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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

MICHAEL PEARSON, individually and on
behalf of other persons similarly situated,

Plaintiff,

vs.

WEST BRANDS, LLC, a Delaware limited
liability company; VERY GOOD TOURING,
INC., a California corporation; KANYE WEST,
an individual; AJR FILMS INC., a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 20STCV31684

The Honorable Carolyn B. Kuhl, Dept. 12

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT**

Date: August 8, 2024

Time: 10:00 a.m.

Dept.: SS-12

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 YOU ARE HEREBY NOTIFIED THAT on August 8, 2024 at 10:00 a.m. in Department
3 SS-12 of the above-entitled court, Plaintiff Michael Pearson will move for an Order for
4 Preliminary Approval of the Stipulation of Class Action and Private Attorney General Settlement
5 (the "Settlement Agreement"), a copy of which is filed concurrently herewith.

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

8 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
9 and Authorities, the Declarations of Plaintiff Michael Pearson, Frank H. Kim, Dara Tabesh, Helen
10 U. Kim, Brian Brumfield, Britany M. Engelman, and the Settlement Administrator, the Settlement
11 Agreement, and all other papers and records on file in this action, and on such oral and
12 documentary evidence that may be presented at the hearing on this Motion.

13 DATED: June 13, 2024

KIM LEGAL, APC

14 By: /s/ Frank H. Kim

15 Frank H. Kim

16 Attorneys for Plaintiff Michael Pearson and the
17 Proposed Class
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Michael Pearson (“Plaintiff”) submits this Memorandum of Points and Authorities
4 in support of Plaintiff’s Motion for Preliminary Approval of the Stipulation of Class Action and
5 Private Attorney General Settlement (“Settlement” or “Settlement Agreement”) reached between
6 Plaintiff and Defendants West Brands, LLC, Very Good Touring, Inc., Ye (formally known as
7 Kanye West), and AJR Films, Inc. (collectively, “Defendants”) (Plaintiff and Defendants will
8 hereinafter be referred to as the “Parties”).

9 By this Motion, Plaintiff requests that the Court:

10 (1) Grant preliminary approval of the fully executed Settlement Agreement. A true and
11 correct copy of the Settlement Agreement is attached to the concurrently filed Declaration of Frank
12 H. Kim as Exhibit “1”;

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

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

19 **II. FACTUAL BACKGROUND**

20 **A. Class Action and PAGA Complaint**

21 On November 23-24, 2019, Plaintiff worked as a background dancer at the Hollywood
22 Bowl for the Nebuchadnezzar Opera (the “Opera”) in exchange for a daily rate in the amount of
23 \$250. (Declaration of Frank H. Kim [“Kim Decl.”] ¶ 4.) Plaintiff alleges that Defendants
24 misclassified him as an independent contractor, failed to pay his overtime wages at the appropriate
25 rate of pay, and failed to pay premium wages for missed meal and rest periods at the appropriate
26 rate of pay, among other claims. (Kim Decl. ¶ 5.)

27 On August 20, 2020, Plaintiff filed a Class Action Complaint alleging claims for: (1)
28 Failure to Pay Earned Wages; (2) Failure to Provide Meal Breaks; (3) Failure to Provide Rest

Breaks; (4) Failure to Pay Overtime Wages; (5) Waiting Time Penalties; (6) Failure to Provide Itemized Wage Statements; (7) Unlawful and Unfair Business Practices. (F. Kim Decl. ¶ 6.)

On March 29, 2021, Plaintiff filed a First Amended Complaint (“FAC”) to add Very Good Touring and Kanye West (also known as “Ye”) as additional defendants and to add a representative cause of action under PAGA. (F. Kim Decl. ¶ 7.)

B. Removal to Federal Court

On June 21, 2021, Defendants removed the action to the U.S. District Court for the Central District of California under the Class Action Fairness Act. (Kim Decl. ¶ 8.)

On June 28, 2021, AJR Films filed a motion to dismiss the FAC or, in the alternative, to strike certain causes of action. (Kim Decl. ¶ 9.) That same day, Ye, Very Good Touring, and West Brands (the “Ye Defendants”) separately filed a motion to dismiss and strike the FAC. (*Id.*) On July 8, 2021, Plaintiff filed oppositions to both motions. (*Id.*)

C. First Attempt at Private Mediation

Thereafter, the Parties agreed to private mediation with Jeffrey Krivis and reserved the mediation date for August 20, 2021, which the Parties continued to November 30, 2022 in order to exchange all the agreed-upon information prior to mediation. Pursuant to stipulation and order, the case was stayed pending mediation. (Kim Decl. ¶ 10.)

On November 1, 2022, Greenberg Traurig LLP, then counsel for the Ye Defendants, filed a motion to withdraw as counsel, which Plaintiff did not oppose. Around this time, the Parties also agreed to cancel the November 30, 2022 mediation given the difficulties of receiving all the mediation data. (*See* Kim Decl. ¶ 11.)

On December 1, 2022, the court granted Greenberg Traurig LLP’s request to withdraw as counsel and set an order to show cause for new counsel. On February 14, 2022, Meservy Law, P.C. and Morello Law, P.C. filed a notice of appearance for the Ye Defendants. (Kim Decl. ¶ 12.)

D. Mediation and Settlement

In the following months, the Parties resumed their discussions regarding mediation and agreed to mediate with Jason Marsili, Esq. on August 29, 2023, which the Parties continued to October 23, 2023 in order to give the Parties time to resolve outstanding issues regarding pre-

1 mediation discovery. (F. Kim Decl. ¶ 13.)

2 In advance of mediation, Defendants provided Plaintiff's counsel with pertinent data for
3 the Class Members so that the Parties could fully investigate the claims at issue and understand
4 their strengths and weaknesses. (Kim Decl. ¶ 14.) Defendants provided the number of class
5 members and PAGA members and documents pertinent to Plaintiff's allegations that the on-stage
6 performers were misclassified as independent contractors. (Kim Decl. ¶ 15.) Plaintiff's counsel
7 also served formal discovery but agreed to stay that discovery pending settlement negotiations.
8 (Kim Decl. ¶ 16.) Plaintiff's counsel had mediation data analyzed by an expert to prepare a damage
9 model for mediation. (Kim Decl. ¶ 17.)

