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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

MICHAEL PRICE and DOUGLAS ANDERSON, as individuals, on behalf of themselves and others similarly situated,

PLAINTIFFS,

v.

STARLIGHT MARINE SERVICES, INC.; and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. MSC20-01311
[Consolidated with Case No. CV-23-004587]

[Case Assigned for All Purposes to Hon. Edward G. Weil in Dept. 39]

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, Declaration of Michael Price, Declaration of Douglas Anderson, and Proposed Order]

Date:
Time:
Dept.: 39

Complaint Filed: July 16, 2020
Trial Date: None Set

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at a date and time to be set by the Court, in Department 39 of the above-entitled court, Plaintiffs MICHAEL PRICE and DOUGLAS ANDERSON will move the Court for an Order of Preliminary Approval of the Class Action and PAGA Settlement Agreement ("Agreement"), a copy of which is filed concurrently herewith.

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

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

DATED: September 2, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

By: ______________________

Kelsey M. Szamet
Jessica Bulaon
Attorneys for Plaintiffs and the proposed class

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs MICHAEL PRICE and DOUGLAS ANDERSON ("Plaintiffs" or "Class Representatives") submit this Memorandum of Points and Authorities in support of Plaintiffs' Motion for Preliminary Approval of the Class Action and PAGA Settlement Agreement reached between Plaintiffs and Defendant STARLIGHT MARINE SERVICES, INC. ("Defendant") (Plaintiffs and Defendant together, the "Parties").

By this Motion, Plaintiffs request that the Court:

(1) Grant preliminary approval of the fully-executed Class Action and PAGA Settlement Agreement ("Agreement"). A true and correct copy of the Agreement is attached hereto as Exhibit "1";

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

(3) Schedule a hearing on final approval of the proposed Settlement and Plaintiffs' counsel's application for an award of attorney's fees and litigation costs at which Class Members may be heard ("Final Approval Hearing").

II. FACTUAL BACKGROUND

A. Litigation Overview and Procedural History

On July 16, 2020, Plaintiffs filed this wage and hour class action lawsuit, alleging five causes of action, including: (1) failure to pay wages and/or overtime under Labor Code sections 510, 1194, and 1199; (2) failure to pay minimum wage pursuant to Labor Code section 1194; (3) failure to provide meal breaks pursuant to Labor Code sections 512 and 226.7; (4) penalties under Labor Code section 203; and (5) violation of Business & Professions Code section 17200. (Szamet Decl. ¶4.) Also on July 6, 2020, Plaintiffs sent a notice letter, pursuant to Labor Code section 2699 ("PAGA"), to the Labor Workforce Development Agency ("LWDA") regarding their intent to seek civil penalties for the same Labor Code violations listed above and alleging additional Labor Code violations, under Labor Code section 2699, *et seq*. (Szamet Decl. ¶5.)

On September 10, 2020, Plaintiffs filed a First Amended Class and Representative Action Complaint ("FAC"), adding an additional cause of action for penalties pursuant to PAGA based upon the same alleged Labor Code violations enumerated in the complaint. (Hereafter, the "Action".) (Szamet Decl. ¶6.)

On May 12, 2021, Defendant filed a Motion to Compel Arbitration ("MTC"), which was denied by the Court on September 9, 2021. (Szamet Decl. ¶7.)

B. Plaintiffs' Motion for Class Certification

On October 27, 2023, Plaintiffs filed their Motion for Class Certification ("MFCC"). (Szamet Decl. ¶8.) On August 22, 2024, the Court granted Plaintiffs' MFCC, certifying the following three subclasses:

1. Meal Period Subclass: All captains employed by Starlight Marine Services, Inc. in the State of California who worked a shift of more than five hours from July 16, 2016, until February 15, 2021.
2. On-Call Subclass: All captains employed by Starlight Marine Services, Inc. in the State of California whose tug logs show they were single-staffed during a 24-hour period from July 16, 2016, until February 15, 2021.
3. Waiting Time Subclass: All captains who formerly worked for Starlight Marine Services, Inc. in the State of California who are member of the Meal Period Subclass and/or the On-Call Subclass. (*Id.*)

On September 12, 2024, the Court entered an Order approving the class notice process following certification. (Szamet Decl. ¶9.) The notice process concluded on October 28, 2024, with two individuals opting out of the class. (*Id.*) The Parties are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement. (Szamet Decl. ¶10.)

C. The Discovery Process and Mediation

After Defendant's Motion to Compel Arbitration was decided, the Parties expressed a desire to resolve this matter through mediation and have engaged in extensive formal discovery. (Szamet Decl. ¶11.) On February 11, 2021, Plaintiffs served special interrogatories and requests for production of documents, seeking information such as the number and identity of putative class members, time and pay data, and applicable wage and hour policies and procedures. (Szamet Decl. ¶12.) Defendant provided response to Plaintiffs' requests on May 14, 2021. (*Ibid*.) The Parties met and conferred regarding Defendant's discovery responses and Defendant agreed to provide further supplemental responses. (*Ibid*.) Through these formal requests, Plaintiffs' counsel obtained the class list; employee handbook which contains Starlight's meal policy, payroll policy; Plaintiffs' wage statements and timesheets; and the wage statements and timesheets for the Class Members. (*Ibid*.) Defendant also produced information regarding estimated class size and number of relevant workweeks at issue. (*Ibid*.) Plaintiffs worked with an expert to carefully review and analyze all of the records produced by Defendant. (Szamet Decl. ¶13.) At the time, Defense counsel represented that there were approximately 29 senior and junior captains.[1] (Szamet Decl. ¶14.) Plaintiffs' investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc*. (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc*. (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*")

On June 22, 2022, the Parties participated in an all-day mediation presided over by Hon. Peter D. Lichtman. (Szamet Decl. ¶15.) The mediation was unsuccessful. (*Id*.) Following the rulings on Defendant's MTC and Plaintiffs' MFCC and the resulting notice process, the Parties engaged in months of meet and confer discussions and direct negotiations, on or around April 4, 2025, which led to the Agreement to settle the Action. (Szamet Decl. ¶16.)

