decl. ¶75.) As the time records produced
22 by Defendant did show such meal periods, Plaintiffs had concerns as to their ability to prove meal
23 period violations on a classwide basis. (Szamet Decl. ¶76.)

24 c) Defendant Allegedly Failed to Provide Compliant Rest Periods

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

1 for Plaintiffs to prevail on this claim. (Szamet Decl. ¶77.) As such, Plaintiffs contend that is
2 appropriate to dramatically discount this claim for settlement purposes. (Szamet Decl. ¶78.)

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

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

11 Here, numerous members of the proposed Class including Plaintiffs Joey Stephens, Manuel
12 Martinez, and Tyler Irish are no longer employed by Defendant. (Szamet Decl. ¶79.) They were
13 either fired or quit Defendant's employ. (Szamet Decl. ¶80.) Plaintiffs contend that Defendant's
14 failure to pay wages and compensation, as alleged above was willful in that Defendant knew wages
15 and compensation to be due but failed to pay them, thus entitling Plaintiffs and the proposed Class
16 Members to penalties under Labor Code § 203, which provides that an employee's wages shall
17 continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.
18 (Szamet Decl. ¶81.)

19 Plaintiffs risk analysis flows from the wage and meal/rest analysis discussed above.
20 (Szamet Decl. ¶82.) If Plaintiffs were not able to prevail on those allegations, they would not be
21 able to prove that waiting time penalties were owed on a classwide basis. (Szamet Decl. ¶83.)
22 Therefore, Plaintiffs believe that taking a discount on this claim because of the risks associated
23 with the merits is fair and reasonable. (Szamet Decl. ¶84.)

24 e) The Risks Associated with the PAGA Claim

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

1 \$100 per employee per pay period for the initial violation and \$200 for subsequent violations.

2 Plaintiffs discounted the PAGA claim for settlement purposes for multiple reasons.
3 (Szamet Decl. ¶85.) First, the aggrieved employees' PAGA claims are derivative of all the
4 foregoing class claims. (Szamet Decl. ¶86.) Thus, any risk associated with prevailing on the
5 underlying Labor Code claims must also be considered when analyzing the civil penalties tied to
6 those claims. (Szamet Decl. ¶87.) Second, a court has discretion to award less than the maximum
7 penalty. (Szamet Decl. ¶88.) Labor Code § 2699(e)(2) ("a court may award a lesser amount than
8 the maximum civil penalty amount specified by this part if, based on the facts and circumstances
9 of the particular case, to do otherwise would result in an award that is unjust, arbitrary and
10 oppressive, or confiscatory"). See e.g., *Carrington v. Starbucks Corporation* (2018) 30
11 Cal.App.5th 504, 241 Cal.Rptr.3d 647, 669 (affirming award of 10% of maximum PAGA penalty).
12 Finally, the Settlement Class is arguably compensated for these violations in the proposed
13 Settlement Agreement, and thus any PAGA recovery for these same violations would be
14 duplicative. (Szamet Decl. ¶89.) As such, Plaintiffs contend that the Settlement Agreement's
15 contemplated PAGA payment of \$50,000.00 is appropriate. (Szamet Decl. ¶90.) See *Nordstrom*
16 *Commissions Cases*, 186 Cal.App.4th 576, 589 (2010) (affirming settlement allocating \$0 of \$6.4
17 million settlement to PAGA penalties).

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

19 There is significant expense associated with the class certification process, which the
20 Parties can avoid by entering into the contemplated Settlement Agreement now. (Szamet Decl.
21 ¶31.) If the Court did eventually certify an unpaid wages or meal claim on a classwide basis, trial
22 of a case involving approximately 1,203 Class Members would require the retention of expensive
23 expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the
24 parties. (Szamet Decl. ¶92.) Moreover, given the complexity and unsettled nature of the issues in
25 this case it is likely that any outcome at trial would have resulted in a lengthy and costly appeal.
26 (Szamet Decl. ¶93.) An appeal would result in further delay for the Class Members who are
27 waiting for a resolution in this matter. (*Id.*)