10 On October 23, 2023, the Parties attended an all-day mediation before Jason Marsili, Esq.
11 (Kim Decl. ¶ 18.) Although the parties did not resolve the matter that day, they continued their
12 settlement discussions in the following weeks with the assistance of the mediator and in response
13 to a mediation proposal, the Parties reached a settlement, as provided herein, to settle Plaintiff's
14 claims on a class-wide and representative basis. (*Id.*) As part of the Settlement Agreement, the
15 Parties stipulated to remand this case back to state court for purposes of preliminary and final
16 approval. (*Id.*)

17 Defendants deny any liability or wrongdoing of any kind associated with the claims alleged
18 in the Action, dispute the damages and penalties claimed by Plaintiff, and further contend that, for
19 any purpose other than settlement, Plaintiff's claims are not appropriate for class or representative
20 action treatment. (Kim Decl. ¶ 19.) Defendants contend, among other things, that, at all times,
21 they have complied with the California Labor Code, and the Industrial Wage Commission Orders.
22 (*Id.*)

23 Based on their own independent investigation and evaluation, Class Counsel is of the
24 opinion that the Settlement Agreement with Defendants is fair, reasonable and adequate, and in
25 the best interest of the settlement classes in light of all known facts and circumstances, including
26 the risk of significant delay, defenses asserted by Defendants, uncertainties regarding a class and
27 representative action trial on the merits, and numerous potential appellate issues. (Kim Decl. ¶ 20.)
28 Although Defendants deny any liability, Defendants are agreeing to this Settlement Agreement

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

III. 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. The Proposed Classes Are Ascertainable and Sufficiently Numerous**

6 **1. 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, the proposed Settlement Class is ascertainable because Defendants have agreed in
13 the Settlement Agreement to provide a class list to the Settlement Administrator containing
14 Settlement Class Member’s full name; last known address; last known home telephone number, or
15 data that will allow the Settlement Administrator to reasonably determine the putative class
16 members after issuance of the preliminary approval order. (Kim Decl. ¶ 21; Ex. 1 at § I, ¶ 4.)
17 Moreover, Settlement Class Members consist of all of the individuals who worked as performers,
18 vocalists, dancers, or other extras in connection with the Opera on November 23-24, 2019. (Kim
19 Decl. ¶ 22.)

20 **2. Numerosity**

21 There is no set number that is required as a matter of law to maintain a class action. (*See*,
22 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Settlement
23 Class contains approximately 599 hourly non-exempt employees in the State of California. (Ex. 1
24 at § 5, ¶5.1.) Therefore, Plaintiff is confident he will be able to establish that the proposed
25 Settlement Class is ascertainable and sufficiently numerous. (Kim Decl. ¶ 23.)

26 **B. There Is a Well-Defined Community of Interest**

27 **1. There Are Predominant Questions of Law and Fact**

28 In deciding whether questions of common or general interest predominate, a court must

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

9 Here, Plaintiff argues that there are questions of law and fact common to the proposed
10 Settlement Class that predominate over any questions affecting only individual Class Members.
11 (Kim Decl. ¶ 24.) These common questions include:

- 12 1) Whether Defendants misclassified the on-stage performers as independent
13 contractors;
- 14 2) Whether Defendants failed to pay all wages and/or overtime compensation;
- 15 3) Whether Defendants failed to provide lawfully required meal periods and/or failed
16 to compensate the performers one (1) hour’s wages in lieu thereof;
- 17 4) Whether Defendants failed to provide lawfully required rest periods and/or failed
18 to compensate the performers one (1) hour’s wages in lieu thereof;
- 19 5) Whether Defendants failed to provide accurate itemized wage statements;
- 20 6) Whether Defendants failed to pay compensation time and whether it failed to pay
21 all wages owed upon termination of employment; and
- 22 7) Whether Defendants engaged in unfair competition.

23 (*Id.*)

24 Plaintiff’s challenge to Defendants’ uniform policies and practices involves common
25 factual and legal issues that are amenable to class treatment. (Kim Decl. ¶ 25.) As the California
26 Supreme Court has emphasized, “[c]aims alleging that a uniform policy consistently applied to a
27 group of employees is in violation of the wage and hour laws are of the sort routinely, and properly,
28 found suitable for class treatment.” (*Brinker, supra*, 53 Cal.4th at 1033; *see also Bradley v.*

1 *Networkers International, LLC* (2012) 211 Cal.App.4th 1129, 1141-1146.) Moreover, a class of
2 similarly situated employees may be certified based on common questions of fact or law, even if
3 each employee has to establish the amount of his or her damages. (*See Bell v. Farmers Ins. Exch.*
4 (2004) 115 Cal.App.4th 715, 741; *Sav-On Drug Stores, Inc. v. Superior Court*, *supra*, 34 Cal.4th
5 at 340.)

6 Here, Plaintiff maintains that the proposed Settlement Class Members suffered the same
7 injuries, in the same manner: (1) Settlement Class Members performed the same job functions; (2)
8 Settlement Class Members were misclassified as independent contractors; (3) Settlement Class
9 Members were not paid all wages/overtime; (4) Settlement Class Members did not receive their
10 meal periods as required; (5) Settlement Class Members did not receive their rest periods as
11 required; (6) Settlement Class Members were not provided accurate itemized wage statements; and
12 (7) Settlement Class Members were not paid all wages owed on a timely basis or upon
13 termination/resignation. (Kim Decl. ¶ 26.) Plaintiff alleges that Settlement Class Members worked
14 in the same capacity for the same employer and were subject to the same employment policies and
15 practices, the questions of fact and claims regarding the status of these employees are the same for
16 each member of the Settlement Class. (Kim Decl. ¶ 27.) Accordingly, for purposes of settlement,
17 the evidence reviewed by Class Counsel demonstrates that common meal policies and wage
18 policies applied to the proposed Settlement Class Members and certification for settlement
19 purposes is appropriate. (Kim Decl. ¶ 28.)