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

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[1] Two captains subsequently opted out of the class at the certification stage and one captain was later found to have not worked during the class period. (Szamet Decl. ¶14.)

Based on their own independent investigation and evaluation, Class Counsel is of the opinion that the Agreement with Defendant is fair, reasonable and adequate, and in the best interest of the settlement class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, uncertainties regarding a class and representative action trial on the merits, and numerous potential appellate issues. (Szamet Decl. ¶18.) Although Defendant denies any liability, Defendant is agreeing to this 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. THE PROPOSED SETTLEMENT

A. <u>The Settlement Class</u>

For purposes of the Agreement, the settlement class is defined as: "All captains employed by Starlight Marine Services, Inc. in the state of California who worked a shift of more than five hours from July 16, 2016 until February 15, 2021, and who did not opt out of the class by the October 28, 2024, deadline set forth in the notice of class certification." ("Class"). (Szamet Decl. ¶19; Ex. 1 at ¶1.5.)

The Class Period is July 16, 2016, until February 15, 2021. (Szamet Decl. ¶20; Ex. 1 at § ¶1.12.) Based on documents and other information produced by Defendant, there are 26 members of the Class who worked a total of 2,376 Total Workweeks. (Szamet Decl. ¶21; Ex. 1 at ¶4.1.)

B. <u>Aggrieved Employees</u>

For purposes of the Agreement, the Aggrieved Employees are defined as: "All captains employed by Starlight Marine Services, Inc. in the state of California who worked a shift of more than five hours from July 16, 2019, until February 15, 2021." ("Aggrieved Employees") (Szamet Decl. ¶22; Settlement, Ex. 1 at ¶1.4.) The PAGA Period is July 16, 2019, until February 15, 2021. (Szamet Decl. ¶23; Ex. 1 at ¶1.30.) Based on documents and other information produced by Defendant, there are 17 Aggrieved Employees who collectively worked a total of 480 PAGA Pay Periods. (Szamet Decl. ¶24; Ex. 1 at ¶4.1.)

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C. Gross Settlement Amount

As detailed fully in the Agreement, the Settlement provides for Defendant to pay a Gross Settlement Amount of $280,000.00, which includes the sum of the Individual Class Payments, the Class Representatives' service awards, PAGA Payment, and the Settlement Administration Costs. (Szamet Decl. ¶25; Ex. 1 at ¶3.1.)

The Net Settlement Amount is the Gross Settlement Amount, less Class Representatives' Enhancements, PAGA Payment, and Settlement Administration Costs. (Szamet Decl. ¶26; Ex. 1 at ¶3.2.)

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

Gross Settlement Amount:	$	280,000.00
Less Class Representatives' Enhancements:	$	20,000.00
Less PAGA Payment:	$	15,000.00 *($11,250.00 to the LWDA and $3,750.00 to remain in the Net Settlement Amount)*
Less Administrator Costs:	$	3,250.00
Anticipated Net Settlement Amount	$	245,500

(Ex. 1 at ¶3.)

D. Individual Settlement Payments

The amount of each Class Member's Individual Class Payment is an individualized amount that is based on the number of compensable Workweeks worked by the Class Member during the Class Period. (Ex. 1 at ¶3.2.4; *see also* Ex. A to the Agreement at pp. 6 [Class Notice].) This individual amount shall be determined according to the settlement payment formula set forth in the Agreement. (*See* Ex. 1 at ¶3.2.4; *Id*. at Ex. A to the Agreement [Class Notice].) The Agreement provides for a specific and detailed Workweek dispute process. (*See* Ex. 1 at ¶7.6.)

The Individual PAGA Payment is an individualized amount based on the number of PAGA Period Pay Periods worked by the Aggrieved Employee during the PAGA Period. (Ex. 1 at ¶3.2.5.1; *see also* Ex. A to the Agreement at pp. 3 [Class Notice].) It shall be calculated as follows: twenty-five percent (25%) of the PAGA Payment (or $3,750.00) divided by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and multiplying the result by each aggrieved employee's PAGA Period Pay Periods. (*See* Ex. 1 at

¶3.2.5.1; *Id.* at Ex. A to the Agreement [Class Notice].)

E. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Agreement will efficiently and accurately ensure that Notice is provided to the Settlement Class Members. (Ex. 1 at ¶7.4.) The Parties have agreed to use a reputable third-party claims administrator, Phoenix Class Action Administration Solutions, to administer the Agreement because their bid was the most cost effective for the Class Members. (Ex. 1 at ¶7.1.)