28 ///

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

2 This case has not been certified to be tried as a class action. (Szamet Decl. ¶94.) While
3 Plaintiffs believe there is strong evidence to support certification of several possible subclasses,
4 certification is always hard fought and subject to judicial discretion. Winning certification may be
5 significantly difficult, as Defendant required Plaintiffs and other Class Members to enter into
6 arbitration provisions that included class action waivers; as noted above, Defendant's Motion to
7 Compel Arbitration has been pending while settlement negotiations were ongoing. (Szamet Decl.
8 ¶95.) Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to
9 certify a class, the parties would need to conduct multiple depositions, including of the Class
10 Representatives and of several person(s) most knowledgeable regarding Defendant's
11 wage/overtime and meal/rest policies. (*Id.*) There is a risk for both sides as to what these
12 depositions will reveal and whether they will support class certification to the extent expected.
13 (*Id.*)

14 4. The Amount Offered in Settlement

15 It was very difficult for the Parties to reach this Settlement of \$1,900,000.00. (Szamet
16 Decl. ¶96.) This Settlement is the result of adversarial, non-collusive, and arms-length
17 negotiations. (Szamet Decl. ¶97.) The Parties arrived at it after extensive investigation and
18 discovery; careful evaluation of the law, risks, and all information substantiating the amount of
19 damages and penalties reasonably likely to be awarded to the class were the trier of fact to find
20 Defendant liable; and the assistance of a very experienced class action mediator, Tripper Ortman.
21 (Szamet Decl. ¶98.)

22 a) Plaintiffs' Assessment of Defendant's Maximum Exposure on the
23 Class Claims

24 Based on the data provided for settlement purposes,² Plaintiffs assessed the full value of
25 the Minimum Wage/Overtime claim, without any discount, at approximately \$260,955.93.
26 (Szamet Decl. ¶99.) This calculation is based on 5.5 unpaid training hours per year per Settlement
27

28 ² Plaintiff worked with an expert to organize and analyze the time and pay records
provided by Defendant. (Szamet Decl. ¶100.)

1 Class Member (training includes: 2 hours for CPR, 1 hour for TB, 1 hour for Blood Borne illness,
2 1 for foggy weather driving, and .5 for annual medical exam). (Szamet Decl. ¶101.) Plaintiffs
3 used an hourly average rate of \$15.07 for their analysis. (Szamet Decl. ¶102.)

4 Plaintiffs assessed the full value of the meal period claim, without any discount, at
5 approximately \$4,278,086.67. (Szamet Decl. ¶103.) This amount is based upon 283,881 allegedly
6 non-compliant shifts from the data. (Szamet Decl. ¶104.) For the reasons above and the risks
7 associated with this claim, Plaintiffs determined that accepting a discount of 75% of the full
8 amount was appropriate for settlement purposes. (Szamet Decl. ¶105.) That amount, reduced for
9 risk, is \$1,069,521.50. (Szamet Decl. ¶106.)

10 The full value of the rest period claim, without any discount, was also approximately
11 \$4,278,086.67 (283,881 shifts x \$15.07 average hourly rate = \$4,278,086.67. (Szamet Decl. ¶107.)
12 Because Plaintiffs were acutely concerned about the risks associated with being able to prevail on
13 this claim as discussed above, Plaintiffs determined that accepting a discount of 90% of the full
14 amount was appropriate. (Szamet Decl. ¶108.) That amount, reduced for risk, is \$427,808.67.
15 (Szamet Decl. ¶109.)

16 For purposes of settlement, Plaintiffs valued the waiting time penalties claim (Labor Code
17 Section 203), tied to the wage/overtime claim, at \$3,310,276.20. (Szamet Decl. ¶110.) This
18 analysis is based upon 30 days of wages for the number of former employees. (Szamet Decl.
19 ¶111.) Considering the derivate nature of Labor Code §203 and the dispute over whether class
20 members were owed any wages, Plaintiffs determined that accepting a discount on this claim was
21 appropriate. (Szamet Decl. ¶112.) Accordingly, based on the risks articulated above associated
22 with each claim, Plaintiffs discounted this claim for settlement purposes by 50% to \$1,655,138.1.
23 (Szamet Decl. ¶113.)