20 **2. The Named Plaintiff Has Claims Typical of the Proposed Class**

21 A putative class representative's claim must be "typical," but not necessarily identical to
22 the claims of other class members. The test of typicality "is whether other members have the same
23 or similar injury, whether the action is based on conduct which is not unique to the Class
24 Representatives, and whether other class members have been injured by the same course of
25 conduct." (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient
26 that the representative is similarly situated so that he or she will have the motive to litigate on
27 behalf of all class members. (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus,
28 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.)

Plaintiff worked as a background dancer for and during the Opera on November 23-24, 2019 at the Hollywood Bowl in exchange for a daily wage in the amount of \$250. (Kim Decl. ¶ 29.) Plaintiff alleges that he: (1) worked without being paid all wages and/or overtime; (2) worked without being provided meal periods as required by law; (3) worked without being provided rest periods as required by law; (4) worked without being provided accurate itemized wage statements; and (5) worked without being paid all wages due on a timely basis and upon separation. He also alleges derivative claims for unfair business competition (B&P Code §17200) (Kim Decl. ¶ 30.) Plaintiff also contends that his claims are typical of those of the Settlement Class. (*Id.*)

3. Plaintiff Contends That As The Named Plaintiff He Has and Will Fairly Represent the Interests of the Settlement Class Members

A putative class representative must show that she 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.)

Plaintiff believes that he is capable of fairly representing and adequately protecting the interests of the proposed Settlement Class Members. (Kim Decl. ¶ 31.) Plaintiff’s interests in this litigation are coextensive with the interests of the proposed Class Members. The members of the proposed Settlement Class all worked for Defendants during the relevant time period and incurred the same type of alleged damages with regard to Defendants’ alleged violations of the law. (Kim Decl. ¶ 32.) Moreover, Plaintiff has agreed to serve as Named Plaintiff and has retained qualified Counsel who is experienced in prosecuting wage and hour class actions. (Kim Decl. ¶ 33.) This demonstrates his commitment to bringing about the best possible results for the benefit of the proposed Settlement Class. (*Id.*) Plaintiff has provided his Counsel with all necessary and pertinent information. He has been a very active participant in the litigation including having

1 frequent contact with Settlement Class Members and working closely with Class Counsel to
2 develop the theories of liability. (Kim Decl. ¶ 34.) He also participated in the mediation in this
3 matter and was informed of and involved in all of the settlement negotiations. (Kim Decl. ¶ 35.)
4 Therefore, Plaintiff believes that he has and will continue to adequately represent the proposed
5 Settlement Class Members. (*Id.*)

6 **C. The Class Action Vehicle Is Superior to the Alternatives**

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

21 Plaintiff maintains that class treatment would be the superior method of managing this case.
22 A class action is superior to individual litigation “when numerous parties suffer injury of
23 insufficient size to warrant individual action and when denial of class relief would result in unjust
24 advantage to the wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In
25 cases such as this, where individual damages may be small, the class action device is the most
26 feasible method of recovery. (*See, e.g., Lockheed Martin, supra*, 29 Cal.4th at 1131.) In this regard,
27 the superiority of class treatment is evident here because individual pursuit of class members’
28 claims may not be economically viable. (Kim Decl. ¶ 36.) The only alternative to certification

would be to force over 599 employees to join this action, file individual, uniform actions, or abandon their legal rights altogether. (Kim Decl. ¶ 37.) Plaintiff maintains that this economic reality would result in a windfall for Defendants if this case were not certified. (Kim Decl. ¶ 38.)

IV. THE PROPOSED SETTLEMENT

A. The Settlement Class

For purposes of Settlement Agreement, the settlement class is defined as: “any and all individuals who worked as performers, vocalists, dancers, or other extras in preparation for and during the Nebuchadnezzar concert in Los Angeles, California, at any time from November 23, 2019, to November 24, 2019 (“Settlement Class Members” or “Class Members”). (Kim Decl. ¶ 39; Settlement Agreement, Ex. 1 at ¶ 1.5.) Based on documents and other information produced by Defendants, there are approximately 599 Settlement Class Members. (*Id.*)

For purposes of Settlement Agreement, the definition of the PAGA settlement group is identical to the Settlement Class Members and defined as: “any and all individuals who worked as performers, vocalists, dancers, or other extras in preparation for and during the Nebuchadnezzar concert in Los Angeles, California, at any time from November 23, 2019, to November 24, 2019 (“Aggrieved Employees”) (Kim Decl. ¶ 40; Settlement Agreement, Ex. 1 at ¶¶ 1.4, 1.9.) Based on documents and other information produced by Defendants, there are approximately 599 Aggrieved Employees. (*Id.*)

B. Gross Settlement Fund

As detailed fully in the Settlement Agreement, the Settlement provides for the Ye Defendants to pay a Gross Settlement Amount of \$1,350,000.00, which includes the sum of the Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administrator’s Expenses. (Kim Decl. ¶ 41; Ex. 1 at ¶ 1.24.)

The Net Settlement Amount is the Gross Settlement Amount, less the Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel

Fees Payment,¹ Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. (Kim Decl. ¶ 42; Ex. 1 ¶ 1.30.)

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

Gross Settlement Fund:	\$	1,350,000.00
Named Plaintiff Service Payment:	\$	7,500.00
Fees Award: ²	\$	449,955.00
Costs Award:	\$	25,000.00
PAGA Penalties:	\$	200,000.00
		<i>(\$150,000 to the LWDA and \$50,000 to remain in the Net Settlement Amount to the Aggrieved Employees)</i>
<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>12,000.00</u>
Net Settlement Fund	\$	655,545.00

(Ex. 1 at ¶¶ 3.1-3.2.)

C. Individual Settlement Payments

The Individual Class Payment amount of each Participating Class Member will be identical since all 599 Class Members worked exactly 1 Workweek during the Class Period. (Ex. 1 ¶ 3.2.4; *see also* Ex. A to the Settlement Agreement [Class Notice].) Specifically, Individual Class Payments will be paid from the Net Settlement Fund and calculated by dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, one each, during the Class Period.