F. Process for Class Members to Respond to Class Notice

As detailed in the Agreement, because this is a Certified Class Action, Class Members already had the opportunity to opt-out.[2] Members of the certified Class are not permitted to Opt-Out of the Settlement. Each Class Member will receive an Individual Settlement Payment. (*See* Ex. 1 at ¶¶7.5-7.7; *see also* Ex. A to the Agreement at pp. 2, 4, 6, and 7 [Class Notice].) Class Members will have an opportunity to object to the Agreement at the Final Approval Hearing. (*Ibid.*) The Agreement and Class Notice contain details about the process to object and explains the Class Members' inability to opt-out of the Settlement. (*Ibid.*)

G. The Release

The Released Claims are defined in the Agreement as: "(i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint. Except as set forth in Section 6.3 of this Agreement, Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period." (Ex. 1 at ¶5.2.)

The Release by Non-Participating Class Members Who Are Aggrieved Employees is defined as: "all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint." (Ex. 1 at ¶5.3.)

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[2] As mentioned above, the Court entered an Order approving the class notice process following certification, which concluded on October 28, 2024. Only two (2) individuals opted out of the class during the class notice process following certification.

H. Attorneys' Fees and Costs

The Parties separately negotiated attorneys' fees and costs. (Szamet Decl. ¶27.) The Agreement provides that Class Counsel may seek Court approval of up to $300,000.00 in attorneys' fees and costs payable no sooner than May 1, 2026, and which shall not precede disbursement of individual settlement payments. (*See* Ex. 1 at ¶3.2.2, 4.4.) Class Counsel will seek approval of attorneys' fees and costs concurrently with the filing of the Motion for Final Approval.

IV. ARGUMENT

A. Plaintiff Requests Approval of This Class Action Settlement

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

The proposed settlement satisfies each of these factors. (Szamet Decl. ¶28.) Class Counsel conducted extensive informal discovery before entering into meaningful settlement negotiations in this matter. (*Id*. at Szamet Decl. ¶¶11-18.) This discovery permitted Class Counsel to fairly evaluate the strength of the case and the risks associated with ongoing litigation. (Szamet Decl. ¶29.) Class Counsel is experienced in handling wage and hour class actions and, after weighing all of the following factors, supports this Agreement. (Szamet Decl. ¶30.)

1. The Strength of Plaintiffs' Case

a) The Risks Associated with Unpaid Wages Claim and the Minimum Wage Claim

"California employees are entitled to compensation for all hours worked, which means "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." (Title 8 Cal. Code of Regs., § 11080(2)(G); *See Troester v. Starbucks Corp*. (2018) 5 Cal.5th 829, 845, as modified on denial of reh'g (Aug. 29, 2018).) Time is compensable if an employee is "subject to the control of an employer" even if not working, or if an employee "is suffered or permitted to work" even if not "under the employer's control, provided the employer has or should have knowledge of the employee's work." (*Frlekin v. Apple Inc*. (2020) 8 Cal.5th 1038, 1046, reh'g denied (May 13, 2020) (citations omitted.) An employer controls an employee if the employer directs an employee and the employee is unable to use their time how they wish. (Id. at p. 1047.) Other factors courts may consider include whether the activity is required, "the location of the activity, the degree of the employer's control, whether the activity primarily benefits the employee or employer, and whether the activity is enforced through disciplinary measures." (*Id*. at p. 1056; *Cf. Gibbs v. TWC Administration, LLC* (S.D. Cal., Jan. 3, 2020, No. 17CV01513DMSAGS) 2020 WL 42768, at *9 (denying Defendant's motion for summary judgment when Plaintiff-employees conducted off-the-clock pre-shift activity in preparation to start work right when they clocked in).)

In *Troester*, employees spent four to ten minutes completing tasks to close up the store, such as setting the alarm and locking the door. (*Troester*, 5 Cal.5th 829 at p. 843.) The Court held that California law prohibits employers from requiring employees to work off the clock, even for minutes, without compensation. (*Id.* at p. 848.) The Court explained:

> An employer that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the job may not evade the obligation to compensate the employee for that time by invoking the de minimis doctrine. As the facts here demonstrate, a few extra minutes of work each day can add up. . . .What Starbucks calls "de minimis" is not de minimis at all to many ordinary people who work for hourly wages.

(*Id.* at p. 847.)

Additionally, California workers are statutorily entitled to overtime compensation, unless they are properly classified as falling within one of the narrow exemption categories. Under California law, "[a]ny 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).)

"Under California's minimum wage law, employees must be compensated for each hour worked at either the legal minimum for the contractual hourly rate, and compliance cannot be determined by averaging hourly compensation." *Bluford v. Safeway Inc.* (2013) 216 Cal.App.4th 864, 872. Labor Code § 1194(a) provides that it is unlawful to pay less than the minimum wage established by law. Defendant's failure to pay minimum wage required by IWC Wage Order 9 violates Labor Code § 1194(a) and is therefore unlawful. Labor Code § 1194.2 further provides that in any action under to recover wages because of the payment of a wage less than minimum wage, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

On-call time, otherwise known as "standby," constitutes hours worked and must be compensated if it is characterized as "controlled" rather than "uncontrolled" time.[3] "Controlled" standby occurs when an employee is required to remain on call such that he cannot use the time effectively for his own purposes, and all such time is considered hours worked that must be compensated.[4] In *Gomez v. Lincare, Inc.*, the Court of Appeal adopted the Ninth Circuit's non-exclusive list of factors, none of which is dispositive, to determine whether the employee was free to use time for his or her own purposes: "(1) whether there was an on-premises living requirement; (2) whether there were excessive geographical restrictions on employee's movements; (3) whether the frequency of calls was unduly restrictive; (4) whether a fixed time limit for response was unduly restrictive; (5) whether the on-call employee could easily trade on-call responsibilities; (6) whether use of a pager could ease restrictions; and (7) whether the employee had actually engaged in personal activities during call-in time."[5] Courts have found issues regarding employees being on-call or standby are suitable for class treatment.[6]

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[3] *Mendiola v. CPS Security Solutions, Inc.* 60 Cal.4th 833, 840 (2015) [the level of the employer's control over its employees is determinative of whether on-call or standby time must be compensated as hours worked].