24 Taken together, using the exposure numbers discounted for risk, Plaintiffs assessed
25 Defendant's exposure on the Labor Code violations alleged at approximately \$3,413,424.19.
26 (Szamet Decl. ¶114.) Based on this analysis, Plaintiffs contend that the proposed Settlement is
27 fair and reasonable and should be approved by the Court. (Szamet Decl. ¶115.)

28 ///

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

Finally, Plaintiffs calculated the value of the PAGA claim at \$2,060,587.5 for aggrieved employees (Szamet Decl. ¶116.) This based upon approximately 20,605 pay periods during the PAGA liability period x \$100 per pay period. (Szamet Decl. ¶117.) The main risk taken into account with the PAGA penalty analysis is the derivative nature of the claim and that in order to recover civil penalties, Plaintiffs first have to prevail on the underlying claim. (Szamet Decl. ¶118.) As discussed, Plaintiffs believe there is risk associate with each claim and had to also consider that risk when analyzing the civil penalties. (Szamet Decl. ¶119.) Second, Plaintiffs had to consider the discretionary nature of the penalty award. (Szamet Decl. ¶120.) A judge can award the statutory maximum of \$100 for the initial violation and \$200 thereafter or – in theory – one cent per wage statement. (Szamet Decl. ¶121.) While there is a dearth of available authority, in Plaintiffs' views, were they to succeed on any of the underlying Labor Code violations, it is not likely that a Judge would also award a large amount of penalties of top of any damages recovered. (Szamet Decl. ¶122.) Thus, Plaintiffs reduced this number by 50% for settlement purposes to \$1,030,293.75. (Szamet Decl. ¶123.)

Per Plaintiffs' assessment, the realistic potential value of all of Plaintiffs' and the Settlement Class Members' claims at trial was approximately \$4,443,717.94 (\$3,413,424.19 + \$1,030,293.75 = \$4,443,717.94. (Szamet Decl. ¶124.) When analyzing this number coupled with the risks associated with recovery as to each claim at trial, Class Counsel believes the Maximum Settlement Amount of \$1,900,000.00 is fair and reasonable. (Szamet Decl. ¶125.)

5. The Experience and Views of Counsel

Counsel's experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Kingsley & Kingsley, APC is very experienced in prosecuting complex employment litigation, and the firm has focused its practice since the year 2000 on complex wage, hour, and working condition violations. (Szamet Decl. ¶¶126-128.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley & Kingsley, APC currently serves as Class Counsel for dozens

1 of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of
2 representative cases that Kingsley & Kingsley, APC has handled is included in the accompanying
3 declaration of Kelsey M. Szamet (*Id.*) Leonard Carder is similarly well-experienced in litigating
4 class actions involving wage and hour violations, having served as class-counsel in scores of cases
5 in state courts and federal courts in California and elsewhere, including on behalf of emergency
6 medical personnel. (Kaufmann Decl. ¶25.) After factoring in the risks explained above, Class
7 Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶129.)

8 6. The Proposed Plan of Allocation Is Fair and Reasonable

9 Plans of allocation are subject to the same standard of review as class action settlements;
10 they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service*
11 *Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
12 compensates Class Members pro rata based on the number of Workweeks worked by the Class
13 Member during the Class Period. The lump sum payment to each Class Member not excluding
14 him/ herself will be determined on an individualized basis based upon multiplying each
15 Participating Class Member’s payment ratio by the portion of the Net Settlement Amount allocated
16 to the Class. (Ex. 1 at § VI, ¶67(i).) This allocation distributes Settlement Agreement funds
17 proportionally to each class member’s potential damages and should therefore be approved as fair,
18 adequate, and reasonable. (Szamet Decl. ¶130.)

19 7. The Proposed Notice Fairly Apprises the Class Members of the Terms of
20 the Settlement and of the Class Members’ Rights under the Settlement

21 Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The
22 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
23 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
24 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last
25 known address of all Class Members, or to an updated address if one is located in the National
26 Change of Address Database. (Ex. 1 at § VI, ¶66). If any Notices are returned as undeliverable,
27 the Settlement Administrator will undertake another reasonable address verification measure to
28 locate a valid mailing address and will promptly send the Notice to the new address. (*Ibid.*) As

1 such, the Notice is likely to reach most, if not all, Class Members.