The Individual PAGA Payment will also be paid on a pro-rata basis. The Individual PAGA Payment will be calculated by dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$50,000.00) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees, one each, during the PAGA Period. (*See* Ex. 1 at ¶ 3.2.5.)

Twenty-five percent (25%) of each Participating Class Member's Individual Class Payment will be deemed payment for settlement of claims for wages and will be subject to appropriate deductions and withholdings calculated and made by the Settlement Administrator.

¹ The Class Counsel Fee Payment will be divided among Class Counsel (Kim Legal, APC, Helen Kim Law, APC, and EcoTech Law Group, P.C.) pursuant to a written agreement signed by Plaintiff as per Prof. Rules of Conduct, Rule 1.5.1. (Kim Decl ¶ 42.)

² Class Counsel is requesting 33.33% of the Gross Settlement Amount, even though the Settlement provides for 35%. (*See* Ex. 1 at ¶ 3.2.2.)

(Ex. 1 at ¶3.2.4.1.) Seventy-five percent (75%) of each Participating Class Member’s Individual Class Payment will be deemed payment for settlement of claims for penalties and interest not subject to withholdings. (*Id.*) All Individual Settlement Payments to PAGA Settlement Group Members shall be allocated as 100% non-wage payment for civil penalties. (Ex. 1 at ¶ 3.2.5.1.)

D. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that the Class Notice is provided to the Settlement Class Members. (Ex. 1 at ¶ 3.) The Parties have agreed to use a reputable third-party claims administrator, ILYM Group, Inc., to administer the Settlement Agreement. (Ex. 1 ¶ 8.1.) Other than a professional relationship arising out of prior experiences administering settlements, neither counsel for Plaintiff nor Defendants has an interest or relationship, financial or otherwise, with ILYM Group, Inc. (Kim Decl. ¶ 83, Declaration of Helen Kim (“H Kim Decl.”) ¶ 7, Declaration of Dara Tabesh (“Tabesh Decl.”) ¶ 12, Declaration of Brian Brumfield (“Brumfield Decl.”) ¶ 3, Declaration of Britany M. Engelman (“Engelman Decl.”) ¶ 3.)

E. Process for Settlement Class Members to Respond to Class Notice

The Class Notice will be in English only because the Class consists of a single production that was conducted entirely in English and all the casting correspondence (offer, acceptance, and logistics) was in English. (Declaration of Michael Pearson (“Pearson Decl.”) ¶ 4.) Therefore, the Class Members are presumed to read English. (*Id.*)

Class Members will have an opportunity to request exclusion from the Settlement (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Ex. 1 at ¶ 8.5.1.)

Class Members who do not opt out of the Settlement may object to the Settlement Agreement in person at the final approval hearing or by mailing written objections to the Settlement Administrator no later than sixty (60) calendar days after the mailing of the Notice Packet. (Ex. 1 at ¶ 8.7.2.) The Settlement Administrator will provide any written objections to Class Counsel and Defendants’ Counsel, who will file them with the Court in advance of the final approval motion. (Ex. 1 at ¶ 8.8.3.)

Class Members may also opt out of the settlement by submitting a Request for Exclusion

no later than sixty (60) calendar days after the mailing of the Class Notice expressing that the Settlement Class Member elects to be excluded from the Settlement. (Ex. 1 at ¶ 8.5.1.)

F. The Release

The Released Class Claims, for the Class Period, are defined as: “all claims that were alleged, or reasonably could have been alleged, arising out of the facts stated in the Operative Complaint including, but not limited to, any and all claims involving any (a) alleged failure to pay wages, including contractual, minimum wage, overtime wages, double-time wages, and split shift wages; (b) failure to provide compliant, off-duty meal periods, and failure pay any or correct extra compensation owed for failure to provide compliant, off-duty meal periods; (c) failure to provide compliant, off-duty rest breaks, and failure to pay any or correct extra compensation owed for failure to provide complaint, off-duty rest breaks; (d) failure to reimburse for business expenses; (e) failure to provide timely, accurate, and compliant itemized wage statements; (f) failure to keep accurate records regarding wages or hours worked; (g) failure to timely pay wages during employment; (h) failure to timely pay wages on termination of employment; (i) claims for or derivative of misclassification as an independent contractor; (j) claims for restitution, disgorgement, damages expenses, attorneys fees, costs, statutory or civil penalties pursuant to or arising from violation of any of the following: California Labor §§ 201, 202, 203, 204, 210, 216, 218.5, 222, 223, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 256, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698-2699.6, 2775, 2802, 2804, 2810.5, 3353, the applicable Industrial Welfare Commission Wage Order(s), California Civil Code § 1786, 15 U.S.C. § 1681; (k) claims for unfair competition and unfair business practices, including for violation of California Business Code §§ 17200, et seq.; and (l) claims for injunctive relief, declaratory relief, interest, attorneys fees, or costs for any of the foregoing alleged violations during the Class Period.” (Ex. 1 at ¶ 6.2.)

The Released PAGA Claims, for the PAGA Period, are defined as: “all claims for PAGA/civil penalties that were alleged, or reasonably could have been alleged, arising out of the facts stated in the Operative Complaint and all PAGA notices including, but not limited to, any and all claims involving any: (a) alleged failure to pay wages, including contractual, minimum

wage, overtime wages, double-time wages, and split shift wages; (b) failure to provide compliant, off-duty meal periods, and failure pay any or correct extra compensation owed for failure to provide compliant, off-duty meal periods; (c) failure to provide compliant, off-duty rest breaks, and failure to pay any or correct extra compensation owed for failure to provide complaint, off-duty rest breaks; (d) failure to reimburse for business expenses; (e) failure to provide timely, accurate, and compliant itemized wage statements; (f) failure to keep accurate records regarding wages or hours worked; (g) failure to timely pay wages during employment; (h) failure to timely pay wages on termination of employment; (i) claims for or derivative of misclassification as an independent contractor; (j) claims for civil penalties pursuant to or arising from violation of any of the following: California Labor §§ 201, 202, 203, 204, 210, 216, 218.5, 222, 223, 225.5, 226, 226.2, 226.3, 226.7, 226.8, 256, 432.5, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 1199, 2698-2699.6, 2775, 2802, 2804, 2810.5, 3353, the applicable Industrial Welfare Commission Wage Order(s), California Civil Code § 1786, 15 U.S.C. § 1681; and (k) all claims for recovery of attorney’s fees and costs for any of the foregoing alleged violations during the PAGA Period.” (Ex. 1 at ¶ 6.3.)