[4] *See Oliver v. Mercy Medical Center, Inc.*, 695 F.2d 379, 380 (9th Cir. 1982) [three-minute response time too restrictive]; *see also Seymore v. Metson, Inc.*, 194 Cal.App.4th 361 (2011) [crew members were entitled to be compensated for standby time when they had to return to their work within 30-45 minutes of an emergency call].

[5] 173 Cal.App.4th 508 (2009)

[6] See *Bebber v. Dignity Health* (E.D. Cal., Mar. 30, 2021, No. 119CV00264DADEPG) 2021 WL 1187268, at *25, report and recommendation adopted as modified sub nom. *Van Bebber v. Dignity Health* (E.D. Cal., Sept. 8, 2021, No. 119CV00264DADEPG) 2021 WL 4077821 [stating that individualized issues of whether an employee may have engaged in personal activities does not predominate over common issues where the employer's policy is applied uniformly to all members of the class]; *Blackwell v. Commercial Refrigeration Specialists, Inc.* (E.D. Cal., Oct. 18, 2022, No. 220CV01968KJMCKD) 2022 WL 10626473, at *5 ["[D]efendants set the length of on-

Defendant ran a 24-hour operation to serve its customers' needs for ship assists or escorts around the clock. (Szamet Decl. ¶31.) Plaintiffs maintain that each tug is active for either a 7-day or 14-day period, referred to as a hitch, and each Class Member's shift is generally 12 hours. (Szamet Decl. ¶32.) The tugs were live-aboard vessels, meaning that the Class Members live on the tug for their entire hitch. (Szamet Decl. ¶33.) Plaintiffs maintain that the Class Members are also required to sleep on the tug in designated sleeping quarters. *Id*. The Class Members take turns being on watch through alternating shifts of 12 hours on, 12 hours off. *Id*. The 12-hour shifts are generally referred to as being "on watch," active time, or active duty. *Id*. Under federal and U.S. Coast Guard regulations, there must always be one captain on watch, even if the tug is idling. Defendant's PMK also testified that "there's always someone on the boat. (Szamet Decl. ¶34.) They can't leave it unmanned." The two crew members on watch must be on the boat. *Id*.

Plaintiffs maintain that, generally, the types and number of jobs each tug performs in a single workday is determined in advance, but there are occasional jobs that are scheduled at the last minute, for which the Class Members had to be at the ready. (Szamet Decl. ¶35.). The time when the tug is performing a job is referred to as being "underway"; the time when a tug is not performing a job is referred to as "standby" or "idling." *Id*. All of the tug's activities, including the amount of time spent on a job/series of jobs and whether a tug was on standby or idling, are recorded on daily tug logs. *Id*.

Plaintiffs contend that, while the tugs typically operated with four-person crews, the tug logs show instances of two-person crews with only one captain assigned to the tug for the 7 or 14-day hitch. (Szamet Decl. ¶36.) This was called being "single-crewed." *Id*. Plaintiffs contend that, because Defendant required a captain to always be on watch, captains aboard single-crewed tugs are required to stay with the tug 24 hours a day, 7 days a week for their entire hitch. *Id*.

Here, Plaintiffs argued that common evidence dictated whether captains aboard single-crewed tugs were sufficiently under Defendant's control to be entitled to pay for their entire hitch, even though Defendant only paid them for the number of hours listed on the tug log. (Szamet Decl. ¶37.) Plaintiffs contend that Defendant's practice of single-staffing tugs subjected captains to being

call shifts, so it is possible to determine how much time technicians spent on-call."]

on-duty for an entire 24-hour period, even if the tug was idle. *Id*. Plaintiff also argued that Defendant's classwide staffing policy assigned crews to live aboard the tugs for the entire 7 or 14-day hitch, substantially limiting their geographic movements, and required a minimum of one captain on board. (Szamet Decl. ¶38.) Plaintiffs maintained that there was no "down time" during a single-crewed hitch because the captain was on watch the entire time, captains could not trade on-call responsibilities when they were the only captain on the vessel, and it was not possible to use a pager or other device to ease restrictions when the captain had to live aboard the vessel and be on watch for an entire hitch. (Szamet Decl. ¶39.)

As discussed above, Plaintiffs argued that Defendant required captains to record on the tug log all jobs and activities performed. (Szamet Decl. ¶40.) Each daily tug log also lists the number of captains and crew members aboard each tug. (*Id.*) Plaintiffs maintained that Defendant's common practice of failing to pay captains on single-crewed tugs for all hours worked resulted in a class-wide underpayment of overtime/double time. (Szamet Decl. ¶41.)

Without repeating the arguments set forth in Defendant's Opposition to Plaintiffs' MFCC, Defendant vigorously contested Plaintiffs' arguments and maintained that the California wage and hour laws at issue were preempted by Federal maritime law. (Szamet Decl. ¶42.) Plaintiffs were acutely aware of this risk and considered it thoughtfully during settlement negotiations, especially because the Court expressly indicated during the MFCC process that Defendant was free to raise the preemption issue again later. (Szamet Decl. ¶43.) If ultimately Defendant was right that Federal maritime law preempted Plaintiffs' claims, there was certainly tangible risk that there would be no recovery at all for the class. (Szamet Decl. ¶44.)