2 With respect to the contents of the Notice, the “notice given to the class must fairly apprise
3 the class members of the terms of the proposed compromise and of the options open to dissenting
4 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)

5 The purpose of a class notice is to give class members sufficient information to decide whether
6 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
7 settlement. (*Ibid.*)

8 Here, the Notice clearly explains the proposed Settlement Agreement and the options to
9 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at § VII, ¶69; *see*
10 *also* Ex. A to the Settlement Agreement at pp. 2-3 and 5-6 [Class Notice].) In short, the Court
11 should approve the proposed Class Notice because it describes the proposed settlement with
12 enough specificity to allow Class Members to make an informed choice regarding whether to
13 participate.

14 **VI. THE SERVICE AWARD TO THE NAMED PLAINTIFFS**

15 The Class Representatives are entitled to an enhancement for their effort, risk in bringing
16 public litigation, and time expended in this matter. (Szamet Decl. ¶131.) The time spent by JOEY
17 STEPHENS, MANUEL MARTINEZ, ERIC MCINTYRE, JEREMY CAPPS, and TYLER IRISH
18 is significant and includes researching and retaining competent counsel; providing information to
19 Class Counsel regarding the nature of the work at Defendant; compiling relevant documents;
20 working closely with Class Counsel to develop the theories of liability and martial relevant
21 evidence; regularly discussing the status of the case with Class Counsel; discussing the case via
22 telephone with many Class Members; being available during the full-day mediation as necessary;
23 and responding promptly to Class Counsel’s communications regarding settlement. (*Id.*) Thus, in
24 addition to the sums paid to Class Members, Plaintiffs request a proposed litigation enhancement
25 in the total amount of \$50,000.00, to be paid from the Maximum Settlement Amount. (Ex. 1 at §
26 IV, ¶53.) As set forth in the Settlement Agreement, Plaintiffs will also be entering into a general
27 release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶132; Ex. 1 at § VIII, ¶74.)

28 Class Counsel considers this to be a fair and reasonable enhancement. (Szamet Decl.

¶133.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of all Class Members. (*Id.*) Plaintiffs will provide a detailed declaration with the Final Approval Motion detailing their participation and further justification for the enhancement. (*Id.*)

VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

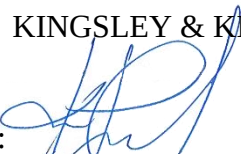
As indicated on the Proof of Service, Plaintiffs' Motion for Approval of Class Action Settlement ("Motion") will be concurrently uploaded to the Labor and Workforce Development Agency's ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of Plaintiffs' Motion, all related documents, and copy of the email from the LWDA confirming receipt is attached to the Declaration of Kelsey M. Szamet as Exhibit "2." (Szamet Decl. ¶134.)

VIII. CONCLUSION

Plaintiff respectfully submits that the proposed Settlement Agreement is fair, adequate, reasonable, and in the best interest of the Class Members. Therefore, the Parties respectfully request that the Court (1) grant preliminary approval of the Joint Stipulation of Class Action Settlement and Release of Claims, and all of its terms; (2) approve the proposed form of notice, and direct that the Notice be sent to Class Members in the manner set forth in the Joint Stipulation of Class Action Settlement and Release of Claims; and (3) schedule a hearing on final approval of the Settlement Agreement and Class Counsel's application for an award of attorney's fees and litigation costs.

DATED: January 3, 2023

KINGSLEY & KINGSLEY, APC

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 January 3, 2023, I served all interested parties in this action the following documents described as: **NOTICE OF MOTION AND MOTION FOR PRELIMINARY 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:

R. Scott Brink Patricia DeSantis Belton RSB@jmbm.com PBelton@jmbm.com Jeffer Mangels Butler & Mitchell LLP JMBM 1900 Avenue of the Stars, 7th Floor Los Angeles, California 90067 <i>Attorneys for Defendant</i>	Aaron Kaufmann David Pogrel akaufmann@leonardcarder.com dpogrel@leonardcarder.com Leonard Carder, LLP 1999 Harrison Street, Suite 2700 Oakland, CA 94612 <i>Attorneys for Plaintiffs</i>
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[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 January 3, 2023, at Sherman Oaks, California.



Leslie Sanchez