V. 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 plaintiff’s 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. In *Munoz v. BCI Coca-Cola Bottling Co. of Los Angeles* (2010) 186 Cal. App. 4th 399, 409, the court clarified that a *Kullar* showing does not require the parties to submit the outer reaches of maximum possible recovery without taking into account the actual risks of certification, decertification, dispositive motions, and trial, so long as there is a record which allows “an understanding of the amount that

1 is in controversy and the realistic range of outcomes of the litigation.”

2 The proposed settlement satisfies each of these factors. Class Counsel conducted extensive
3 informal discovery before entering into meaningful settlement negotiations in this matter. (Kim
4 Decl. ¶¶ 10- 18.) This discovery permitted Class Counsel to fairly evaluate the strength of the case
5 and the risks associated with ongoing litigation. (Kim Decl. ¶ 43.) Class Counsel is experienced in
6 handling wage and hour class actions and, after weighing all of the following factors, supports this
7 Settlement Agreement. (Kim Decl. ¶ 44; Declaration of Dara Tabesh (“Tabesh Decl.”), ¶ __; H
8 Kim Decl.) ¶ __.)

9 **1. The Strength of Plaintiff’s Case**

10 **a) The Risks Associated with the Misclassification Theory**

11 Plaintiff’s recovery for their misclassification claim faces significant risks. First, Plaintiff
12 must establish misclassification under two standards: the standard set forth in *Dynamex Operations*
13 *W. v. Superior Court* (2018) 4 Cal.5th 903 and codified in California Assembly Bill 5 (“AB 5”)
14 (the “ABC test”), or the one set forth in *S.G. Borello & Sons, Inc. v. Department of Industrial*
15 *Relations* (1989) 48 Cal.3d 341, 350 (the “*Borello* multi-factor test”).

16 Since Plaintiff’s allegations arise from work that occurred in November 2019, the ABC
17 test would apply for Plaintiff’s claims for violations of the Wage Order, which includes his claim
18 for unpaid overtime, meal and rest breaks, and itemized wage statements. (*Gonzalez v. San Gabriel*
19 *Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1157; Wage Order No. 12-2001, subd. 7 (requiring
20 employers provide “itemized statement[s]” to workers), subd. 11 and 12 (regulating meal breaks
21 and rest breaks for covered workers). Meanwhile, Plaintiff’s claim for waiting time penalties,
22 which does not arise from the Wage Order, is governed by the *Borello* common law employment
23 test. The *Borello* test would also apply to Plaintiff’s PAGA and UCL claims to the extent they are
24 derivative of the waiting time penalties claim.

25 The *Borello* multi-factor test is a more difficult test for Plaintiff than the ABC test, in large
26 part because it does not place the burden on the defendant to refute the presumption of an
27 employer-employee relationship and because no single factor controls the analysis. Accordingly,
28

1 should the Court determine that the *Borello* multi-factor test applies to Plaintiff and the Class,
2 Plaintiff's claims for misclassification would be subject to an even greater risk of failure.

3 There are specific risks to the Plaintiff's largest civil penalties claim under Labor Code §
4 226.8. Recovery of civil penalties under Labor Code section 226.8 depends on a finding that an
5 employer engaged in "willful" misclassification of employees as independent contractors. Thus,
6 the risks to Plaintiff's misclassification claim are twofold: first, there is a risk that the Court could
7 find that Defendants properly classified Plaintiff and the Class Members as independent
8 contractors and deny recovery on this basis. If the Court were to do so, Plaintiff would lose.
9 Second, if the Court found that Defendants did not *willfully* misclassify Plaintiffs and the Class
10 Members, it would eliminate the Plaintiff's largest monetary remedy.

11 The Court could also determine that Defendants willfully misclassified Plaintiff and the
12 class but did not engage in a pattern or practice of doing so. Plaintiff contends Defendants engaged
13 in a willful pattern and practice of misclassifying the Class Members. However, they recognize
14 the significant risks outlined above. Accounting for such risks required a significant reduction in
15 Plaintiff's initial demand. (Kim Decl. ¶ 45.)

16 **b) The Risks Associated with Joint Employer Liability**

17 In addition to misclassification, Plaintiff must establish that Defendants were his and the
18 Class Members' legal employer under joint-employer liability under *Martinez v. Combs*, 49
19 Cal.4th 35 (2010). Moreover, since Plaintiff believed that only the Ye Defendants were financially
20 solvent to make the instant class action lawsuit worthwhile, Plaintiff needed to establish that he
21 had a joint relationship with the Ye Defendants. Here, Plaintiff was recruited by a third party
22 casting agency, controlled by various subcontractors unrelated to the Ye Defendants, and paid by
23 AJR Films, Inc. (Kim Decl., ¶ 46.) Given the different array of parties who could have "suffered
24 and permitted" Plaintiff and the Class Members to work on November 23 and 24, 2019, Plaintiff
25 understood the risk of pinning the employment relationship on the Ye Defendants.

26 **c) The Risks Associated with Unpaid Wages/Overtime Claim**

27 Even assuming *arguendo* the Court were to find that Plaintiff's and the Class Members
28 were misclassified and legally employed by Defendants, there is a further risk that Plaintiff's

1 recovery for unpaid wages or overtime would be limited at best. In order to prevail, Plaintiff must
2 establish that his payment of \$250 per day was a “fixed salary” under Labor Code § 515(d)(2), and
3 therefore only accounts for payment for his non-overtime hours, and that he should be paid
4 separately for overtime hours. (Cal. Lab. Code § 515(d)(2).) In opposition, Defendants would
5 argue that Section 515(d)(2) applies only to “weekly” salaries, not a daily salary, that the term
6 “salary” is not defined in the Labor Code or the Wage Orders, and that Plaintiff was not paid a
7 salary under the recent Supreme Court case of *Helix Energy Solutions Group, Inc. v. Hewitt* (2023)
8 598 U.S. 39 (holding that a “daily rate” worker did not meet the “salary basis test” under the
9 FSLA). If Defendants prevail on one of these arguments, Plaintiff’s entire claim for unpaid wages
10 would fail. Accounting for such risks required a significant reduction in Plaintiff’s initial demand.
11 (Kim Decl. ¶ 47.)