Another important risk to consider was Defendant's solvency and ability to ultimately pay any judgment awarded against it. (Szamet Decl. ¶45.) Defendant is no longer in operation and the business was bought out many years ago. (Szamet Decl. ¶46.) Because it is no longer operable, Defendant's financial status was always a consideration during resolution talks, and in fact, the case settled in part pursuant to an agreement that Defendant would not have to pay any Court-awarded attorneys' fees or costs until after May 1, 2026. (Szamet Decl. ¶47.)

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b) The Risks Associated with the Meal Break Claim

Plaintiffs contend that Defendant maintained a common policy of failing to provide Class Members with off-duty meal periods, in violation of Labor Code § 512. (Szamet Decl. ¶48.) That section provides: "An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes . . . [or] more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes . . . ." The applicable wage order similarly provides: "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes . . . . An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes . . . ."[7] Thus, pursuant to the Labor Code and applicable Wage Order, an employer's obligation to provide a meal period is "triggered" upon the employee working five hours.[8]

Under this rule, "[e]mployers must afford employees uninterrupted half-hour periods in which they are relieved of any duty or employer control and are free to come and go as they please."[9] For a meal period to qualify as a lawful break under California law, an employer must (1) relieve its employees of all duty; (2) relinquish control over their activities; (3) permit them a reasonable opportunity to take an uninterrupted 30-minute break; and (4) not impede or discourage them from doing so.[10] Lastly, employees must be free to leave the premises during breaks.[11] Here, Plaintiffs maintain that Class Members were either scheduled on alternating shifts where the on-duty captain was not relieved for a break, or scheduled on a single-crewed tug where the captain remained on-duty for the entire hitch, and there was no other captain to offer relief for a break. (Szamet Decl. ¶49.)

Plaintiffs maintain that this was all done pursuant to Defendant's common staffing policies for Class Members. (Szamet Decl. ¶50.) Following *Brinker*, the Courts of Appeal have confirmed

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[7] Wage Order 9-2001(11)(A)-(B)

[8] *See Brinker, supra*, 53 Cal.4th at p. 1039 ["If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered."]

[9] *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1037

[10] *Id.* at p. 1040

[11] *Augustus v. ABMSecurity Services, Inc.* (2016) 2 Cal.5th 257, 269 [an employer that limits where an employee can take a meal or rest break does not "relinquish control over how employees spend their time"].

that liability for meal period violations arises when an employer fails to adopt a California-compliant policy, or has a class-wide practice of not providing compliant meal periods when required.[12] Accordingly, when an employer adopts a uniform policy that fails to comport with the requirements of the applicable wage order, "it has violated the wage order and is liable."[13] The on-duty policy means that there are no waiver issues. If a meal period that complies with the Labor Code and the applicable wage order was never authorized, an employee has no opportunity to decline to take it and, thus, there is no issue of waiver.

Importantly, the California Supreme Court found this very theory of liability (i.e. that a break policy facially violates the Wage Order) to be "of the sort routinely, and properly, found suitable for class treatment."[14] When an employer has not authorized and not provided legally code-compliant meal breaks, "the employer has violated the law and the fact that an employee may have actually taken a break or was able to eat food during the workday does not show that individual issues will predominate in the litigation."[15]

Here, Plaintiffs maintain that Defendant had a policy and practice of failing to provide lawful, duty-free meal breaks. (Szamet Decl. ¶51.) Plaintiffs contend that, because the on-duty captain had to be constantly watching the ship during his 12-hour watch, and the captains' shifts did not run concurrently or there was no other captain on board, there was no one to relieve the on-duty captain for his meal periods. Thus, meal periods were always on-duty. *Id*.

Plaintiffs maintain that Defendant's written meal period policy is facially non-compliant by not indicating when a required break must be taken. (Szamet Decl. ¶52.) The Employee Handbook, which is distributed to all captains at the time of hiring, contained a short meal period policy for maritime personnel. *Id*. Plaintiffs assert that Defendant's written meal policy fails to include any language informing employees of their right to take their meal period before the end of the fifth hour of work or that the meal period must be no less than 30 minutes. (Szamet Decl.

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[12] *See e.g., Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; *Faulkinbury v. Boyd & Associates, Inc.* (2013) 216 Cal.App.4th 220, 235 ["*Brinker* leads us now to conclude [defendant] would be liable upon a determination that [defendant]'s uniform on-duty meal break policy was unlawful."]; *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701.

[13] *Brinker, supra*, 53 Cal.4th at p. 1033.

[14] *Id*.

[15] *Bradley v. Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1151; *see also Wylie v. Foss Maritime Co.* (N.D. Cal., Sept. 4, 2008, No. C 06-07228 MHP) 2008 WL 4104304, at *11.

¶53.) It merely states that if an employee works more than 4 hours, the employee is entitled to an unpaid meal period. Defendant also testified that it never paid meal period premiums. (Szamet Decl. ¶54.)

Furthermore, Plaintiffs maintain that Defendant failed to keep any record of meal periods. (Szamet Decl. ¶55.) Class Members did not clock in or out for meal periods, nor are there any records of if or when meal periods were taken. *Id*. Indeed, there was also no way for Class members to indicate on the daily tug log that a meal period was on-duty. *Id*.