12 **d) The Risks Associated with the Meal and Rest Break Claims**

13 Employers must pay one hour at the employee’s “regular rate of compensation” as a
14 penalty when they fail to provide a thirty-minute uninterrupted meal period as required by Labor
15 Code section 512. (See Labor Code § 226.7(b).) They must also authorize and permit non-exempt
16 employees covered by the wage orders to take a 10-minute rest break every four hours of work or
17 major fraction thereof. (*Id.*; see also 8 Cal. Code Regs. § 11120.)

18 Plaintiff claims that Defendants improperly failed to pay him and the Settlement Class
19 premium wages as a result of misclassifying them as independent contractors. Accordingly,
20 success on these claims is contingent on the Court finding that Defendants misclassified Plaintiff
21 and the Settlement Class and failed to authorize and permit meal and rest breaks.

22 Moreover, Defendants contend that, to establish a violation for missed meal periods, a
23 plaintiff must do more than show that a meal break was not taken. (*Brinker*, 53 Cal.4th at 1004.)
24 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
25 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
26 performed.” (*Id.* at 1040-41.) Instead, a plaintiff must show the employer impeded, discouraged,
27 or prohibited the employee from taking a proper break, or otherwise failed to release the employee
28 of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the reason that a

particular employee may have failed to take a meal break.” (*Washington v. Joe’s Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641.)

There are also risks to Plaintiff’s rest period claim. Employers are not required to record rest periods and such rest periods are paid. Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. Managing such claims at trial may be exceedingly difficult. Plaintiff will depend on sample witness testimony and surveys to prove the claims. While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. (*See Duran v. U.S. Bank National Assn.*, 59 Cal.4th 1, 31 (2014) (explaining “[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling”).)

Risks to both the meal and rest period claims arise from the fact that Defendants retained the Class Members to rehearse and perform in the Opera. Unlike a workforce in a factory that are under the direct and constant supervision of their managers, the Class Members spent a significant amount of time on their own while they waited for instruction from Defendants. Defendants will argue that this freedom of movement and lack of oversight will inhibit any claim that they prevented the Class Members from taking duty-free rest and meal periods – to the extent that they were entitled to any such meal or rest periods.

e) The Risks Associated with the Wage Statement Claim

Labor Code § 226(a)(2) requires that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing total hours worked by the employee. Labor Code § 226(a)(9) requires the wage statement to display all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Plaintiff acknowledged risk posed by Defendants’ argument that he was not misclassified as an independent contractor under the ABC test, which would completely bar any recovery under this claim. Defendants also argued that even if he were misclassified, Defendants were the

1 employer or joint employer and that they are not liable pursuant to *Martinez v. Combs* (2010) 49
2 Cal. 4th 35, 77. While Plaintiff believed his wage statement claim was relatively strong given that
3 he did not receive any statement associated with his payment, there was still risk that a Court would
4 find no liability as to this issue.³ (Kim Decl. ¶ 48.)

5 **f) The Risks Associated with the Waiting Time Penalty Claim**

6 Under Labor Code § 203, if an employer fails to provide wages at the time of an employee's
7 termination or within 72 hours of resignation, then the employee's wages shall continue as a
8 penalty for up to 30 days. Section 203 reflects a public policy that favors the full and prompt
9 payment of earned wages. (*See Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7;
10 *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) Similarly, under Labor Code §§ 204 and 210,
11 an employee may seek a penalty for not being paid timely after the close of a payroll period.

12 Here, Plaintiff rehearsed and performed as a background dancer for two days on November
13 23 and 24, 2019 and argues that he is owed waiting time penalties due to Defendant's failure to
14 pay appropriate overtime wages and meal period premiums. (*See Diaz v. Grill Concepts Services,*
15 *Inc.* (2018) 23 Cal.App.5th 859.) (Kim Decl. ¶ 49.)

16 In evaluating settlement, Plaintiff considered Defendants' argument that a good-faith belief
17 exception applies because they had a good faith belief (1) that Plaintiff was properly classified as
18 an independent contractor, (2) that neither party was an employer or joint employer, and (3) that
19 their payment calculations did not result in underpayment. (*See, e.g., Hill v. Walmart Inc.*, 32 F.4th
20 811 (9th Cir. 2022) (finding that a good faith dispute about whether a model was properly classified
21 as an independent contractor precluded waiting time penalties.) Significantly, Plaintiff recognized
22 that Defendants need not prevail on any of these defenses; rather, in order to establish a good faith
23 defense, Defendants only need to establish an objectively reasonable basis for a defense based on
24 the facts and law as it existed in November 2019. (*Id.*) Thus, even if Plaintiff were to establish that
25 he had an employment relationship with Defendants, and even if he were to establish the

27 ³ Although neither party contemplated this risk at the time of settlement, there is
28 additional risk posed by *Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024
Daily Journal D.A.R. 3799, where the California Supreme Court recently upheld a "good faith"
defense to a wage statement claim under Labor Code § 226.

underlying wage violations as alleged in the FAC, Defendants could still avoid paying waiting time penalties. (*Naranjo v. Spectrum Security Services, Inc.* (Cal., May 6, 2024) 2024 Daily Journal D.A.R. 3799.) Since the waiting time penalties amount to over 70% of class damages, Plaintiff believed that a significant discount on this claim was reasonable given the attendant risks. (Kim Decl. ¶ 50.)

g) The Risks Associated with the PAGA Claim

Plaintiff is cognizant of risks associated with their PAGA claim and have therefore agreed to discount this claim for multiple reasons. First, the aggrieved employees' PAGA claims arise from the same violations as the foregoing class claims and bear the same risks on the merits. Second, the Court has discretion to award less than the maximum penalty, which Defendants argued would be appropriate considering the low amount of direct wage damages, even if Plaintiff prevails. (*See* 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"]; *Carrington v. Starbucks Corporation* (2018) 30 Cal.App.5th 504, 529 [affirming award of 10% of maximum PAGA penalty].) Finally, the Settlement Class is compensated for these violations in the proposed Settlement Agreement, and thus any PAGA recovery for these same violations would be duplicative. Thus, PAGA did not make up a significant percentage of the overall potential liability compared to other claims. (Kim Decl. ¶ 51.) As such, the Settlement Agreement's contemplated PAGA payment of \$200,000 is appropriate. (*Id.*)

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

There is significant expense associated with the class certification process, which the Parties can avoid by entering into the contemplated Settlement Agreement now. (Kim Decl. ¶ 52.) If the Court did eventually certify a class, trial of a case involving approximately 599 Settlement Class Members would require the retention of expensive expert witnesses, the accrual of extensive litigation costs, and a significant time overlay by the Parties. (Kim Decl. ¶ 53.) Moreover, given the complexity and unsettled nature of the issues in this case it is likely that any outcome at trial

would have resulted in a lengthy and costly appeal. (Kim Decl. ¶ 54.) An appeal would result in further delay for the Settlement Class Members who are waiting for a resolution in this matter. (*Id.*)

3. The Risk Associated With a Potential *Pick-Up Stix* Campaign

There is also a risk that Defendants could engage in an individual settlement campaign pursuant to *Chindarah v. Pick Up Stix, Inc.* (2009), 171 Cal.App.4th 796. Given the financial strain that Defendants' workers are no doubt experiencing due to the COVID-19 pandemic, there is a significant risk that, if Defendants were to engage in such a campaign, many if not all of the background actors would choose to accept Defendants' individual settlement offers. If this were to occur, Plaintiff could be left without a sufficiently numerous class to represent a class action.

4. The Risk of Maintaining Class Action Status through Trial

This case has not yet been certified to be tried as a class action. (Kim Decl. ¶ 55.) While Plaintiff believes there is strong evidence to support certification of several possible subclasses, certification is always hard fought and subject to judicial discretion. Moreover, in class actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the Parties would need to conduct multiple depositions, including of the Named Plaintiff and of several person(s) most knowledgeable regarding Defendants' policies. (*Id.*) There is a risk for both sides as to what these depositions will reveal and whether they will support class certification to the extent expected. (*Id.*)

5. The Amount Offered in Settlement

It was very difficult for the Parties to reach this Settlement of \$1,350,000.00. (Kim Decl. ¶ 56.) This Settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Kim Decl. ¶ 57.) 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 Defendants liable, and the assistance of an experienced mediator, Jason Marsili, Esq. (*Id.*)

a) Plaintiff's Assessment of Defendants' Maximum Exposure

Plaintiff assessed full value of the Unpaid Wages claim, without any discount, at

1 approximately \$112,312.50. (Kim Decl. ¶ 58.) Plaintiff used an hourly average rate of \$31.25
2 and assumed that the 599 Class Members worked a 10-hour shift on November 23 and 24, 2019.
3 (Kim Decl. ¶ 59.)

4 The full value of the Meal Period claim and Rest Period claim, without any discount, was
5 each approximately \$37,437.50. (Kim Decl. ¶ 60.)

6 With regard to the Reimbursement Claim analysis, Plaintiff believed that it was reasonable
7 to value the potential reimbursement at \$5 per Class Member, for reimbursement of the cost of
8 using one's personal device for communicating with Defendants' stage directors during rehearsals
9 on November 23 and 24, 2019. This brought the damages for this claim to \$2,995.00 (\$5 x 599
10 Class Members). (Kim Decl. ¶ 61.)

11 Plaintiff valued the Wage Statement Claim, without discount, at approximately
12 \$29,950.00. (Kim Decl. ¶ 62.) This is based on one Workweek for 599 Class Members who
13 worked from November 23, 2019 to November 24, 2019. (*Id.*)

14 Plaintiff valued the Waiting Time Claim, tied to the claims for unpaid wages, at
15 \$7,300,312.50. (Kim Decl. ¶ 63.) This was based on the full amount of waiting time penalties due
16 to Defendants' failure to pay overtime and premium wages. (*Id.*) Considering the derivate nature
17 of Labor Code section 203 and the disputes over willfulness, Plaintiff determined that accepting a
18 steep discount on this claim was appropriate. (Kim Decl. ¶ 64.)

19 Finally, Plaintiff calculated the value of the PAGA claim at \$3,113,550.00 for the PAGA
20 Period, which consists of one Workweek. (Kim Decl. ¶ 65.) The main risk taken into account with
21 PAGA is the discretionary nature of the penalty award. (Kim Decl. ¶ 66.) The court could award
22 the statutory maximum of one hundred (\$100) dollars for the initial violation and two hundred
23 (\$200) dollars thereafter or – in theory – one cent per wage statement. (Kim Decl. ¶ 67.) While
24 there is a dearth of available authority, in Plaintiff's view, were they to succeed on any of the
25 underlying Labor Code violations (especially waiting time penalties), it is not likely that the Court
26 would also award a large amount of PAGA penalties on top of damages. (Kim Decl. ¶ 68.)

27 Per Plaintiff's assessment, the maximum potential value of all of Plaintiff's and the
28 Settlement Class Members' claims was approximately \$10,596,557.50. (Kim Decl. ¶ 69.)

1 However, as a result of the forgoing risks on the merits, Class Counsel believes the Gross
2 Settlement Fund of \$1,350,000.00 is fair and reasonable. (Kim Decl. ¶ 70.)

3 **6. The Experience and Views of Counsel**

4 Finally, counsel’s experience and success in similar class actions also weigh in favor of
5 preliminary approval. *See Wershba, supra*, 91 Cal.App.4th at 245. Class Counsel is very
6 experienced in prosecuting complex employment litigation in complex wage, hour, and working
7 condition violations. (Kim Decl. ¶¶ 77-82, H Kim Decl., .) Class Counsel is well versed in class
8 action litigation and has diligently and aggressively pursued this action. (*Id.*) Class Counsel
9 currently serves as Class Counsel for dozens of pending class action lawsuits throughout
10 California. (*Id.*) After factoring in the risks explained above, Class Counsel believes that the
11 proposed settlement is fair and reasonable. (Kim Decl. ¶ 78.)