Defendant argued in response that it was entirely up to Class Members – who were the master of the vessel in their words – to schedule their meal periods. (Szamet Decl. ¶56.) However, Plaintiffs argued that because there was only one captain on active duty at a time, there was no other active captain on duty to provide relief for an uninterrupted, 30-minute meal period. This is true for both a double-crewed tug and a single-crewed tug. *Id*. In fact, Plaintiffs argued that Defendant was aware that its captains were taking meals while on watch, and yet still failed to pay applicable penalties. (Szamet Decl. ¶57.)

As discussed above, the same risks were considered here as it relates to potential Federal preemption and Defendant's financial status. (Szamet Decl. ¶58.)

c) The Risks Associated with the Waiting Time Penalty Claim

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

Under Labor Code § 203, a "'willful' failure to pay wages … occurs when an employer intentionally fails to pay wages to an employee when those wages are due." Cal. Code Regs., tit. 8, § 13520; *see also Diaz v. Grill Concepts Services, Inc.* (2018) 23 Cal.App.5th 859 ("willful" simply means that "the employer intentionally failed or refused to perform an act which was required to be done[.] Willful … does not necessarily imply anything blameable, or any malice or wrong toward the other party").

Here, Plaintiffs contend that Defendant failed to properly pay overtime for any work in excess of eight (8) hours per day and/or any work in excess of forty (40) hours per week. (Szamet Decl. ¶59.) The risk analysis for the Section 203 claim flows from the risk analysis for the underlying wage claim discussed above as derivative waiting-time penalties are only as strong as the underlying predicate claims, and are subject to good faith defenses. (Szamet Decl. ¶60.) If Defendant could prove, as it contends, that Class Members were properly paid for all hours worked, there would be no recovery of wages and no waiting time penalties that flow therefrom. (Szamet Decl. ¶61.)

Plaintiffs also allege that Defendant owes waiting time penalties by not paying former employees all wages owed and all premium payments for non-compliant meal periods. Labor Code § 226.7. Pursuant to *Murphy v. Kenneth Cole Productions, Inc*. (2002) 40 Cal.4th 1094, 1120, Plaintiffs contend that break premium payments constitute "wages" under Labor Code § 203. ("We hold that section 226.7's plain language, the administrative and legislative history, and the compensatory purpose of the remedy compel the conclusion that the 'additional hour of pay' is a premium wage, not a penalty"). (Szamet Decl. ¶62.)

A unique risk that Plaintiffs analyzed here, is that to establish liability for waiting time penalties, Plaintiffs would have to establish not only that the underlying violations occurred, but also that Defendant's conduct was "willful." (Labor Code § 203; Szamet Decl. ¶63.) If Defendant could establish that any alleged failure to pay wages or premiums was the result of mistake or oversight and not "willful", then it is possible that Plaintiffs would not be able to recover penalties for this claim. (Szamet Decl. ¶64.) Because of this risk, Plaintiffs determined that accepting a discount for settlement purposes was appropriate. (Szamet Decl. ¶65.)

d) The Risks Associated with the PAGA Claim

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

$100 per employee per pay period for the initial violation and $200 for subsequent violations.[16]

Plaintiffs discounted the PAGA claim for multiple reasons. First, the Aggrieved Employees' PAGA claims are arguably derivative of all the foregoing class claims. (Szamet Decl. ¶66.) If Plaintiffs cannot establish liability on the underlying claim (taking into account the risks discussed above), then the derivative PAGA claim will also necessarily fail. (*Id.*) Second, a court has discretion to award less than the maximum penalty. (Szamet Decl. ¶67.) (Labor Code § 2699(e)(2) ("a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory"). *See e.g., Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 241 (affirming award of 10% of maximum PAGA penalty). Third, the likelihood of the Court reducing the PAGA damages awarded to Plaintiffs and the Aggrieved Employees – assuming liability is proven as to each of Plaintiffs' claims – is also higher in this case where these same individuals will also be receiving money for the same unlawful conduct under the class claims. (Szamet Decl. ¶68.) (s*ee Avila v. Cold Spring Granite Co*. (E.D. Cal. Jan. 12, 2018) Case No. 1:16-cv-001533-AWI-SKO, 2018 U.S. Dist. LEXIS 6142 *17 ("Because the PAGA penalties sought are at least partially duplicative of penalties granted by the underlying Labor Code violations, see, e.g., Cal. Lab. Code §§ 203, 226, 558(a), 1194.2, and because a Court has discretion in whether and in what amount to award PAGA penalties, see Cal. Lab. Code § 2699(e)(2), Plaintiffs recognize that the potential PAGA penalties are highly uncertain."); and see *Nordstrom Commissions Cases* (2010) 186 Cal.App.4th 576, 589

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[16] The comprehensive reform of California's Private Attorneys General Act is now the law (AB 2288 and SB 92). The PAGA reform took effect immediately and applies to cases filed after June 19, 2024. Though it does not apply here as this was prior-filed, it is instructive to courts and practitioners on many issues including when "Subsequent' Penalties" may apply.

Where a penalty was not provided for under the PAGA, the default penalty was $100 for an initial violation and $200 for a subsequent violation. Plaintiffs argued that "subsequent" meant any violation after the first violation. Defendants generally argued, often citing *Gunther v. Alaska Airlines, Inc*. (2021) 72 Cal.App.5th 334 that a subsequent violation could only occur after an initial violation was found to have occurred by a court or the Labor Commissioner.

The PAGA reform clarifies that the default $100 penalty applies to all violations, unless (1) a court or the Labor Commissioner finds that the employer's practice or policy violated the law within the last five years, or (2) a court determines that the employer acted "maliciously, fraudulently, or oppressively." The new law does not define what constitutes "maliciously, fraudulently, or oppressively." But, if either of the above apply, the default penalty will increase to $200 for subsequent violations.

(affirming settlement allocating $0 of $6.4 million settlement to PAGA penalties).

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

Even though the Court granted class certification on August 22, 2024, trial of a case involving 26 Class Members would require extensive litigation costs, and a significant time overlay by the Parties. (Szamet Decl. ¶69.) Given the complexity and unsettled nature of the issues, particularly the issue around preemption, it is likely that any outcome at trial would have resulted in a lengthy and costly appeal, further delaying any relief to the Class. (Szamet Decl. ¶70.) There is a real risk of failure to pay if the Agreement or a Judgment at trial is too large. (Szamet Decl. ¶71.) These risks made settlement a prudent and fair resolution for the Class. (Szamet Decl. ¶72.)

3. The Risk of Maintaining Class Action Status through Trial

Plaintiffs acknowledge that, although the Court granted class certification and there were not active challenges to that ruling, maintaining class status through trial and potential appeal carries inherent risk. (Szamet Decl. ¶73.) Settlement now ensures that the Class Members will receive relief without the uncertainty of further litigation over class scope or trial outcomes. (Szamet Decl. ¶74.)

4. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of $280,000.00. (Szamet Decl. ¶75.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl. ¶76.) The Parties arrived at it after extensive investigation and discovery, careful evaluation of the law, risks, and all information substantiating the amount of penalties reasonably likely to be awarded to the class were the trier of fact to find Defendant liable, and the assistance of an experienced mediator, Hon. Peter D. Lichtman. (*Id.*)

a) Plaintiffs' Assessment of Defendant's Maximum Exposure

Plaintiffs were provided with time and pay data for mediation purposes and had it analyzed by an expert. (Szamet Decl. ¶77.) There were 29 putative class members in the data, but in the end one of them was excluded because they worked outside the Class Period and two others opted out of the class at the certification stage. (Szamet Decl. ¶78.) There were 3,053 workweeks in the data but once the workweeks attributed to those 3 employees were omitted, the workweek count came down to 2,376 workweeks during the certified Class Period. (Szamet Decl. ¶79.)

(1) Unpaid Wages and Meal Premiums

Working with the data expert, Plaintiffs assessed the full value of the unpaid wages claim, without any discount, at approximately $999,108.00. (Szamet Decl. ¶80.) This analysis was based on an assumed unpaid wages amount of 10 hours per workweek during the Class Period at the average hourly rate of $42.05 (10 hours x 2,376 workweeks x $42.05) (*Id.*) This assumption seemed reasonable for purposes of resolution. *Id*.

Plaintiffs assessed the full value of the meal period claim, without any discount, at approximately $699,375.60. (Szamet Decl. ¶81.) This amount is based upon a 100% assumed violation rate for meal periods. *Id*. If there are 7 days in a hitch, which here converts to a workweek, it is 7 days x $42.05/hour x 2,376 workweeks at issue = $699,375.60. (Szamet Decl. ¶82.) But Plaintiffs acknowledge this analysis could ultimately be overstated. *Id*. If Defendant could prove by way of testimony at trial that on any given day in the Class Period a Class Member was able to take a duty free, uninterrupted meal period, it could show that a 100% assumed violation rate is vastly overstated for purposes of analyzing Defendant's potential damages exposure. (Szamet Decl. ¶83.)

(2) Penalties Analysis

As to the exposure for waiting time penalties under Labor Code §203, Plaintiffs assumed that all 26 Class Members were considered terminated during the Class Period and were owed unpaid wages. (Szamet Decl. ¶84.) Plaintiffs also assumed 30 days per employee at 12 hours per day at the average hourly rate of $42.05. (Szamet Decl. ¶85.) The estimated exposure therefore was $393,588.00. (Szamet Decl. ¶86.)

As to PAGA penalties under Labor Code §2699, et seq., Plaintiffs valued this claim at approximately $48,000.00. (Szamet Decl. ¶87.) This was based upon the number of pay periods at issue during the PAGA relevant time period (480 pay periods) multiplied by $100 per pay period. (Szamet Decl. ¶88.) Plaintiffs' exposure analysis assumes that they can prove there was at least one underlying Labor Code violation in each and every pay period that would trigger a civil penalty under PAGA. (Szamet Decl. ¶89.)

Thus, per Plaintiffs' assessment, the maximum potential value of all of Plaintiffs' and the Class Members' damages claims was approximately $2,140,071.60. (Szamet Decl. ¶90.) However, in looking at just the core damages related to the claims for alleged unpaid wages and meal period violations, excluding the statutory and civil penalties, the maximum exposure was $1,698,483.60. (Szamet Decl. ¶91.) Plaintiffs and Class Counsel believe that examining the core exposure, together with the significant foregoing risks on the merits, supports a finding that the Gross Settlement Amount of $280,000.00 is fair and reasonable. (Szamet Decl. ¶92.)