12 **7. The PAGA Allocation is Reasonable**

13 The “trial court should evaluate a PAGA settlement to determine whether it is fair,
14 reasonable, and adequate in view of PAGA’s purposes to remediate present labor law violations,
15 deter future ones, and to maximize enforcement of state labor laws.” (*Moniz v. Adecco USA, Inc.*
16 (2021) 72 Cal.App.5th 56, 76.) A PAGA allocation, even if a small portion of the gross settlement,
17 could be reasonable if the settlement of the underlying wage and hour claims is robust and serves
18 the deterrent purpose of the PAGA statute. (*O’Connor v. Uber Technologies, Inc.* (N.D. Cal. 2016)
19 201 F.Supp.3d 1110, 1135.)

20 Here, \$200,000 is allocated to PAGA Penalties. (Kim Decl. ¶ 71.) Given that the Ye
21 Defendants will pay a total of \$1,350,000 as a result of the alleged violations, the class
22 and PAGA settlement is a large disincentive for Defendant to engage in similar Labor Code
23 violations in the future. (Kim Decl ¶ 72.) And, because all Class Members will receive a Class
24 Notice with contact information for Class Counsel, those employees will know to contact Class
25 Counsel in the future if Defendants attempts to engage in similar practices. (Kim Decl ¶ 73.) These
26 factors – the payment of a large sum and employee notice of violations and potential violations –
27 serve to maximize enforcement of state labor laws. (Kim Decl ¶ 74.) Also, unlike in *Moniz*, here
28 there is no unsubstantiated and disproportionate allocation of civil penalties between different

groups of employees. (Kim Decl ¶ 75.) Each Aggrieved Employee will receive the same amount of civil penalty because each worked one Workweek during the PAGA Period. (Kim Decl ¶ 76.) Based on the foregoing, the PAGA allocation and the individual PAGA payment satisfies policies underlying California’s wage and hour laws.

8. The Class Payment Allocation Is Fair and Reasonable

Plans of allocation are subject to the same standard of review as class action settlements; they must be “fair, adequate and reasonable.” (*See, e.g., Officers for Justice v. Civil Service Comm’n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation compensates Settlement Class Members pro rata based on the Net Settlement Amount. The payment to each member of the Settlement Class not excluding him/ herself will be determined by dividing the Net Settlement Amount by the total number of Workweeks (1 Workweek) by all members of the Settlement Class during the Settlement Period. This allocation distributes Settlement funds proportionally to each class member’s damages, and should therefore be approved as fair, adequate, and reasonable. (Ex. 1 at § 3.2.4.)

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

Plaintiff requests 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 Settlement 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 ¶ 8.4.) If any Notices are returned as undeliverable, the Settlement 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

1 class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134, 151–52.)
2 The purpose of a class notice is to give class members sufficient information to decide whether
3 they should accept the benefits offered, opt out and pursue their own remedies, or object to the
4 settlement. (*Id.*)

5 Here, the Notice clearly explains the proposed Settlement Agreement and the options to
6 opt out of the Settlement or object to it at the Final Approval Hearing. (Ex. 1 at ¶ 8.4.2; *see also*
7 Ex. A to the Settlement Agreement at pp. 2, 4 [Class Notice].) In short, the Court should approve
8 the proposed Class Notice because it describes the proposed settlement with enough specificity to
9 allow Settlement Class Members to make an informed choice regarding whether to participate.

10 **VI. THE SERVICE AWARD TO THE NAMED PLAINTIFF**

11 The Named Plaintiff is entitled to an enhancement for his valiant effort and time expended
12 in this matter. (Kim Decl. ¶ 84.) The time spent by Plaintiff is significant and includes researching
13 and retaining competent counsel; providing information to Class Counsel regarding the nature of
14 the work; compiling relevant documents; working closely with Class Counsel to develop the
15 theories of liability and martial relevant evidence; regularly discussing the status of the case with
16 Class Counsel; participating during mediation; and responding promptly to Class Counsel’s
17 communications regarding settlement. (Kim Decl. ¶ 85; Pearson Decl. ¶¶ 5-15.) Thus, in addition
18 to the sums paid to Class Members, Plaintiff requests a proposed litigation enhancement in the
19 amount of \$7,500.00, to be paid from the Gross Settlement Fund. (Ex. 1 at ¶ 3.2.1.) As set forth in
20 the Settlement Agreement, Plaintiff will also be entering into a general release of liability pursuant
21 to Civil Code Section 1542. (Kim Decl. ¶ 86; Ex. 1 ¶ 6.1.)

22 Class Counsel considers this to be a fair and reasonable enhancement. (Kim Decl. ¶ 87;
23 HKim Decl. ¶ 2; Tabesh Decl. ¶¶ 2-4.) The enhancement takes into consideration the time, effort,
24 and expense incurred by Plaintiff in coming forward to litigate this matter on behalf of all Class
25 Members. (*Id.*) Plaintiff will provide a detailed declaration with the Final Approval Motion
26 detailing his participation and further justification for the enhancement. (*Id.*)

27 **VII. SUBMISSION TO THE LABOR AND WORKFORCE DEVELOPMENT AGENCY**

28 As indicated on the Proof of Service, Plaintiff’s Motion for Approval of Class Action

1 Settlement will be concurrently uploaded to the Labor and Workforce Development Agency's
2 ("LWDA") website on the date this Motion is filed as required by statute. Proof of submission of
3 Plaintiff's Motion, all related documents, and copy of the email from the LWDA confirming
4 receipt is attached to the Declaration Frank H. Kim as Exhibit 2. (Kim Decl. ¶ 88.)

5 **VIII. CONCLUSION**

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

14 DATED: June 13, 2024

KIM LEGAL, APC

15 By: /s/ Frank H. Kim

16 Frank H. Kim

17 Attorneys for Plaintiff Michael Pearson and the
18 Proposed Class
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