5. <u>The Experience and Views of Counsel</u>

Class Counsel's experience and success in similar class actions also weigh in favor of preliminary approval. *See Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 245. Kingsley Szamet Employment Lawyers is a well-established firm and 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. ¶¶93-95.) The firm is well versed in class action litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley Szamet Employment Lawyers currently serves as Class Counsel for dozens of pending class action lawsuits in Northern, Central, and Southern California. (*Id.*) A list of representative cases that Kingsley Szamet Employment Lawyers has handled is included in the accompanying declaration of Kelsey M. Szamet. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the proposed settlement is fair and reasonable. (Szamet Decl. ¶96.)

6. <u>The Proposed Plan of Allocation Is Fair and Reasonable</u>

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 compensable Workweeks worked by the Class member during the Class Period. The lump sum payment to each Class Member will be determined on an individualized basis based upon the compensable Workweeks worked by that individual. (Ex. 1 at ¶3.2.4.) This allocation distributes Settlement funds proportionally to each

Class Members's potential damages and should therefore be approved as fair, adequate, and reasonable. (Szamet Decl. ¶97.)

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

Plaintiffs request that the Court approve the proposed plan and form of Class Notice. The standard for determining the adequacy of notice is whether the notice has "a reasonable chance of reaching a substantial percentage of the class members." (*Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 974.) Pursuant to the Agreement, the Notice will be sent to the last known address of all Class Members, or to an updated address if one is located in the National Change of Address Database. (Ex. 1 at ¶7.4.2). If any Notices are returned as undeliverable, the Administrator will undertake another reasonable address verification measure to locate a valid mailing address and will promptly send the Notice to the new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Class Members.

With respect to the contents of the Notice, the "notice given to the class must fairly apprise the class members of the terms of the proposed compromise and of the options open to dissenting class members." (*Trotsky v. L.A. Fed. Sav. & Loan Ass'n* (1975) 48 Cal.App.3d 134, 151–52.) The purpose of a class notice is to give class members sufficient information to decide whether they should accept the benefits offered, opt out and pursue their own remedies, or object to the settlement. (*Ibid.*)

Here, the Notice clearly explains the proposed Agreement, that the Class Members cannot opt-out of the Settlement because of this Action being a Certified Class Action, and the option to object to the Settlement at the Final Approval Hearing. (Ex. 1 at ¶7.5; ¶7.7 ; *see also* Ex. A to the Agreement at pp. 2, 4, 6-7 [Class Notice].) In short, the Court should approve the proposed Class Notice because it describes the proposed settlement with enough specificity to allow Class Members to make an informed choice regarding whether to exercise their right to object to the Settlement.

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V. THE SERVICE AWARDS TO THE NAMED PLAINTIFFS

The Class Representatives are entitled to an enhancement for their valiant efforts and time expended in this matter. (Szamet Decl. ¶98.) The time spent by Michael Price and Douglas Anderson is significant and includes researching and retaining competent counsel; providing information to Class Counsel regarding the nature of the work at Defendant; compiling relevant documents; working closely with Class Counsel to develop the theories of liability and martial relevant evidence; regularly discussing the status of the case with Class Counsel; discussing the case via telephone with many Class Members; sitting for deposition; making themselves available for two full-days of mediation and attending remotely; and responding promptly to Class Counsel's communications regarding settlement. (*Id.*) Thus, in addition to the sums paid to Class Members, Plaintiffs request a proposed litigation enhancement in the amount of $20,000.00 ($10,000.00 each) to be paid from the Gross Settlement Amount. (Ex. 1 at ¶3.2.1.) As set forth in the Agreement, Plaintiffs will also be entering into a general release of liability pursuant to Civil Code Section 1542. (Szamet Decl. ¶99; Ex. 1 at ¶5.1.1.)

Class Counsel considers this to be a fair and reasonable enhancement especially as this is a certified case that has been pending for many years. (Szamet Decl. ¶100.) The enhancement takes into consideration the time, effort, and expense incurred by Plaintiffs in coming forward to litigate this matter on behalf of all members of the Class. (*Id.*) Plaintiffs will each provide a detailed declaration with the Final Approval Motion detailing their participation and further justification for the enhancement. (*Id.*)

VI. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY

As indicated on the Proof of Service, Plaintiffs' Motion for Preliminary 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. ¶101.)

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VII. CONCLUSION

Plaintiffs respectfully submit that the proposed Agreement is fair, adequate, reasonable, and in the best interest of the Class. Therefore, the Parties respectfully request that the Court (1) grant preliminary approval of the Class Action and PAGA Settlement Agreement, 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 Class Action and PAGA Settlement Agreement; and (3) schedule a hearing on final approval of the Agreement and Class Counsel's application for an award of attorney's fees and litigation costs.

DATED: September 2, 2025

KINGSLEY SZAMET EMPLOYMENT LAWYERS

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 September 2, 2025, 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:

MARRON LAWYERS, APC Paul Marron pmarron@marronlaw.com Paul B. Arenas parenas@marronlaw.com Laura Theriault ltheriault@marronlaw.com 5000 E. Spring St., Suite 580 Long Beach, CA 90815 *Attorneys for Defendant*	**ANTICOUNI & ASSOCIATES** **A Professional Corporation** Bruce N. Anticouni Nicole K. Ricotta 201 N. Calle Cesar Chavez, Suite 105 Santa Barbara, CA 93103 *Attorneys for Plaintiff*

[XX] BY ELECTRONIC MAIL TRANSMISSION: I caused the document to be sent 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] 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/432) and service was completed by electronic means by transmittal of the documents referenced herein on the EF System.

[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 September 2, 2025, at Encino, California.

Kimberly Madrid